

(c) The department of treasury shall not do any of the following:

(i) Collect the tax levied under this act from a person that provides 1 or more of the services subject to the tax under this act pursuant to section 3d. However, if a person that provides 1 or more of the services subject to the tax under this act pursuant to section 3d collects the tax from a person that receives a service subject to the tax under this act pursuant to section 3d prior to the effective date of the amendatory act that added this section and does not return or remit that tax as provided in subdivision (a), the department shall collect that tax. A person that receives a service subject to the tax under this act pursuant to section 3d and who paid that tax may apply for a refund of that tax as provided in subdivision (a).

(ii) Except as otherwise provided in subdivision (b), penalize a person that provides 1 or more of the services subject to the tax under this act pursuant to section 3d for failure to collect, return, or remit the tax levied under this act on services subject to the tax under section 3d.

This act is ordered to take immediate effect.

Approved December 10, 2007.

Filed with Secretary of State December 10, 2007.

[No. 149]

(SB 593)

AN ACT to amend 1978 PA 368, entitled “An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to provide for the levy of taxes against certain health facilities or agencies; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for the implementation of federal law; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to provide for an appropriation and supplements; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates,” by amending the heading of part 131 and sections 13101 and 13102 (MCL 333.13101 and 333.13102), as added by 1996 PA 223, and by adding sections 13104, 13105, 13106, 13107, 13108, 13109, 13110, and 13111.

The People of the State of Michigan enact:

PART 131. BODY ART FACILITIES

333.13101 Definitions.

Sec. 13101. (1) As used in this part:

(a) “Alcoholic liquor” means that term as defined in section 105 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1105.

(b) “Body art facility” means the location at which an individual does 1 or more of the following for compensation:

(i) Performs tattooing.

(ii) Performs branding.

(iii) Performs body-piercing.

(c) “Body-piercing” means the perforation of human tissue other than an ear for a non-medical purpose.

(d) “Branding” means a permanent mark made on human tissue by burning with a hot iron or other instrument.

(e) “Controlled substance” means that term as defined in section 7104.

(f) “Department” means the department of community health.

(g) “Local governing entity” means that term as defined in section 2406.

(h) “Minor” means an individual under 18 years of age who is not emancipated under section 4 of 1968 PA 293, MCL 722.4.

(i) “Smoking” means that term as defined in section 12601.

(j) “Tattoo” means 1 or more of the following:

(i) An indelible mark made upon the body of another individual by the insertion of a pigment under the skin.

(ii) An indelible design made upon the body of another individual by production of scars other than by branding.

(2) In addition, article 1 contains general definitions and principles of construction applicable to all articles in this code.

333.13102 Tattoo, brand, or body piercing on minor; consent of parent or guardian required; individual under influence of alcoholic liquor or controlled substance.

Sec. 13102. (1) Subject to section 13104, an individual shall not tattoo, brand, or perform body-piercing on a minor unless the individual obtains the prior written informed consent of the minor’s parent or legal guardian. The minor’s parent or legal guardian shall execute the written, informed consent required under this subsection in the presence of the individual performing the tattooing, branding, or body-piercing on the minor or in the presence of an employee or agent of that individual.

(2) An individual shall not tattoo, brand, or perform body-piercing on another individual if the other individual is under the influence of alcoholic liquor or a controlled substance.

333.13104 Tattooing, branding, or performing body-piercing; licensure of body art facility required; application; form; issuance; duration; fees.

Sec. 13104. (1) Beginning January 1, 2009, an individual shall not tattoo, brand, or perform body-piercing on another individual unless the tattooing, branding, or body-piercing occurs at a body art facility licensed under this part.

(2) The owner or operator of a body art facility shall apply to the department for a body art facility license under this part on a form provided by the department and at the time of application shall pay to the department the appropriate fee prescribed under subsection (3). If the department determines that the application is complete and the body art facility proposed or operated by the applicant meets the requirements of this part and any rules promulgated under this part, the department shall issue a license to the applicant for the operation of that body art facility. Except for a temporary license issued under this part, the license is effective for 3 years.

(3) Subject to section 13108, the owner or operator of a body art facility shall pay 1 of the following fees at the time of application for a body art facility license:

(a) For an initial 3-year license.....	\$ 500.00.
(b) For a 3-year renewal of a license.....	\$ 300.00.
(c) For a temporary license to operate a body art facility at a fixed location for not more than a 2-week period.....	\$ 100.00.

333.13105 Inspection by local health department; results; annual inspection; license nontransferable.

Sec. 13105. (1) Before issuing a license to an applicant under this part, the department shall receive the results of an inspection of the premises of the body art facility that is the subject of the application from the appropriate local health department. The local health department shall convey the results of the inspection of the premises of the body art facility that is the subject of the application to the department as soon as practical after the inspection occurs.

(2) The appropriate local health department shall inspect each body art facility prior to being licensed under this part and shall at least annually inspect each body art facility licensed under this part to ensure compliance with this part. Subject to section 13108, the department shall authorize a local health department under section 2235 to perform the inspections required under this subsection.

(3) The department shall issue a license under this part to a specific person for a body art facility at a specific location. A license issued under this part is nontransferable.

333.13106 License renewal.

Sec. 13106. The owner or operator of a body art facility licensed under this part shall apply to the department for renewal of the license not less than 30 days before the license expires. Upon payment of the renewal fee prescribed by section 13104(3), the department shall renew the license if the applicant is in compliance with this part and any rules promulgated under this part. The department shall consult with the appropriate local health department to determine that compliance.

333.13107 Owner of body art facility; duties.

Sec. 13107. A person who owns or operates a body art facility licensed under this part shall do all of the following:

(a) Display the license issued under this part in a conspicuous place within the customer service area of the body art facility.

(b) Comply with and ensure that the body art facility is in compliance with this part and part 138 and with rules promulgated under those parts.

(c) Ensure that the body art facility as a whole and any individual engaged in tattooing, cleaning tattooing instruments, performing branding or body-piercing, or cleaning branding or body-piercing instruments comply with the bloodborne pathogen safety standards under 29 CFR 1910.1030.

(d) Ensure that tattooing, branding, or body-piercing is performed in a sterile field with sterile needles and only single-use ink.

(e) Maintain a confidential record of each individual who has been tattooed or branded or who has had body-piercing performed at the body art facility and make the records available for inspection by a local health department. The record shall include, at a minimum, the individual's name, address, age, and signature; the date; the design and location of the tattooing, branding, or body-piercing; the name of the individual performing the tattooing, branding, or body-piercing; and any known complications the individual has with any tattooing, branding, or body-piercing done at that body art facility. The owner, operator, manager, or person having control of the body art facility shall provide a copy of the record to the individual at the time he or she is tattooed, is branded, or has body-piercing performed. The department shall develop guidelines for the confidential handling of this record, including, but not limited to, the maintenance, storage, inspection, and destruction of the record.

(f) Prohibit smoking within the body art facility.

(g) Provide each customer with a written information sheet distributed or approved by the department that provides at least all of the following:

(i) Instructions on the care of a tattoo site, brand site, or body-piercing site.

(ii) A recommendation that an individual seek medical attention if the tattoo site, brand site, or body-piercing site becomes infected or painful or if the person develops a fever soon after being tattooed, branded, or having body-piercing performed.

(iii) Notice that the individual may be allowed to donate blood within the standard deferral period if the individual presents a copy of the record required under subdivision (e) to the blood donor facility.

(h) Maintain on file on the premises of the body art facility and have available for inspection by a local health department all of the following:

(i) All of the following regarding each technician employed by or who performs tattooing, branding, or body-piercing at the body art facility:

(A) His or her full legal name.

(B) His or her exact duties at the facility.

(C) His or her date of birth.

(D) His or her gender.

(E) His or her home address.

(F) His or her home and work telephone numbers.

(G) His or her prior or other current places of employment as a technician, if known.

(H) His or her training and experience.

(I) An identification photo.

(J) Documentation of compliance with the educational, training, or experience requirements of the department under this part.

(K) Documentation of HBV vaccination status or other vaccination status requirements of the department under this part.

(ii) Full legal name of the body art facility.

(iii) The hours of operation of the body art facility.

(iv) All of the following regarding each owner and operator of the body art facility:

(A) His or her full legal name.

(B) His or her home address.

(C) His or her home and work telephone numbers.

(v) A complete description of all tattooing, branding, or body-piercing performed at the body art facility.

(vi) A complete inventory of all instruments, body jewelry, sharps, and inks used for the tattooing, branding, or body-piercing performed at the body art facility. The inventory shall include the name of the item's manufacturer and serial or lot number, if applicable. The body art facility may provide invoices or orders to satisfy this requirement if determined appropriate by the department or the local health department.

(vii) A copy of this part and rules promulgated under this part.

333.13108 Enforcement.

Sec. 13108. (1) Pursuant to section 2235, the department shall authorize a local health department to enforce this part and any rules promulgated under this part. A local health department authorized to enforce this part and any rules promulgated under this part shall enforce this part and any rules promulgated under this part pursuant to sections 2461(2) and 2462. In addition to the penalties and remedies under this part, a local health department may enforce this part and any rules promulgated under this part through an action commenced pursuant to section 2465 or any other appropriate action authorized by law.

(2) If a local health department of a county or city under part 24 is unable or unwilling to perform the functions required in this section and the county or city is not part of a district that has created a district health department pursuant to section 2415, the county or city, through an intergovernmental agreement, may contract with another local governing entity to have that entity's local health department perform the functions required in this section. The contracting parties under this subsection shall obtain the department's approval before execution of the intergovernmental agreement.

(3) Pursuant to section 2444, a local governing entity of a local health department authorized to enforce this part under this section may fix and require the payment of fees by applicants and licensees for services required to be performed by the local health department under this section.

(4) Unless they conflict with standards of this part or rules are promulgated by the department regarding safety standards, a local health department shall use as guidance in enforcing this part the safety standards issued by the national environmental health association in "Body Art: A Comprehensive Guidebook and Model Code".

(5) In addition to any other enforcement action authorized by law, a person alleging a violation of this part may bring a civil action in a court of competent jurisdiction for appropriate injunctive relief.

333.13109 Violation as misdemeanor; penalty.

Sec. 13109. Except as otherwise provided in sections 13103 and 13110, a person who violates this part or a rule promulgated under this part is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$100.00, or both, for each violation.

333.13110 Giving or selling body-piercing kit or device to minor prohibited; violation; fine.

Sec. 13110. A person shall not give or sell to a minor a body-piercing kit or other body-piercing device. A person who violates this section is responsible for a state civil infraction and is subject to a civil fine of not more than \$500.00. This section shall be enforced pursuant to chapter 88 of the revised judicature act of 1961, 1961 PA 236, MCL 600.8801 to 600.8835.

333.13111 Local codes, regulations, or ordinances.

Sec. 13111. A local governing entity of a local health department authorized to enforce this part under section 13108 may adopt and enforce local codes, ordinances, or regulations

that are more stringent than the minimum applicable standards set forth in this part or rules promulgated under this part. This part shall not relieve the applicant for a license or a licensee from the responsibility for securing a local permit or complying with applicable local codes, regulations, or ordinances that are in addition to this part.

This act is ordered to take immediate effect.
Approved December 13, 2007.
Filed with Secretary of State December 13, 2007.

[No. 150]

(SB 910)

AN ACT to amend 1995 PA 24, entitled “An act to promote economic growth and job creation within this state; to create and regulate the Michigan economic growth authority; to prescribe the powers and duties of the authority and of state and local officials; to assess and collect a fee; to approve certain plans and the use of certain funds; and to provide qualifications for and determine eligibility for tax credits and other incentives for authorized businesses and for qualified taxpayers,” by amending sections 6 and 9 (MCL 207.806 and 207.809), section 6 as amended by 2003 PA 248 and section 9 as amended by 2000 PA 144.

The People of the State of Michigan enact:

207.806 Michigan economic growth authority; powers.

Sec. 6. The authority shall have powers necessary or convenient to carry out and effectuate the purpose of this act, including, but not limited to, the following:

- (a) To authorize eligible businesses to receive tax credits to foster job creation in this state.
- (b) To determine which businesses qualify for tax credits under this act.
- (c) To determine the amount and duration of tax credits authorized under this act.
- (d) To issue certificates and enter into written agreements specifying the conditions under which tax credits are authorized and the circumstances under which those tax credits may be reduced or terminated.
- (e) To charge and collect reasonable administrative fees.
- (f) To delegate to the chairperson of the authority, staff, or others the functions and powers it considers necessary and appropriate to administer the programs under this act.
- (g) To assist an eligible business to obtain the benefits of a tax credit, incentive, or inducement program provided by this act or by law.
- (h) To determine the eligibility of and issue certificates to certain qualified taxpayers for credits allowed under section 38g(3) of the single business tax act, 1975 PA 228, MCL 208.38g, and section 431 of the Michigan business tax act, 2007 PA 36, MCL 208.1431, and to develop the application process and necessary forms to claim the credit under section 38g(3) of the single business tax act, 1975 PA 228, MCL 208.38g, and section 431 of the Michigan business tax act, 2007 PA 36, MCL 208.1431. The Michigan economic growth authority annually shall prepare and submit to the house of representatives and senate committees responsible for tax policy and economic development issues a report on the credits under section 38g(3) of the single business tax act, 1975 PA 228, MCL 208.38g, and section 431 of the Michigan business

tax act, 2007 PA 36, MCL 208.1431. The report shall include, but is not limited to, all of the following:

(i) A listing of the projects under section 38g(3) of the single business tax act, 1975 PA 228, MCL 208.38g, and section 431 of the Michigan business tax act, 2007 PA 36, MCL 208.1431, that were approved in the previous calendar year.

(ii) The total amount of eligible investment approved under section 38g(3) of the single business tax act, 1975 PA 228, MCL 208.38g, and section 431 of the Michigan business tax act, 2007 PA 36, MCL 208.1431, in the previous calendar year.

(i) To approve the capture of school operating taxes and work plans as provided in sections 13 and 15 of the brownfield redevelopment financing act, 1996 PA 381, MCL 125.2663 and 125.2665.

(j) To determine the eligibility of and issue certificates to certain qualified taxpayers for credits allowed under section 407 of the Michigan business tax act, 2007 PA 36, MCL 208.1407.

207.809 Eligibility for credits; issuance of certificate.

Sec. 9. (1) An authorized business is eligible for the credits provided in sections 37c, 37d, and 38g(19) to (24) of the single business tax act, 1975 PA 228, MCL 208.37c, 208.37d, and 208.38g, and sections 407 and 431 of the Michigan business tax act, 2007 PA 36, MCL 208.1407 and 208.1431.

(2) The authority shall issue a certificate each year to an authorized business that states the following:

(a) That the eligible business is an authorized business.

(b) The amount of the tax credit for the designated tax year.

(c) The taxpayer's federal employer identification number or the Michigan treasury number assigned to the taxpayer.

This act is ordered to take immediate effect.

Approved December 14, 2007.

Filed with Secretary of State December 14, 2007.

[No. 151]

(HB 4550)

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

probation throughout this state and the appointment of probation officers; to prescribe the powers, duties, and compensation of probation officers; to provide penalties for the violation of the duties of probation officers; to provide for procedure governing proceedings to prevent crime and proceedings for the discovery of crime; to provide for fees of officers, witnesses, and others in criminal and ordinance violation cases; to set forth miscellaneous provisions as to criminal procedure in certain cases; to provide penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act,” by amending section 16b of chapter XVII (MCL 777.16b), as amended by 2006 PA 518.

The People of the State of Michigan enact:

CHAPTER XVII

777.16b MCL 750.49 to 750.68; felonies to which chapter applicable.

Sec. 16b. This chapter applies to the following felonies enumerated in chapter 750 of the Michigan Compiled Laws:

M.C.L.	Category	Class	Description	Stat	Max
750.49(2)(a) to (d)	Pub ord	F	Fighting animals or providing facilities for animal fights		4
750.49(2)(e)	Pub ord	F	Organizing or promoting animal fights		4
750.49(2)(f)	Pub ord	H	Attending animal fight		4
750.49(2)(g)	Pub ord	F	Breeding or selling fighting animals		4
750.49(2)(h)	Pub ord	F	Selling or possessing equipment for animal fights		4
750.49(8)	Person	A	Inciting fighting animal resulting in death		Life
750.49(9)	Person	F	Inciting fighting animal to attack		4
750.49(10)	Person	D	Fighting animal attacking without provocation and death resulting		15
750.50(4)(c)	Pub ord	G	Animal neglect or cruelty involving 4 or more animals but fewer than 10 animals or with 1 prior conviction		2
750.50(4)(d)	Pub ord	F	Animal neglect or cruelty involving 10 or more animals or with 2 or more prior convictions		4
750.50b(2)	Property	F	Killing or torturing animals		4
750.50c(5)	Pub ord	E	Killing or causing serious physical harm to law enforcement animal or search and rescue dog		5
750.50c(7)	Pub saf	H	Harassing or causing harm to law enforcement animal or search and rescue dog while committing crime		2
750.68	Property	G	Changing brands with intent to steal		4

Effective date.

Enacting section 1. This amendatory act takes effect April 1, 2008.

Conditional effective date.

Enacting section 2. This amendatory act does not take effect unless House Bill No. 4551 of the 94th Legislature is enacted into law.

Approved December 20, 2007.

Filed with Secretary of State December 20, 2007.

Compiler's note: House Bill No. 4551, referred to in enacting section 2, was filed with the Secretary of State December 20, 2007, and became 2007 PA 152, Eff. Apr. 1, 2008.

[No. 152]**(HB 4551)**

AN ACT to amend 1931 PA 328, entitled “An act to revise, consolidate, codify, and add to the statutes relating to crimes; to define crimes and prescribe the penalties and remedies; to provide for restitution under certain circumstances; to provide for the competency of evidence at the trial of persons accused of crime; to provide immunity from prosecution for certain witnesses appearing at such trials; and to repeal certain acts and parts of acts inconsistent with or contravening any of the provisions of this act,” by amending section 50 (MCL 750.50), as amended by 1998 PA 405.

The People of the State of Michigan enact:

750.50 Definitions; charge or custody of animal; prohibited conduct; forfeiture of animal; violation as misdemeanor or felony; penalty; psychiatric or psychological counseling; other violation of law arising out of same transaction; consecutive terms; order to pay costs; order prohibiting owning or possessing animal for certain period of time; violation of subsection (9); revocation of probation; certain conduct not prohibited by section.

Sec. 50. (1) As used in this section and section 50b:

(a) “Adequate care” means the provision of sufficient food, water, shelter, sanitary conditions, exercise, and veterinary medical attention in order to maintain an animal in a state of good health.

(b) “Animal” means any vertebrate other than a human being.

(c) “Animal protection shelter” means a facility operated by a person, humane society, society for the prevention of cruelty to animals, or any other nonprofit organization, for the care of homeless animals.

(d) “Animal control shelter” means a facility operated by a county, city, village, or township to impound and care for animals found in streets or otherwise at large contrary to any ordinance of the county, city, village, or township or state law.

(e) “Licensed veterinarian” means a person licensed to practice veterinary medicine under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(f) “Livestock” means that term as defined in the animal industry act of 1987, 1988 PA 466, MCL 287.701 to 287.747.

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

(h) “Neglect” means to fail to sufficiently and properly care for an animal to the extent that the animal’s health is jeopardized.

(i) “Sanitary conditions” means space free from health hazards including excessive animal waste, overcrowding of animals, or other conditions that endanger the animal’s health. This definition does not include any condition resulting from a customary and reasonable practice pursuant to farming or animal husbandry.

(j) “Shelter” means adequate protection from the elements and weather conditions suitable for the age, species, and physical condition of the animal so as to maintain the animal in a state of good health. Shelter, for livestock, includes structures or natural features such as trees or topography. Shelter, for a dog, includes 1 or more of the following:

(i) The residence of the dog’s owner or other individual.

(ii) A doghouse that is an enclosed structure with a roof and of appropriate dimensions for the breed and size of the dog. The doghouse shall have dry bedding when the outdoor temperature is or is predicted to drop below freezing.

(iii) A structure, including a garage, barn, or shed, that is sufficiently insulated and ventilated to protect the dog from exposure to extreme temperatures or, if not sufficiently insulated and ventilated, contains a doghouse as provided under subparagraph (ii) that is accessible to the dog.

(k) “State of good health” means freedom from disease and illness, and in a condition of proper body weight and temperature for the age and species of the animal, unless the animal is undergoing appropriate treatment.

(l) “Tethering” means the restraint and confinement of a dog by use of a chain, rope, or similar device.

(m) “Water” means potable water that is suitable for the age and species of animal that is made regularly available unless otherwise directed by a licensed veterinarian.

(2) An owner, possessor, or person having the charge or custody of an animal shall not do any of the following:

(a) Fail to provide an animal with adequate care.

(b) Cruelly drive, work, or beat an animal, or cause an animal to be cruelly driven, worked, or beaten.

(c) Carry or cause to be carried in or upon a vehicle or otherwise any live animal having the feet or legs tied together, other than an animal being transported for medical care, or a horse whose feet are hobbled to protect the horse during transport or in any other cruel and inhumane manner.

(d) Carry or cause to be carried a live animal in or upon a vehicle or otherwise without providing a secure space, rack, car, crate, or cage, in which livestock may stand, and in which all other animals may stand, turn around, and lie down during transportation, or while awaiting slaughter. As used in this subdivision, for purposes of transportation of sled dogs, “stand” means sufficient vertical distance to allow the animal to stand without its shoulders touching the top of the crate or transportation vehicle.

(e) Abandon an animal or cause an animal to be abandoned, in any place, without making provisions for the animal’s adequate care, unless premises are vacated for the protection of human life or the prevention of injury to a human. An animal that is lost by an owner or custodian while traveling, walking, hiking, or hunting is not abandoned under this section when the owner or custodian has made a reasonable effort to locate the animal.

(f) Negligently allow any animal, including one who is aged, diseased, maimed, hopelessly sick, disabled, or nonambulatory to suffer unnecessary neglect, torture, or pain.

(g) Tether a dog unless the tether is at least 3 times the length of the dog as measured from the tip of its nose to the base of its tail and is attached to a harness or nonchoke collar designed for tethering.

(3) If an animal is impounded and is being held by an animal control shelter or its designee or an animal protection shelter or its designee or a licensed veterinarian pending the outcome of a criminal action charging a violation of this section or section 50b, before final disposition of the criminal charge, the prosecuting attorney may file a civil action in the court that has jurisdiction of the criminal action, requesting that the court issue an order forfeiting the animal to the animal control shelter or animal protection shelter or to a licensed veterinarian before final disposition of the criminal charge. The prosecuting attorney shall serve a true copy of the summons and complaint upon the defendant and upon a person with a known ownership interest or known security interest in the animal or a person who has filed a lien with the secretary of state in an animal involved in the pending action. The forfeiture of an animal under this section encumbered by a security interest is subject to the interest of the holder of the security interest who did not have prior knowledge of, or consent to the commission of the crime. Upon the filing of the civil action, the court shall set a hearing on the complaint. The hearing shall be conducted within 14 days of the filing of the civil action, or as soon as practicable. The hearing shall be before a judge without a jury. At the hearing, the prosecuting attorney has the burden of establishing by a preponderance of the evidence that a violation of this section or section 50b occurred. If the court finds that the prosecuting attorney has met this burden, the court shall order immediate forfeiture of the animal to the animal control shelter or animal protection shelter or the licensed veterinarian unless the defendant, within 72 hours of the hearing, submits to the court clerk cash or other form of security in an amount determined by the court to be sufficient to repay all reasonable costs incurred, and anticipated to be incurred, by the animal control shelter or animal protection shelter or the licensed veterinarian in caring for the animal from the date of initial impoundment to the date of trial. If cash or other security has been submitted, and the trial in the action is continued at a later date, any order of continuance shall require the defendant to submit additional cash or security in an amount determined by the court to be sufficient to repay all additional reasonable costs anticipated to be incurred by the animal control shelter or animal protection shelter or the licensed veterinarian in caring for the animal until the new date of trial. If the defendant submits cash or other security to the court under this subsection the court may enter an order authorizing the use of that money or other security before final disposition of the criminal charges to pay the reasonable costs incurred by the animal control shelter or animal protection shelter or the licensed veterinarian in caring for the animal from the date of impoundment to the date of final disposition of the criminal charges. The testimony of a person at a hearing held under this subsection is not admissible against him or her in any criminal proceeding except in a criminal prosecution for perjury. The testimony of a person at a hearing held under this subsection does not waive the person's constitutional right against self-incrimination. An animal seized under this section or section 50b is not subject to any other civil action pending the final judgment of the forfeiture action under this subsection.

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

(a) Except as otherwise provided in subdivisions (c) and (d), if the violation involved 1 animal, the person is guilty of a misdemeanor punishable by 1 or more of the following and may be ordered to pay the costs of prosecution:

(i) Imprisonment for not more than 93 days.

(ii) A fine of not more than \$1,000.00.

(iii) Community service for not more than 200 hours.

(b) Except as otherwise provided in subdivisions (c) and (d), if the violation involved 2 or 3 animals or the death of any animal, the person is guilty of a misdemeanor punishable by 1 or more of the following and may be ordered to pay the costs of prosecution:

- (i) Imprisonment for not more than 1 year.
- (ii) A fine of not more than \$2,000.00.
- (iii) Community service for not more than 300 hours.

(c) If the violation involved 4 or more animals but fewer than 10 animals or the person had 1 prior conviction under subsection (2), the person is guilty of a felony punishable by 1 or more of the following and may be ordered to pay the costs of prosecution:

- (i) Imprisonment for not more than 2 years.
- (ii) A fine of not more than \$2,000.00.
- (iii) Community service for not more than 300 hours.

(d) If the violation involved 10 or more animals or the person had 2 or more prior convictions for violating subsection (2), the person is guilty of a felony punishable by 1 or more of the following and may be ordered to pay the costs of prosecution:

- (i) Imprisonment for not more than 4 years.
- (ii) A fine of not more than \$5,000.00.
- (iii) Community service for not more than 500 hours.

(5) The court may order a person convicted of violating subsection (2) to be evaluated to determine the need for psychiatric or psychological counseling and, if determined appropriate by the court, to receive psychiatric or psychological counseling. The evaluation and counseling shall be at the defendant's own expense.

(6) This section does not prohibit a person from being charged with, convicted of, or punished for any other violation of law arising out of the same transaction as the violation of this section.

(7) The court may order a term of imprisonment imposed for a violation of this section to be served consecutively to a term of imprisonment imposed for any other crime including any other violation of law arising out of the same transaction as the violation of this section.

(8) As a part of the sentence for a violation of subsection (2), the court may order the defendant to pay the costs of the care, housing, and veterinary medical care for the animal, as applicable. If the court does not order a defendant to pay all of the applicable costs listed in this subsection, or orders only partial payment of these costs, the court shall state on the record the reason for that action.

(9) As a part of the sentence for a violation of subsection (2), the court may, as a condition of probation, order the defendant not to own or possess an animal for a period of time not to exceed the period of probation. If a person is convicted of a second or subsequent violation of subsection (2), the court may order the defendant not to own or possess an animal for any period of time, including permanent relinquishment of animal ownership.

(10) A person who owns or possesses an animal in violation of an order issued under subsection (9) is subject to revocation of probation if the order is issued as a condition of probation. A person who owns or possesses an animal in violation of an order issued under subsection (9) is also subject to the civil and criminal contempt power of the court, and if found guilty of criminal contempt, may be punished by imprisonment for not more than 90 days, or by a fine of not more than \$500.00, or both.

(11) This section does not prohibit the lawful killing or other use of an animal, including the following:

- (a) Fishing.
 - (b) Hunting, trapping, or wildlife control regulated under the natural resources and environmental protection act, 1994 PA 451, MCL 324.101 to 324.90106.
 - (c) Horse racing.
 - (d) The operation of a zoological park or aquarium.
 - (e) Pest or rodent control regulated under part 83 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.8301 to 324.8336.
 - (f) Farming or a generally accepted animal husbandry or farming practice involving livestock.
 - (g) Activities authorized under rules promulgated under section 9 of the executive organization act of 1965, 1965 PA 380, MCL 16.109.
 - (h) Scientific research under 1969 PA 224, MCL 287.381 to 287.395.
 - (i) Scientific research under sections 2226, 2671, 2676, and 7333 of the public health code, 1978 PA 368, MCL 333.2226, 333.2671, 333.2676, and 333.7333.
- (12) This section does not apply to a veterinarian or a veterinary technician lawfully engaging in the practice of veterinary medicine under part 188 of the public health code, 1978 PA 368, MCL 333.18801 to 333.18838.

Effective date.

Enacting section 1. This amendatory act takes effect April 1, 2008.

Approved December 20, 2007.

Filed with Secretary of State December 20, 2007.

[No. 153]

(HB 5138)

AN ACT to amend 2000 PA 161, entitled “An act to create the Michigan education savings program; to provide for education savings accounts; to prescribe the powers and duties of certain state agencies, boards, and departments; to allow certain tax credits or deductions; and to provide for penalties and remedies,” by amending sections 2, 3, 4, 5, 7, 9, 11, 12, and 15 (MCL 390.1472, 390.1473, 390.1474, 390.1475, 390.1477, 390.1479, 390.1481, 390.1482, and 390.1485), sections 2, 7, and 9 as amended by 2004 PA 387 and section 3 as amended by 2001 PA 215.

The People of the State of Michigan enact:

390.1472 Definitions.

Sec. 2. As used in this act:

- (a) “Account” or “education savings account” means an account established under this act.
- (b) “Account owner” means any of the following:
 - (i) The individual who enters into a Michigan education savings program agreement and establishes an education savings account. The account owner may also be the designated beneficiary of the account.

(ii) An entity exempt from taxation under section 501(c)(3) of the internal revenue code or an estate or trust that enters into a Michigan education savings program agreement and establishes an education savings account.

(c) “Board” means the board of directors of the Michigan education trust described in section 10 of the Michigan education trust act, 1986 PA 316, MCL 390.1430.

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

(e) “Designated beneficiary” means the individual designated as the individual whose higher education expenses are expected to be paid from the account.

(f) “Eligible educational institution” means that term as defined in section 529 of the internal revenue code or a college, university, community college, or junior college described in section 4, 5, or 6 of article VIII of the state constitution of 1963 or established under section 7 of article VIII of the state constitution of 1963.

(g) “Internal revenue code” means the United States internal revenue code of 1986 in effect on January 1, 2002 or at the option of the taxpayer, in effect for the current year.

(h) “Management contract” means the contract executed between the treasurer and a program manager.

(i) “Member of the family” means a family member as defined in section 529 of the internal revenue code.

(j) “Michigan education savings program agreement” means the agreement between the program and an account owner that establishes an education savings account.

(k) “Program” means the Michigan education savings program established pursuant to this act.

(l) “Program manager” means an entity selected by the treasurer to act as a manager of 1 or more of the savings plans offered under the program.

(m) “Qualified higher education expenses” means qualified higher education expenses as defined in section 529 of the internal revenue code.

(n) “Qualified withdrawal” means a distribution that is not subject to a penalty or an excise tax under section 529 of the internal revenue code, a penalty under this act, or taxation under the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532, and that meets any of the following:

(i) A withdrawal from an account to pay the qualified higher education expenses of the designated beneficiary incurred after the account is established.

(ii) A withdrawal made as the result of the death or disability of the designated beneficiary of an account.

(iii) A withdrawal made because a beneficiary received a scholarship that paid for all or part of the qualified higher education expenses of the beneficiary to the extent the amount of the withdrawal does not exceed the amount of the scholarship.

(iv) A withdrawal made because a beneficiary attended a service academy to the extent that the amount of the withdrawal does not exceed the costs of the advanced education attributable to the beneficiary’s attendance in the service academy.

(v) A transfer of funds due to the termination of the management contract as provided in section 5.

(vi) A transfer of funds as provided in section 8.

(o) “Savings plan” or “plans” means a plan that provides different investment strategies and allows account distributions for qualified higher education expenses.

(p) “Service academy” means the United States military academy, United States naval academy, United States air force academy, United States coast guard academy, or United States merchant marine academy.

(q) “Treasurer” means the state treasurer.

390.1473 Michigan education savings program; establishment; soliciting proposals; duties and powers vested in treasurer; administration of program; funds trustee; personnel and services; selection of program manager; contract.

Sec. 3. (1) The Michigan education savings program is established in the department of treasury. The program may consist of 1 or more savings plans.

(2) The treasurer shall solicit proposals from entities to be a program manager to provide the services described in subsection (5).

(3) The purposes, powers, and duties of the Michigan education savings program are vested in and shall be exercised by the treasurer or the designee of the treasurer.

(4) The state treasurer shall administer the Michigan education savings program and shall be the trustee for the funds of the Michigan education savings program. The treasurer may use program revenues to maintain or enhance the state’s qualified tuition programs.

(5) The treasurer may employ or contract with personnel and contract for services necessary for the administration of each savings plan under the program and the investment of the assets of each savings plan under the program including, but not limited to, managerial, professional, legal, clerical, technical, and administrative personnel or services.

(6) When selecting a program manager, the treasurer shall give preference to proposals from single entities that propose to provide all of the functions described in subsection (5) and that demonstrate the most advantageous combination, to both potential participants and this state, of the following factors and the management contract shall address these factors:

(a) Financial stability.

(b) The safety of the investment instruments being offered.

(c) The ability of the investment instruments to track the increasing costs of higher education.

(d) The ability of the entity to satisfy the record-keeping and reporting requirements of this act.

(e) The entity’s plan for marketing the savings plan and the investment it is willing to make to promote the savings plan.

(f) The fees, if any, proposed to be charged to persons for opening or maintaining an account.

(g) The minimum initial deposit and minimum contributions that the entity will require which, for the first year of the savings plan, shall not be greater than \$25.00 for a cash contribution or \$15.00 per pay period for payroll deduction plans.

(h) The ability of the entity to accept electronic withdrawals, including payroll deduction plans.

(7) The treasurer shall enter into a contract with each program manager which shall address the respective authority and responsibility of the treasurer and the program manager to do all of the following:

(a) Develop and implement the savings plan or plans offered under the program.

(b) Invest the money received from account owners in 1 or more investment instruments.

(c) Engage the services of consultants on a contractual basis to provide professional and technical assistance and advice.

(d) Determine the use of financial organizations as account depositories and financial managers.

(e) Charge, impose, and collect annual administrative fees and service in connection with any agreements, contracts, and transactions relating to individual accounts, exclusive of initial sales charges, which shall not exceed 2.0% of the average daily net assets of the account.

(f) Develop marketing plans and promotional material.

(g) Establish the methods by which funds are allocated to pay for administrative costs.

(h) Provide criteria for terminating and not renewing the management contract.

(i) Address the ability of the program manager to take any action required to keep the savings plan or plans offered under the program in compliance with requirements of this act and its management contract and to manage the savings plan or plans offered under the program to qualify as a qualified tuition program under section 529 of the internal revenue code.

(j) Keep adequate records of each account and provide the treasurer with information that the treasurer requires related to those records.

(k) Compile the information contained in statements required to be prepared under this act and provide that compilation to the treasurer in a timely manner.

(l) Hold all accounts for the benefit of the account owner.

(m) Provide for audits at least annually by a firm of certified public accountants.

(n) Provide the treasurer with copies of all regulatory filings and reports related to the savings plan or plans offered under the program made during the term of the management contract or while the program manager is holding any accounts, other than confidential filings or reports except to the extent those filings or reports are related to or are a part of the savings plan or plans offered under the program. It is the responsibility of the program manager to make available for review by the treasurer the results of any periodic examination of the program manager by any state or federal banking, insurance, or securities commission, except to the extent that the report or reports are not required to be disclosed under state or federal law.

(o) Ensure that any description of the savings plan or plans offered under the program, whether in writing or through the use of any media, is consistent with the marketing plan developed by the program manager.

(p) Take any other necessary and proper activities to carry out the purposes of this act.

390.1474 Management contract; supervision by treasurer.

Sec. 4. The treasurer shall be responsible for the ongoing supervision of each management contract in consultation with the board.

390.1475 Management contract; term; termination.

Sec. 5. (1) A management contract shall be for a term of years specified in the management contract.

(2) The treasurer may terminate a management contract based on the criteria specified in the management contract.

390.1477 Education savings accounts; establishment; purpose; agreement; form of contribution; withdrawal; distributions; penalty; separate accounting for each beneficiary.

Sec. 7. (1) Beginning October 1, 2000, education savings accounts may be established under this act.

(2) Any individual or entity described in section 2(b)(ii) may open 1 or more education savings accounts to save money to pay the qualified higher education expenses of 1 or more designated beneficiaries. An account owner shall open only 1 account for any 1 designated beneficiary. Each account opened under this act shall have only 1 designated beneficiary.

(3) To open an education savings account, the individual or entity described in section 2(b)(ii) shall enter into a Michigan education savings program agreement with the program. The Michigan education savings program agreement shall be in the form prescribed by a program manager and approved by the treasurer and contain all of the following:

(a) The name, address, and social security number or employer identification number of the account owner.

(b) A designated beneficiary.

(c) The name, address, and social security number of the designated beneficiary.

(d) Any other information that the treasurer or program manager considers necessary.

(4) Any individual or entity described in section 2(b)(ii) may make contributions to an account.

(5) Contributions to accounts shall only be made in cash, by check, by money order, by credit card, or by any similar method as approved by the state treasurer but shall not be property.

(6) An account owner may withdraw all or part of the balance from an account on 60 days' notice, or a shorter period as authorized in the Michigan education savings program agreement.

(7) Distributions from an account shall be requested on a form approved by the state treasurer. A program manager may retain from the distribution the amount necessary to comply with federal and state tax laws. Distributions may be made in the following manner:

(a) Directly to an eligible education institution.

(b) In the form of a check payable to both the designated beneficiary and the eligible educational institution.

(c) In the form of a check payable to the designated beneficiary or account holder.

(8) Except as otherwise provided in this subsection for tax years that begin before January 1, 2002, if the distribution is not a qualified withdrawal, a program manager shall withhold an amount equal to 10% of the distribution amount as a penalty and pay that amount to the department for deposit into the general fund. For a distribution made after December 31, 2001 that is not a qualified withdrawal, if an excise tax or penalty is imposed under section 529 of the internal revenue code pursuant to section 530(d)(4) of the internal revenue code, a penalty shall not be imposed under this subsection for that distribution. If a distribution that is not a qualified withdrawal is made after December 31, 2001 and an excise tax or penalty is not imposed under section 529 of the internal revenue code pursuant to section 530(d)(4) of the internal revenue code on that distribution, a program manager shall withhold an amount equal to 10% of the accumulated earnings attributable to that distribution amount as a penalty and pay that amount to the department for deposit into the general fund. The penalty under this subsection may be increased or decreased if the treasurer and the program manager determine that it is necessary to increase or decrease the penalty to comply with section 529 of the internal revenue code.

(9) Each savings plan under the program shall provide separate accounting for each designated beneficiary.

390.1479 Account owner or beneficiary; direction of contributions or earnings; selection of investment strategy; contributions by board members or employees; use of interest; restriction.

Sec. 9. (1) Except as otherwise provided in this section, an account owner or a designated beneficiary of any account shall not direct the investment of any contributions to an account or the earnings on an account.

(2) An account owner may select among different investment strategies designed by a program manager in all of the following circumstances to the extent allowed under section 529 of the internal revenue code:

(a) At the time any contribution is made to an account with respect to the amount of that contribution.

(b) Once each calendar year with respect to the accumulated account balance.

(c) When an account owner makes a change in designated beneficiary of an account.

(3) The program may allow board members or employees of the program, or the board members or employees of a contractor hired by the program to perform administrative services, to make contributions to an account.

(4) An interest in an account shall not be used by an account owner or a designated beneficiary as security for a loan. Any pledge of an interest in an account has no force or effect.

390.1481 Account distributions; report to internal revenue service and account owner; statements.

Sec. 11. (1) Each program manager shall report distributions from an account to any individual or for the benefit of any individual during a tax year to the internal revenue service and the account owner or, to the extent required by federal law or regulation, to the distributee.

(2) Each program manager shall provide statements that identify the individual contributions made during the tax year, the total contributions made to the account for the tax year, the value of the account at the end of the tax year, distributions made during the tax year, and any other information that the treasurer requires to each account owner on or before the January 31 following the end of each calendar year.

390.1482 Disclosure of information.

Sec. 12. Each program manager shall disclose the following information in writing to each account owner of an education savings account and any other person who requests information about an education savings account:

(a) The terms and conditions for establishing an education savings account.

(b) Restrictions on the substitutions of designated beneficiaries and transfer of account funds.

(c) The person or entity entitled to terminate a Michigan education savings program agreement.

(d) The period of time during which a designated beneficiary may receive benefits under the Michigan education savings program agreement.

(e) The terms and conditions under which money may be wholly or partially withdrawn from an account or the program, including, but not limited to, any reasonable charges and fees and penalties that may be imposed for withdrawal.

(f) The potential tax consequences associated with contributions to and distributions and withdrawals from accounts.

(g) Investment history and potential growth of account funds and a projection of the impact of the growth of the account funds on the maximum amount allowable in an account.

(h) All other rights and obligations under Michigan education savings program agreements and any other terms, conditions, and provisions of a contract or an agreement entered into under this act.

390.1485 Annual report.

Sec. 15. Each program manager shall file an annual report with the treasurer and the board that includes all of the following:

(a) The names and identification numbers of account owners, designated beneficiaries, and distributees of family tuition accounts. The information reported pursuant to this subdivision is not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(b) The total amount contributed to all accounts during the year.

(c) All distributions from all accounts and whether or not each distribution was a qualified withdrawal.

(d) Any information that the program manager or treasurer may require regarding the taxation of amounts contributed to or withdrawn from accounts.

This act is ordered to take immediate effect.

Approved December 20, 2007.

Filed with Secretary of State December 20, 2007.

[No. 154]

(HB 5139)

AN ACT to amend 1967 PA 281, entitled “An act to meet deficiencies in state funds by providing for the imposition, levy, computation, collection, assessment, and enforcement by lien and otherwise of taxes on or measured by net income; to prescribe the manner and time of making reports and paying the taxes, and the functions of public officers and others as to the taxes; to permit the inspection of the records of taxpayers; to provide for interest and penalties on unpaid taxes; to provide exemptions, credits and refunds of the taxes; to prescribe penalties for the violation of this act; to provide an appropriation; and to repeal certain acts and parts of acts,” by amending section 30 (MCL 206.30), as amended by 2007 PA 94.

The People of the State of Michigan enact:

206.30 “Taxable income” defined; personal exemption; single additional exemption; certain deduction not considered allowable federal exemption for purposes of subsection (2); allowable exemption or deduction for nonresident or part-year resident; subtraction of prizes under MCL 432.1 to 432.47 from adjusted gross income prohibited; adjusted personal exemption; “retirement or pension benefits” defined.

Sec. 30. (1) “Taxable income” means, for a person other than a corporation, estate, or trust, adjusted gross income as defined in the internal revenue code subject to the following adjustments under this section:

(a) Add gross interest income and dividends derived from obligations or securities of states other than Michigan, in the same amount that has been excluded from adjusted gross income less related expenses not deducted in computing adjusted gross income because of section 265(a)(1) of the internal revenue code.

(b) Add taxes on or measured by income to the extent the taxes have been deducted in arriving at adjusted gross income.

(c) Add losses on the sale or exchange of obligations of the United States government, the income of which this state is prohibited from subjecting to a net income tax, to the extent that the loss has been deducted in arriving at adjusted gross income.

(d) Deduct, to the extent included in adjusted gross income, income derived from obligations, or the sale or exchange of obligations, of the United States government that this state is prohibited by law from subjecting to a net income tax, reduced by any interest on indebtedness incurred in carrying the obligations and by any expenses incurred in the production of that income to the extent that the expenses, including amortizable bond premiums, were deducted in arriving at adjusted gross income.

(e) Deduct, to the extent included in adjusted gross income, compensation, including retirement benefits, received for services in the armed forces of the United States.

(f) Deduct the following to the extent included in adjusted gross income:

(i) Retirement or pension benefits received from a federal public retirement system or from a public retirement system of or created by this state or a political subdivision of this state.

(ii) Retirement or pension benefits received from a public retirement system of or created by another state or any of its political subdivisions if the income tax laws of the other state permit a similar deduction or exemption or a reciprocal deduction or exemption of a retirement or pension benefit received from a public retirement system of or created by this state or any of the political subdivisions of this state.

(iii) Social security benefits as defined in section 86 of the internal revenue code.

(iv) Beginning on and after January 1, 2007, retirement or pension benefits not deductible under subparagraph (i) or subdivision (e) from any other retirement or pension system or benefits from a retirement annuity policy in which payments are made for life to a senior citizen, to a maximum of \$42,240.00 for a single return and \$84,480.00 for a joint return. The maximum amounts allowed under this subparagraph shall be reduced by the amount of the deduction for retirement or pension benefits claimed under subparagraph (i) or subdivision (e) and by the amount of a deduction claimed under subdivision (r). For the 2008 tax year and each tax year after 2008, the maximum amounts allowed under this subparagraph shall be adjusted by the percentage increase in the United States consumer price index for the immediately preceding calendar year. The department shall annualize the amounts provided in this subparagraph as necessary. As used in this subparagraph, "senior citizen" means that term as defined in section 514.

(v) The amount determined to be the section 22 amount eligible for the elderly and the permanently and totally disabled credit provided in section 22 of the internal revenue code.

(g) Adjustments resulting from the application of section 271.

(h) Adjustments with respect to estate and trust income as provided in section 36.

(i) Adjustments resulting from the allocation and apportionment provisions of chapter 3.

(j) Deduct political contributions as described in section 4 of the Michigan campaign finance act, 1976 PA 388, MCL 169.204, or 2 USC 431, not in excess of \$50.00 per annum, or \$100.00 per annum for a joint return.

(k) Deduct, to the extent included in adjusted gross income, wages not deductible under section 280C of the internal revenue code.

(l) Deduct the following payments made by the taxpayer in the tax year:

(i) The amount of payment made under an advance tuition payment contract as provided in the Michigan education trust act, 1986 PA 316, MCL 390.1421 to 390.1442.

(ii) The amount of payment made under a contract with a private sector investment manager that meets all of the following criteria:

(A) The contract is certified and approved by the board of directors of the Michigan education trust to provide equivalent benefits and rights to purchasers and beneficiaries as an advance tuition payment contract as described in subparagraph (i).

(B) The contract applies only for a state institution of higher education as defined in the Michigan education trust act, 1986 PA 316, MCL 390.1421 to 390.1442, or a community or junior college in Michigan.

(C) The contract provides for enrollment by the contract's qualified beneficiary in not less than 4 years after the date on which the contract is entered into.

(D) The contract is entered into after either of the following:

(I) The purchaser has had his or her offer to enter into an advance tuition payment contract rejected by the board of directors of the Michigan education trust, if the board determines that the trust cannot accept an unlimited number of enrollees upon an actuarially sound basis.

(II) The board of directors of the Michigan education trust determines that the trust can accept an unlimited number of enrollees upon an actuarially sound basis.

(m) If an advance tuition payment contract under the Michigan education trust act, 1986 PA 316, MCL 390.1421 to 390.1442, or another contract for which the payment was deductible under subdivision (l) is terminated and the qualified beneficiary under that contract does not attend a university, college, junior or community college, or other institution of higher education, add the amount of a refund received by the taxpayer as a result of that termination or the amount of the deduction taken under subdivision (l) for payment made under that contract, whichever is less.

(n) Deduct from the taxable income of a purchaser the amount included as income to the purchaser under the internal revenue code after the advance tuition payment contract entered into under the Michigan education trust act, 1986 PA 316, MCL 390.1421 to 390.1442, is terminated because the qualified beneficiary attends an institution of postsecondary education other than either a state institution of higher education or an institution of postsecondary education located outside this state with which a state institution of higher education has reciprocity.

(o) Add, to the extent deducted in determining adjusted gross income, the net operating loss deduction under section 172 of the internal revenue code.

(p) Deduct a net operating loss deduction for the taxable year as determined under section 172 of the internal revenue code subject to the modifications under section 172(b)(2) of the internal revenue code and subject to the allocation and apportionment provisions of chapter 3 of this act for the taxable year in which the loss was incurred.

(q) Deduct, to the extent included in adjusted gross income, benefits from a discriminatory self-insurance medical expense reimbursement plan.

(r) Beginning on and after January 1, 2007, a taxpayer who is a senior citizen may deduct to the extent included in adjusted gross income, interest, dividends, and capital gains received in the tax year not to exceed \$9,420.00 for a single return and \$18,840.00 for a joint return. The maximum amounts allowed under this subdivision shall be reduced by the amount of a deduction claimed for retirement benefits under subdivision (e) or a deduction claimed under subdivision (f)(i), (ii), (iv), or (v). For the 2008 tax year and each tax year after 2008, the maximum amounts allowed under this subdivision shall be adjusted by the percentage increase in the United States consumer price index for the immediately preceding calendar year. The department shall annualize the amounts provided in this subdivision as necessary. As used in this subdivision, "senior citizen" means that term as defined in section 514.

(s) Deduct, to the extent included in adjusted gross income, all of the following:

(i) The amount of a refund received in the tax year based on taxes paid under this act.

(ii) The amount of a refund received in the tax year based on taxes paid under the city income tax act, 1964 PA 284, MCL 141.501 to 141.787.

(iii) The amount of a credit received in the tax year based on a claim filed under sections 520 and 522 to the extent that the taxes used to calculate the credit were not used to reduce adjusted gross income for a prior year.

(t) Add the amount paid by the state on behalf of the taxpayer in the tax year to repay the outstanding principal on a loan taken on which the taxpayer defaulted that was to fund an advance tuition payment contract entered into under the Michigan education trust act, 1986 PA 316, MCL 390.1421 to 390.1442, if the cost of the advance tuition payment contract was deducted under subdivision (l) and was financed with a Michigan education trust secured loan.

(u) Deduct the amount calculated under section 30d.

(v) Deduct, to the extent included in adjusted gross income, any amount, and any interest earned on that amount, received in the tax year by a taxpayer who is a Holocaust victim as a result of a settlement of claims against any entity or individual for any recovered asset pursuant to the German act regulating unresolved property claims, also known as Gesetz zur Regelung offener Vermögensfragen, as a result of the settlement of the action entitled In re: Holocaust victim assets litigation, CV-96-4849, CV-96-5161, and CV-97-0461 (E.D. NY), or as a result of any similar action if the income and interest are not commingled in any way with and are kept separate from all other funds and assets of the taxpayer. As used in this subdivision:

(i) "Holocaust victim" means a person, or the heir or beneficiary of that person, who was persecuted by Nazi Germany or any Axis regime during any period from 1933 to 1945.

(ii) "Recovered asset" means any asset of any type and any interest earned on that asset including, but not limited to, bank deposits, insurance proceeds, or artwork owned by a Holocaust victim during the period from 1920 to 1945, withheld from that Holocaust victim from and after 1945, and not recovered, returned, or otherwise compensated to the Holocaust victim until after 1993.

(w) Deduct, to the extent not deducted in determining adjusted gross income, both of the following:

(i) Contributions made by the taxpayer in the tax year less qualified withdrawals made in the tax year from education savings accounts, calculated on a per education savings account basis, pursuant to the Michigan education savings program act, 2000 PA 161, MCL 390.1471 to 390.1486, not to exceed a total deduction of \$5,000.00 for a single return or \$10,000.00 for a joint return per tax year. The amount calculated under this subparagraph for each education savings account shall not be less than zero.

(ii) The amount under section 30f.

(x) Add, to the extent not included in adjusted gross income, the amount of money withdrawn by the taxpayer in the tax year from education savings accounts, not to exceed the total amount deducted under subdivision (w) in the tax year and all previous tax years, if the withdrawal was not a qualified withdrawal as provided in the Michigan education savings program act, 2000 PA 161, MCL 390.1471 to 390.1486. This subdivision does not apply to withdrawals that are less than the sum of all contributions made to an education savings account in all previous tax years for which no deduction was claimed under subdivision (w), less any contributions for which no deduction was claimed under subdivision (w) that were withdrawn in all previous tax years.

(y) Deduct, to the extent included in adjusted gross income, the amount of a distribution from individual retirement accounts that qualify under section 408 of the internal revenue code if the distribution is used to pay qualified higher education expenses as that term is defined in the Michigan education savings program act, 2000 PA 161, MCL 390.1471 to 390.1486.

(z) Deduct, to the extent included in adjusted gross income, an amount equal to the qualified charitable distribution made in the tax year by a taxpayer to a charitable organization. The amount allowed under this subdivision shall be equal to the amount deductible by the taxpayer under section 170(c) of the internal revenue code with respect to the qualified charitable distribution in the tax year in which the taxpayer makes the distribution to the qualified charitable organization, reduced by both the amount of the deduction for retirement or pension benefits claimed by the taxpayer under subdivision (f)(i), (ii), (iv), or (v) and by 2 times the total amount of credits claimed under sections 260 and 261 for the tax year. As used in this subdivision, “qualified charitable distribution” means a distribution of assets to a qualified charitable organization by a taxpayer not more than 60 days after the date on which the taxpayer received the assets as a distribution from a retirement or pension plan described in subsection (8)(a). A distribution is to a qualified charitable organization if the distribution is made in any of the following circumstances:

(i) To an organization described in section 501(c)(3) of the internal revenue code except an organization that is controlled by a political party, an elected official or a candidate for an elective office.

(ii) To a charitable remainder annuity trust or a charitable remainder unitrust as defined in section 664(d) of the internal revenue code; to a pooled income fund as defined in section 642(c)(5) of the internal revenue code; or for the issuance of a charitable gift annuity as defined in section 501(m)(5) of the internal revenue code. A trust, fund, or annuity described in this subparagraph is a qualified charitable organization only if no person holds any interest in the trust, fund, or annuity other than 1 or more of the following:

(A) The taxpayer who received the distribution from the retirement or pension plan.

(B) The spouse of an individual described in sub-subparagraph (A).

(C) An organization described in section 501(c)(3) of the internal revenue code.

(aa) A taxpayer who is a resident tribal member may deduct, to the extent included in adjusted gross income, all nonbusiness income earned or received in the tax year and during the period in which an agreement entered into between the taxpayer’s tribe and this state pursuant to section 30c of 1941 PA 122, MCL 205.30c, is in full force and effect. As used in this subdivision:

(i) “Business income” means business income as defined in section 4 and apportioned under chapter 3.

(ii) “Nonbusiness income” means nonbusiness income as defined in section 14 and, to the extent not included in business income, all of the following:

(A) All income derived from wages whether the wages are earned within the agreement area or outside of the agreement area.

(B) All interest and passive dividends.

(C) All rents and royalties derived from real property located within the agreement area.

(D) All rents and royalties derived from tangible personal property, to the extent the personal property is utilized within the agreement area.

(E) Capital gains from the sale or exchange of real property located within the agreement area.

(F) Capital gains from the sale or exchange of tangible personal property located within the agreement area at the time of sale.

(G) Capital gains from the sale or exchange of intangible personal property.

(H) All pension income and benefits including, but not limited to, distributions from a 401(k) plan, individual retirement accounts under section 408 of the internal revenue code, or a defined contribution plan, or payments from a defined benefit plan.

(I) All per capita payments by the tribe to resident tribal members, without regard to the source of payment.

(J) All gaming winnings.

(iii) “Resident tribal member” means an individual who meets all of the following criteria:

(A) Is an enrolled member of a federally recognized tribe.

(B) The individual’s tribe has an agreement with this state pursuant to section 30c of 1941 PA 122, MCL 205.30c, that is in full force and effect.

(C) The individual’s principal place of residence is located within the agreement area as designated in the agreement under sub-subparagraph (B).

(bb) For tax years that begin after December 31, 2006, deduct, to the extent included in adjusted gross income, all or a portion of the gain, as determined under this section, realized from an initial equity investment of not less than \$100,000.00 made by the taxpayer before December 31, 2009, in a qualified business, if an amount equal to the sum of the taxpayer’s basis in the investment as determined under the internal revenue code plus the gain, or a portion of that amount, is reinvested in an equity investment in a qualified business within 1 year after the sale or disposition of the investment in the qualified business. If the amount of the subsequent investment is less than the sum of the taxpayer’s basis from the prior equity investment plus the gain from the prior equity investment, the amount of a deduction under this section shall be reduced by the difference between the sum of the taxpayer’s basis from the prior equity investment plus the gain from the prior equity investment and the subsequent investment. As used in this subdivision:

(i) “Advanced automotive, manufacturing, and materials technology” means any technology that involves 1 or more of the following:

(A) Materials with engineered properties created through the development of specialized process and synthesis technology.

(B) Nanotechnology, including materials, devices, or systems at the atomic, molecular, or macromolecular level, with a scale measured in nanometers.

(C) Microelectromechanical systems, including devices or systems integrating microelectronics with mechanical parts and a scale measured in micrometers.

(D) Improvements to vehicle safety, vehicle performance, vehicle production, or environmental impact, including, but not limited to, vehicle equipment and component parts.

(E) Any technology that involves an alternative energy vehicle or its components. “Alternative energy vehicle” means that term as defined in section 2 of the Michigan next energy authority act, 2002 PA 593, MCL 207.822.

(F) A new technology, device, or system that enhances or improves the manufacturing process of wood, timber, or agricultural-based products.

(G) Advanced computing or electronic device technology related to technology described under this subparagraph.

(H) Design, engineering, testing, or diagnostics related to technology described under this subparagraph.

(I) Product research and development related to technology described under this subparagraph.

(ii) “Advanced computing” means any technology used in the design and development of 1 or more of the following:

(A) Computer hardware and software.

(B) Data communications.

(C) Information technologies.

(iii) “Alternative energy technology” means applied research or commercialization of new or next generation technology in 1 or more of the following:

(A) Alternative energy technology as that term is defined in section 2 of the Michigan next energy authority act, 2002 PA 593, MCL 207.822.

(B) Devices or systems designed and used solely for the purpose of generating energy from agricultural crops, residue and waste generated from the production and processing of agricultural products, animal wastes, or food processing wastes, not including a conventional gasoline or diesel fuel engine or a retrofitted conventional gasoline or diesel fuel engine.

(C) A new technology, product, or system that permits the utilization of biomass for the production of specialty, commodity, or foundational chemicals or of novel or economical commodity materials through the application of biotechnology that minimizes, complements, or replaces reliance on petroleum for the production.

(D) Advanced computing or electronic device technology related to technology described under this subparagraph.

(E) Design, engineering, testing, or diagnostics related to technology described under this subparagraph.

(F) Product research and development related to a technology described under this subparagraph.

(iv) “Competitive edge technology” means 1 or more of the following:

(A) Advanced automotive, manufacturing, and materials technology.

(B) Alternative energy technology.

(C) Homeland security and defense technology.

(D) Life sciences technology.

(v) “Electronic device technology” means any technology that involves microelectronics, semiconductors, electronic equipment, and instrumentation, radio frequency, microwave, and millimeter electronics; optical and optic-electrical devices; or data and digital communications and imaging devices.

(vi) “Homeland security and defense technology” means technology that assists in the assessment of threats or damage to the general population and critical infrastructure, protection of, defense against, or mitigation of the effects of foreign or domestic threats, disasters, or attacks, or support for crisis or response management, including, but not limited to, 1 or more of the following:

(A) Sensors, systems, processes, or equipment for communications, identification and authentication, screening, surveillance, tracking, and data analysis.

(B) Advanced computing or electronic device technology related to technology described under this subparagraph.

(C) Aviation technology including, but not limited to, avionics, airframe design, sensors, early warning systems, and services related to the technology described in this subparagraph.

(D) Design, engineering, testing, or diagnostics related to technology described under this subparagraph.

(E) Product research and development related to technology described under this subparagraph.

(vii) “Life sciences technology” means any technology derived from life sciences intended to improve human health or the overall quality of human life, including, but not limited to, systems, processes, or equipment for drug or gene therapies, biosensors, testing, medical devices or instrumentation with a therapeutic or diagnostic value, a pharmaceutical or other product that requires United States food and drug administration approval or registration prior to its introduction in the marketplace and is a drug or medical device as defined by the federal food, drug, and cosmetic act, 21 USC 301 to 399, or 1 or more of the following:

(A) Advanced computing or electronic device technology related to technology described under this subparagraph.

(B) Design, engineering, testing, or diagnostics related to technology or the commercial manufacturing of technology described under this subparagraph.

(C) Product research and development related to technology described under this subparagraph.

(viii) “Life sciences” means science for the examination or understanding of life or life processes, including, but not limited to, all of the following:

(A) Bioengineering.

(B) Biomedical engineering.

(C) Genomics.

(D) Proteomics.

(E) Molecular and chemical ecology.

(F) Biotechnology, including any technology that uses living organisms, cells, macromolecules, microorganisms, or substances from living organisms to make or modify a product for useful purposes. Biotechnology or life sciences do not include any of the following:

(I) Activities prohibited under section 2685 of the public health code, 1978 PA 368, MCL 333.2685.

(II) Activities prohibited under section 2688 of the public health code, 1978 PA 368, MCL 333.2688.

(III) Activities prohibited under section 2690 of the public health code, 1978 PA 368, MCL 333.2690.

(IV) Activities prohibited under section 16274 of the public health code, 1978 PA 368, MCL 333.16274.

(V) Stem cell research with human embryonic tissue.

(ix) “Qualified business” means a business that complies with all of the following:

(A) The business is a seed or early stage business as defined in section 3 of the Michigan early stage venture investment act of 2003, 2003 PA 296, MCL 125.2233.

(B) The business has its headquarters in this state, is domiciled in this state, or has a majority of its employees working a majority of their time in this state.

(C) The business has a preinvestment valuation of less than \$10,000,000.00.

(D) The business has been in existence less than 5 years. This sub-subparagraph does not apply to a business, the business activity of which is derived from research at an institution of higher education located within this state or an organization exempt from federal taxation under section 501(c)(3) of the internal revenue code and that is located within this state.

(E) The business is engaged only in competitive edge technology.

(F) The business is certified by the Michigan strategic fund as meeting the requirements of sub-subparagraphs (A) to (E) at the time of each proposed investment.

(2) Except as otherwise provided in subsection (7), a personal exemption of \$2,500.00 multiplied by the number of personal or dependency exemptions allowable on the taxpayer's federal income tax return pursuant to the internal revenue code shall be subtracted in the calculation that determines taxable income.

(3) Except as otherwise provided in subsection (7), a single additional exemption determined as follows shall be subtracted in the calculation that determines taxable income in each of the following circumstances:

(a) \$1,800.00 for each taxpayer and every dependent of the taxpayer who is 65 years of age or older. When a dependent of a taxpayer files an annual return under this act, the taxpayer or dependent of the taxpayer, but not both, may claim the additional exemption allowed under this subdivision. As used in this subdivision and subdivision (c), "dependent" means that term as defined in section 30e.

(b) \$1,800.00 for each taxpayer and every dependent of the taxpayer who is a deaf person as defined in section 2 of the deaf persons' interpreters act, 1982 PA 204, MCL 393.502; a paraplegic, a quadriplegic, or a hemiplegic; a person who is blind as defined in section 504; or a person who is totally and permanently disabled as defined in section 522. When a dependent of a taxpayer files an annual return under this act, the taxpayer or dependent of the taxpayer, but not both, may claim the additional exemption allowed under this subdivision.

(c) \$1,800.00 if the taxpayer's return includes unemployment compensation that amounts to 50% or more of adjusted gross income.

(d) For tax years beginning after 2007, \$250.00 for each taxpayer and every dependent of the taxpayer who is a qualified disabled veteran. When a dependent of a taxpayer files an annual return under this act, the taxpayer or dependent of the taxpayer, but not both, may claim the additional exemption allowed under this subdivision. As used in this subdivision:

(i) "Qualified disabled veteran" means a veteran with a service-connected disability.

(ii) "Service-connected disability" means a disability incurred or aggravated in the line of duty in the active military, naval, or air service as described in 38 USC 101(16).

(iii) "Veteran" means a person who served in the active military, naval, marine, coast guard, or air service and who was discharged or released from his or her service with an honorable or general discharge.

(4) An individual with respect to whom a deduction under section 151 of the internal revenue code is allowable to another federal taxpayer during the tax year is not considered to have an allowable federal exemption for purposes of subsection (2), but may subtract \$1,500.00 in the calculation that determines taxable income for a tax year.

(5) A nonresident or a part-year resident is allowed that proportion of an exemption or deduction allowed under subsection (2), (3), or (4) that the taxpayer's portion of adjusted gross income from Michigan sources bears to the taxpayer's total adjusted gross income.

(6) In calculating taxable income, a taxpayer shall not subtract from adjusted gross income the amount of prizes won by the taxpayer under the McCauley-Traxler-Law-Bowman-McNeely lottery act, 1972 PA 239, MCL 432.1 to 432.47.

(7) For each tax year, the personal exemption allowed under subsection (2) shall be adjusted by multiplying the exemption for the tax year beginning in 1997 by a fraction, the numerator of which is the United States consumer price index for the state fiscal year ending in the tax year prior to the tax year for which the adjustment is being made and the denominator of which is the United States consumer price index for the 1995-96 state fiscal

year. The resultant product shall be rounded to the nearest \$100.00 increment. The personal exemption for the tax year shall be determined by adding \$200.00 to that rounded amount. As used in this section, “United States consumer price index” means the United States consumer price index for all urban consumers as defined and reported by the United States department of labor, bureau of labor statistics. For each tax year, the exemptions allowed under subsection (3) shall be adjusted by multiplying the exemption amount under subsection (3) for the tax year by a fraction, the numerator of which is the United States consumer price index for the state fiscal year ending the tax year prior to the tax year for which the adjustment is being made and the denominator of which is the United States consumer price index for the 1998-1999 state fiscal year. The resultant product shall be rounded to the nearest \$100.00 increment.

(8) As used in subsection (1)(f), “retirement or pension benefits” means distributions from all of the following:

(a) Except as provided in subdivision (d), qualified pension trusts and annuity plans that qualify under section 401(a) of the internal revenue code, including all of the following:

(i) Plans for self-employed persons, commonly known as Keogh or HR10 plans.

(ii) Individual retirement accounts that qualify under section 408 of the internal revenue code if the distributions are not made until the participant has reached 59-1/2 years of age, except in the case of death, disability, or distributions described by section 72(t)(2)(A)(iv) of the internal revenue code.

(iii) Employee annuities or tax-sheltered annuities purchased under section 403(b) of the internal revenue code by organizations exempt under section 501(c)(3) of the internal revenue code, or by public school systems.

(iv) Distributions from a 401(k) plan attributable to employee contributions mandated by the plan or attributable to employer contributions.

(b) The following retirement and pension plans not qualified under the internal revenue code:

(i) Plans of the United States, state governments other than this state, and political subdivisions, agencies, or instrumentalities of this state.

(ii) Plans maintained by a church or a convention or association of churches.

(iii) All other unqualified pension plans that prescribe eligibility for retirement and pre-determine contributions and benefits if the distributions are made from a pension trust.

(c) Retirement or pension benefits received by a surviving spouse if those benefits qualified for a deduction prior to the decedent’s death. Benefits received by a surviving child are not deductible.

(d) Retirement and pension benefits do not include:

(i) Amounts received from a plan that allows the employee to set the amount of compensation to be deferred and does not prescribe retirement age or years of service. These plans include, but are not limited to, all of the following:

(A) Deferred compensation plans under section 457 of the internal revenue code.

(B) Distributions from plans under section 401(k) of the internal revenue code other than plans described in subdivision (a)(iv).

(C) Distributions from plans under section 403(b) of the internal revenue code other than plans described in subdivision (a)(iii).

(ii) Premature distributions paid on separation, withdrawal, or discontinuance of a plan prior to the earliest date the recipient could have retired under the provisions of the plan.

(iii) Payments received as an incentive to retire early unless the distributions are from a pension trust.

This act is ordered to take immediate effect.

Approved December 20, 2007.

Filed with Secretary of State December 20, 2007.

[No. 155]

(SB 450)

AN ACT to amend 1980 PA 299, entitled “An act to revise, consolidate, and classify the laws of this state regarding the regulation of certain occupations; to create a board for each of those occupations; to establish the powers and duties of certain departments and agencies and the boards of each occupation; to provide for the promulgation of rules; to provide for certain fees; to provide for penalties and civil fines; to establish rights, relationships, and remedies of certain persons under certain circumstances; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts,” by amending sections 601, 602, 604, 605, 2405, 2411, and 2412 (MCL 339.601, 339.602, 339.604, 339.605, 339.2405, 339.2411, and 339.2412), sections 601 and 602 as amended by 2005 PA 278, section 604 as amended by 1989 PA 261, and sections 2411 and 2412 as amended by 2001 PA 113, and by adding sections 606 and 2404a.

The People of the State of Michigan enact:

339.601 Practicing regulated occupation or using designated title without license or registration; operation of barber college, school of cosmetology, or real estate school without license or approval; effect of suspended, revoked, or lapsed license; person not licensed as residential builder or residential maintenance and alteration contractor; violation as misdemeanor; penalties; restitution; injunctive relief; exceptions; “affected person” defined; investigation; remedies; performance of services by interior designer; notice of conviction to department.

Sec. 601. (1) A person shall not engage in or attempt to engage in the practice of an occupation regulated under this act or use a title designated in this act unless the person possesses a license or registration issued by the department for the occupation.

(2) A school, institution, or person shall not operate or attempt to operate a barber college, school of cosmetology, or real estate school unless the school, institution, or person is licensed or approved by the department.

(3) Subject to section 411, a person whose license or registration is suspended, revoked, or lapsed, as determined by the records of the department, is considered unlicensed or unregistered.

(4) Except as otherwise provided for in section 735, a person, school, or institution that violates subsection (1) or (2) is guilty of a misdemeanor punishable by a fine of not more than \$500.00, or imprisonment for not more than 90 days, or both.

(5) Except as otherwise provided for in section 735, a person, school, or institution that violates subsection (1) or (2) a second or any subsequent time is guilty of a misdemeanor punishable by a fine of not more than \$1,000.00, or imprisonment for not more than 1 year, or both.

(6) Notwithstanding subsections (4) and (5), a person not licensed under article 24 as a residential builder or a residential maintenance and alteration contractor who violates subsection (1) or (2) is guilty as follows:

(a) In the case of a first offense, a misdemeanor punishable by a fine of not less than \$5,000.00 or more than \$25,000.00, or imprisonment for not more than 1 year, or both.

(b) In the case of a second or subsequent offense, a misdemeanor punishable by a fine of not less than \$5,000.00 or more than \$25,000.00, or imprisonment for not more than 2 years, or both.

(c) In the case of an offense that causes death or serious injury, a felony punishable by a fine of not less than \$5,000.00 or more than \$25,000.00, or imprisonment for not more than 4 years, or both.

(7) Any violation of this act shall include a requirement that restitution be made, based upon proofs submitted to and findings made by the trier of fact as provided by law.

(8) Notwithstanding the existence and pursuit of any other remedy, an affected person may maintain injunctive action to restrain or prevent a person from violating subsection (1) or (2). If successful in obtaining injunctive relief, the affected person shall be entitled to actual costs and attorney fees.

(9) This act does not apply to a person engaging in or practicing the following:

(a) Interior design.

(b) Building design.

(c) Any activity for which the person is licensed under the state plumbing act, 2002 PA 733, MCL 338.3511 to 338.3569.

(d) Any activity for which the person is licensed under the Forbes mechanical contractors act, 1984 PA 192, MCL 338.971 to 338.988.

(e) Any activity for which the person is licensed under the electrical administrative act, 1956 PA 217, MCL 338.881 to 338.892.

(10) As used in subsection (8), “affected person” means a person directly affected by the actions of a person suspected of violating subsection (1) or (2) and includes, but is not limited to, a licensee or registrant, a board established pursuant to this act, the department, a person who has utilized the services of the person engaging in or attempting to engage in an occupation regulated under this act or using a title designated by this act without being licensed or registered by the department, or a private association composed primarily of members of the occupation in which the person is engaging in or attempting to engage in or in which the person is using a title designated under this act without being registered or licensed by the department.

(11) An investigation may be conducted under article 5 to enforce this section. A person who violates this section shall be subject to this section and sections 506, 602, and 606.

(12) The department, the attorney general, or a county prosecutor may utilize forfeiture as a remedy in the manner provided for in section 606.

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

(14) An interior designer may perform services in connection with the design of interior spaces including preparation of documents relative to finishes, systems furniture, furnishings, fixtures, equipment, and interior partitions that do not affect the building mechanical, structural, electrical, or fire safety systems.

(15) Upon entering a conviction under subsection (4) or (5), a court entering the conviction shall notify, by mail, facsimile transmission, or electronic mail, the bureau of commercial services at the department.

339.602 Violation of act, rule, or order; penalties.

Sec. 602. A person, school, or institution that violates this act or a rule or order promulgated or issued under this act shall be assessed 1 or more of the following penalties:

- (a) Placement of a limitation on a license or certificate of registration for an occupation regulated under articles 8 to 25.
- (b) Suspension of a license or certificate of registration.
- (c) Denial of a license, certificate of registration, or renewal of a license or certificate of registration.
- (d) Revocation of a license or certificate of registration.
- (e) In the case of a person licensed or registered under this act and except as otherwise provided for by this act, an administrative fine to be paid to the department, not to exceed \$10,000.00.
- (f) Censure.
- (g) Probation.
- (h) A requirement that restitution be made, based upon proofs submitted to, and findings made by, the hearing examiner after a contested case.

339.604 Violation of article regulating occupation or commission of prohibited act; penalties.

Sec. 604. A person who violates 1 or more of the provisions of an article which regulates an occupation or who commits 1 or more of the following shall be subject to the penalties prescribed in section 602:

- (a) Practices fraud or deceit in obtaining a license or registration.
- (b) Practices fraud, deceit, or dishonesty in practicing an occupation.
- (c) Violates a rule of conduct of an occupation.
- (d) Demonstrates a lack of good moral character.
- (e) Commits an act of gross negligence in practicing an occupation.
- (f) Practices false advertising.
- (g) Commits an act which demonstrates incompetence.
- (h) Violates any other provision of this act or a rule promulgated under this act for which a penalty is not otherwise prescribed.
- (i) Fails to comply with a subpoena issued under this act.
- (j) Fails to respond to a citation as required by section 555.
- (k) Violates or fails to comply with a final order issued by a board, including a stipulation, settlement agreement, or a citation.
- (l) Aids or abets another person in the unlicensed practice of an occupation.

339.605 Action in name of state; intervention and prosecution by attorney general; standing.

Sec. 605. (1) The department may bring any appropriate action, including mediation or other alternative dispute resolution, in the name of the people of this state to carry out this act and to enforce this act.

(2) If the attorney general considers it necessary, the attorney general shall intervene in and prosecute all cases arising under this act.

(3) This section does not prohibit the department from bringing any civil, criminal, or administrative action for the enforcement of section 601.

(4) The department has standing to bring an administrative action or to directly bring an action in a court of competent jurisdiction regarding unlicensed practice of an occupation.

339.606 Forfeiture.

Sec. 606. The department, the attorney general, and a county prosecutor may utilize the forfeiture provisions of chapter 47 of the revised judicature act of 1961, 1961 PA 236, MCL 600.4701 to 600.4709, for items seized and determined to be proceeds of a crime, substituted proceeds of a crime, or the instrumentality of a crime as those terms are defined under section 4701 of the revised judicature act of 1961, 1961 PA 236, MCL 600.4701.

339.2404a Information to be provided as part of contract.

Sec. 2404a. A licensee shall, as part of the contract, provide information relating to his or her individual license and to any license issued to that person as a qualifying officer of another entity.

339.2405 Application for license by corporation, partnership, association, limited liability company, or other entity; designation and responsibilities of qualifying officer; age and license requirements; suspension, revocation, or denial of license.

Sec. 2405. (1) If a license is applied for by a corporation, partnership, association, limited liability company, or other entity, the applicant shall designate 1 of its officers, partners, members, or managing agent as a qualifying officer who, upon taking and passing the examination, and upon meeting all other requirements of this article, is entitled to a license to act for the corporation, partnership, association, limited liability company, or other entity. The qualifying officer shall also obtain and maintain a license under this article as an individual. The qualifying officer shall be responsible for exercising the supervision or control of the building or construction operations necessary to secure full compliance with this article and the rules promulgated under this article. A license shall not be issued to a corporation, partnership, association, limited liability company, or other entity unless each partner, trustee, director, officer, member, and a person exercising control is at least 18 years of age, and meets the requirements for a license under this article other than those relating to knowledge and experience. If an individual licensee is also a qualifying officer, the individual's name and license number shall be listed on any license issued to the individual as a qualifying officer. In the case of a license issued under this subsection, each officer, partner, member, or managing agent, whether or not he or she is the qualifying officer, shall provide a copy of his or her operator's license or state personal identification card to the department for use by the department only for identification purposes. A licensee granted inactive status under section 2404b is not eligible to serve as a qualifying officer.

(2) The license of a corporation, partnership, association, limited liability company, or other entity shall be suspended when a license or license application of a qualifying officer, partner, trustee, director, officer, member, or a person exercising control of the corporation, partnership, association, limited liability company, or other entity is suspended, revoked, or denied. The suspension shall remain in force until the board determines that the disability created by the suspension, revocation, or denial has been removed.

(3) A suspension, revocation, or denial of a license of an individual shall suspend, revoke, or deny any other license held or applied for by that individual issued under this article. A suspension, revocation, or denial of a license by the department shall suspend, revoke, or deny any other license held or applied for under this article by the qualifying officer of a corporation, partnership, association, limited liability company, or other entity whose license is suspended, revoked, or denied.

(4) If the qualifying officer of a licensee ceases to be its qualifying officer, the license is suspended. However, upon request, the department may permit the license to remain in force for a reasonable time to permit the qualification of a new qualifying officer.

339.2411 Complaint; time period; conduct subject to penalty; suspension or revocation of license; violations; review of violation of asbestos abatement contractors licensing act; administrative proceedings regarding workmanship; failure to appear, participate, or defend action; default; “verified complaint” defined.

Sec. 2411. (1) A complaint filed under this section or article 5, or both, shall be made within 18 months after the latest of the following regarding a residential structure or a combination of residential and commercial structure as follows:

(a) In the case of a maintenance and alteration contract:

(i) Completion.

(ii) Occupancy.

(iii) Purchase.

(b) In the case of a project requiring an occupancy permit:

(i) Issuance of the certificate of occupancy or temporary certificate of occupancy.

(ii) Closing.

(2) A licensee or applicant who commits 1 or more of the following shall be subject to the penalties set forth in article 6:

(a) Abandonment without legal excuse of a contract, construction project, or operation engaged in or undertaken by the licensee.

(b) Diversion of funds or property received for prosecution or completion of a specific construction project or operation, or for a specified purpose in the prosecution or completion of a construction project or operation, and the funds or property application or use for any other construction project or operation, obligation, or purposes.

(c) Failure to account for or remit money coming into the person's possession which belongs to others.

(d) A willful departure from or disregard of plans or specifications in a material respect and prejudicial to another, without consent of the owner or an authorized representative and without the consent of the person entitled to have the particular construction project or operation completed in accordance with the plans and specifications.

(e) A willful violation of the building laws of the state or of a political subdivision of the state.

(f) In a residential maintenance and alteration contract, failure to furnish to a lender the purchaser's signed completion certificate executed upon completion of the work to be performed under the contract.

(g) If a licensed residential builder or licensed residential maintenance and alteration contractor, failure to notify the department within 10 days of a change in the control or direction of the business of the licensee resulting from a change in the licensee's partners, directors, officers, or trustees, or a change in the control or direction of the business of the licensee resulting from any other occurrence or event.

(h) Failure to deliver to the purchaser the entire agreement of the parties including finance and any other charge arising out of or incidental to the agreement when the agreement involves repair, alteration, or addition to, subtraction from, improvement of, wrecking of, or demolition of a residential structure or combination of residential and commercial structure, or building of a garage, or laying of concrete on residential property, or manufacture, assembly, construction, sale, or distribution of a residential or combination residential and commercial structure which is prefabricated, preassembled, precut, packaged, or shell housing.

(i) If a salesperson, failure to pay over immediately upon receipt money received by the salesperson, in connection with a transaction governed by this article to the residential

builder or residential maintenance and alteration contractor under whom the salesperson is licensed.

(j) Aiding or abetting an unlicensed person to evade this article, or knowingly combining or conspiring with, or acting as agent, partner, or associate for an unlicensed person, or allowing one's license to be used by an unlicensed person, or acting as or being an ostensible licensed residential builder or licensed residential maintenance and alteration contractor for an undisclosed person who does or shall control or direct, or who may have the right to control or direct, directly or indirectly, the operations of a licensee.

(k) Acceptance of a commission, bonus, or other valuable consideration by a salesperson for the sale of goods or the performance of service specified in the article from a person other than the residential builder or residential maintenance and alteration contractor under whom the person is licensed.

(l) Becoming insolvent, filing a bankruptcy action, becoming subject to a receivership, assigning for the benefit of creditors, failing to satisfy judgments or liens, or failing to pay an obligation as it becomes due in the ordinary course of business.

(m) Workmanship not meeting the standards of the Michigan residential code as promulgated under the Stille-DeRossett-Hale single state construction code act, 1972 PA 230, MCL 125.1501 to 125.1531.

(3) The department shall suspend or revoke the license of a person licensed under this article whose failure to pay a lien claimant results in a payment being made from the homeowner construction lien recovery fund pursuant to the construction lien act, 1980 PA 497, MCL 570.1101 to 570.1305, regardless of whether the person was performing services as a licensee under this article; under the electrical administrative act, 1956 PA 217, MCL 338.881 to 338.892; or under the state plumbing act, 2002 PA 733, MCL 338.3511 to 338.3569. The department shall not renew a license or issue a new license until the licensee has repaid in full to the fund the amount paid out plus the costs of litigation and interest at the rate set by section 6013 of the revised judicature act of 1961, 1961 PA 236, MCL 600.6013.

(4) The department shall conduct a review upon notice that the licensee has violated the asbestos abatement contractors licensing act, 1986 PA 135, MCL 338.3101 to 338.3319. The department may suspend or revoke that person's license for a knowing violation of the asbestos abatement contractors licensing act, 1986 PA 135, MCL 338.3101 to 338.3319.

(5) Notwithstanding article 5, the following apply to administrative proceedings regarding workmanship under subsection (2)(m):

(a) A complaint submitted by an owner shall describe in writing to the department the factual basis for the allegation. The homeowner shall send a copy of the initial complaint to the licensee concurrent with the submission of the complaint to the department.

(b) The department shall presume the innocence of the licensee throughout the proceeding until the administrative law hearing examiner finds otherwise in a determination of findings of fact and conclusions of law under article 5. The licensee has the burden of refuting evidence submitted by a person during the administrative hearing. The licensee also has the burden of proof regarding the reason deficiencies were not corrected.

(c) Upon receipt of a building inspection report issued to the department by a state or local building enforcement official authorized to do so under the Stille-DeRossett-Hale single state construction code act, 1972 PA 230, MCL 125.1501 to 125.1531, which report verifies or confirms the substance of the complaint, the department shall send by certified mail a copy of the verified complaint to the licensee. Failure of the department to send a copy of the verified complaint within 30 days of receipt of the building inspection report prevents the department from assessing a fine against the licensee under article 6 but does not prevent

the department from pursuing restitution, license suspension, or other remedies provided under this act.

(d) A licensee may contractually provide for an alternative dispute resolution procedure to resolve complaints filed with the department. The procedure shall be conducted by a neutral third party for determining the rights and responsibilities of the parties and shall be initiated by the licensee, who shall provide notice of the initiation of the procedure to the complainant by certified mail not less than 30 days before the commencement of that procedure. The procedure shall be conducted at a location mutually agreed to by the parties.

(e) The department shall not initiate a proceeding against a licensee under this subsection in the case of a licensee who contractually provides for an alternative dispute resolution procedure that has not been utilized and completed unless it is determined that the licensee has not complied with a decision or order issued as a result of that alternative dispute resolution procedure, that alternative dispute resolution procedure was not fully completed within 90 days after the filing of the complaint with the department, or an alternative dispute resolution procedure meeting the requirements of subdivision (d) is not available to the complainant.

(f) The complainant shall demonstrate that notice has been provided to the licensee describing reasonable times and dates that the residential structure was accessible for any needed repairs and proof acceptable to the department that the repairs were not made within 60 days after the sending of the notice. This subdivision does not apply where the department determines a necessity to safeguard the structure or to protect the occupant's health and safety and, in such case, the department may utilize any remedy available under section 504(3)(a) through (d).

(g) In the case where the owner and licensee have agreed contractually on mutually acceptable performance guidelines relating to workmanship, the department shall consider those guidelines in its evaluation of a complaint. The guidelines shall be consistent with the Stille-DeRossett-Hale single state construction code act, 1972 PA 230, MCL 125.1501 to 125.1531.

(6) In any case where the licensee or respondent fails to appear, participate, or defend any action, the board shall issue an order granting by default the relief requested, based upon proofs submitted to and findings made, by the hearing examiner after a contested case.

(7) As used in this section, "verified complaint" means a complaint in which all or a portion of the allegations have been confirmed by an affidavit of the state or local building official.

339.2412 Action for collection of compensation for performance of act or contract; alleging and proving licensure; failure to use alternative dispute resolution; other legal action; civil violation.

Sec. 2412. (1) A person or qualifying officer for a corporation or member of a residential builder or residential maintenance and alteration contractor shall not bring or maintain an action in a court of this state for the collection of compensation for the performance of an act or contract for which a license is required by this article without alleging and proving that the person was licensed under this article during the performance of the act or contract.

(2) Failure of the person bringing a complaint against a licensee to utilize a contractually provided alternative dispute resolution procedure shall be an affirmative defense to an action brought in a court of this state against a licensee under this article.

(3) A person or qualifying officer for a corporation or a member of a residential builder or residential maintenance and alteration contractor shall not impose or take any legal or other

action to impose a lien on real property unless that person was licensed under this article during the performance of the act or contract.

(4) A prosecuting attorney and the attorney general may bring an action for a civil violation in a court of competent jurisdiction against a person not licensed under this article that has violated section 601(1) or (2). The court shall assess a civil fine, to be paid to the prosecuting attorney or the attorney general bringing the action, of not less than \$5,000.00 and not more than \$25,000.00, aside from any civil damages or restitution.

Conditional effective date.

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

- (a) Senate Bill No. 451.
- (b) Senate Bill No. 452.
- (c) Senate Bill No. 453.

Effective date of certain sections.

Enacting section 2. Sections 2405, 2411, and 2412 of the occupational code, 1980 PA 299, MCL 339.2405, 339.2411, and 339.2412, as amended by this amendatory act, and sections 606 and 2404a of the occupational code, 1980 PA 299, as added by this amendatory act, take effect June 1, 2008.

This act is ordered to take immediate effect.
 Approved December 20, 2007.
 Filed with Secretary of State December 21, 2007.

Compiler's note: The bills referred to in enacting section 1 were enacted into law as follows:
 Senate Bill No. 451 was filed with the Secretary of State December 21, 2007, and became 2007 PA 156, Eff. June 1, 2008.
 Senate Bill No. 452 was filed with the Secretary of State December 21, 2007, and became 2007 PA 157, Imd. Eff. Dec. 21, 2007.
 Senate Bill No. 453 was filed with the Secretary of State December 21, 2007, and became 2007 PA 158, Eff. June 1, 2008.

[No. 156]

(SB 451)

AN ACT to amend 1961 PA 236, entitled "An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of such courts, and of the judges and other officers thereof; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in said courts; pleading, evidence, practice and procedure in civil and criminal actions and proceedings in said courts; to provide remedies and penalties for the violation of certain provisions of this act; to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act; and to repeal acts and parts of acts," by amending section 4701 (MCL 600.4701), as amended by 2002 PA 142, and by adding section 2975a.

The People of the State of Michigan enact:

600.2975a Entry of judgment for damages; notice to department.

Sec. 2975a. Upon entry of a judgment for damages against a licensee under article 24 of the occupational code, 1980 PA 299, MCL 339.2401 to 339.2412, on the basis of a violation of section 2411(2) of the occupational code, 1980 PA 299, MCL 339.2411, the court shall notify the bureau of commercial services of the department of labor and economic growth of the entry of that judgment and shall convey to the department a copy of that judgment.

600.4701 Definitions.

Sec. 4701. As used in this chapter:

(a) “Crime” means committing, attempting to commit, conspiring to commit, or soliciting another person to commit any of the following offenses in connection with which the forfeiture of property is sought:

(i) A violation of part 111 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.11101 to 324.11153.

(ii) A violation of part 121 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.12101 to 324.12117.

(iii) A violation of section 4, 5, or 7 of the medicaid false claim act, 1977 PA 72, MCL 400.604, 400.605, and 400.607.

(iv) A violation of section 2 or 3 of the Michigan antitrust reform act, 1984 PA 274, MCL 445.772 and 445.773.

(v) A violation described in section 409 of the uniform securities act, 1964 PA 265, MCL 451.809.

(vi) A violation of section 5 or 7 of 1978 PA 33, MCL 722.675 and 722.677.

(vii) A violation of section 49, 75, 94, 95, 96, 100, 104, 105, 106, 110, 112, 117, 118, 119, 120, 121, 124, 145c, 145d, 157q, 157r, 174, 175, 176, 180, 181, 182, 213, 214, 218, 219a, 224, 248, 249, 250, 251, 252, 253, 254, 255, 263, 264, 271, 272, 273, 274, 300, 356, 357, 357a, 359, 360, 529, 530, 531, 535, 540c, or 540g or chapter LXXXIII-A of the Michigan penal code, 1931 PA 328, MCL 750.49, 750.75, 750.94, 750.95, 750.96, 750.100, 750.104, 750.105, 750.106, 750.110, 750.112, 750.117, 750.118, 750.119, 750.120, 750.121, 750.124, 750.145c, 750.145d, 750.157q, 750.157r, 750.174, 750.175, 750.176, 750.180, 750.181, 750.182, 750.213, 750.214, 750.218, 750.219a, 750.224, 750.248, 750.249, 750.250, 750.251, 750.252, 750.253, 750.254, 750.255, 750.263, 750.264, 750.271, 750.272, 750.273, 750.274, 750.300, 750.356, 750.357, 750.357a, 750.359, 750.360, 750.529, 750.530, 750.531, 750.535, 750.540c, 750.540g, and 750.543a to 750.543z.

(viii) A violation of 1979 PA 53, MCL 752.791 to 752.797.

(ix) A violation of section 601 of the occupational code, 1980 PA 299, MCL 339.601.

(b) “Instrumentality of a crime” means any property, other than real property, the use of which contributes directly and materially to the commission of a crime.

(c) “Person” means an individual, corporation, partnership, or other business entity, or an unincorporated or voluntary association.

(d) “Proceeds of a crime” means any property obtained through the commission of a crime, including any appreciation in the value of the property.

(e) “Security interest” means any interest in real or personal property that secures payment or performance of an obligation.

(f) “Substituted proceeds of a crime” means any property obtained or any gain realized by the sale or exchange of proceeds of a crime.

Conditional effective date.

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

(a) Senate Bill No. 450.

(b) Senate Bill No. 452.

(c) Senate Bill No. 453.

Effective date.

Enacting section 2. This amendatory act takes effect June 1, 2008.

This act is ordered to take immediate effect.

Approved December 20, 2007.

Filed with Secretary of State December 21, 2007.

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

Senate Bill No. 450 was filed with the Secretary of State December 21, 2007, and became 2007 PA 155, Imd. Eff. Dec. 21, 2007.

Senate Bill No. 452 was filed with the Secretary of State December 21, 2007, and became 2007 PA 157, Imd. Eff. Dec. 21, 2007.

Senate Bill No. 453 was filed with the Secretary of State December 21, 2007, and became 2007 PA 158, Eff. June 1, 2008.

[No. 157]

(SB 452)

AN ACT to amend 1980 PA 299, entitled "An act to revise, consolidate, and classify the laws of this state regarding the regulation of certain occupations; to create a board for each of those occupations; to establish the powers and duties of certain departments and agencies and the boards of each occupation; to provide for the promulgation of rules; to provide for certain fees; to provide for penalties and civil fines; to establish rights, relationships, and remedies of certain persons under certain circumstances; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," by amending sections 601, 602, 605, 2402, 2404, 2405, and 2411 (MCL 339.601, 339.602, 339.605, 339.2402, 339.2404, 339.2405, and 339.2411), sections 601 and 602 as amended by 2005 PA 278, section 2404 as amended by 1988 PA 463, and section 2411 as amended by 2001 PA 113, and by adding sections 2404b and 2411a.

The People of the State of Michigan enact:

339.601 Practicing regulated occupation or using designated title without license or registration; operation of barber college, school of cosmetology, or real estate school without license or approval; effect of suspended, revoked, or lapsed license or registration; violation as misdemeanor; penalties; person not licensed as residential builder or residential maintenance and alteration contractor; restitution; injunctive relief; exceptions; "affected person" defined; investigation; forfeiture; remedies; performance of services by interior designer; notice of conviction to department.

Sec. 601. (1) A person shall not engage in or attempt to engage in the practice of an occupation regulated under this act or use a title designated in this act unless the person possesses a license or registration issued by the department for the occupation.

(2) A school, institution, or person shall not operate or attempt to operate a barber college, school of cosmetology, or real estate school unless the school, institution, or person is licensed or approved by the department.

(3) Subject to section 411, a person whose license or registration is suspended, revoked, or lapsed, as determined by the records of the department, is considered unlicensed or unregistered.

(4) Except as otherwise provided for in section 735, a person, school, or institution that violates subsection (1) or (2) is guilty of a misdemeanor, punishable by a fine of not more than \$500.00, or imprisonment for not more than 90 days, or both.

(5) Except as otherwise provided for in section 735, a person, school, or institution that violates subsection (1) or (2) a second or any subsequent time is guilty of a misdemeanor, punishable by a fine of not more than \$1,000.00, or imprisonment for not more than 1 year, or both.

(6) Notwithstanding subsections (4) and (5), a person not licensed under article 24 as a residential builder or a residential maintenance and alteration contractor who violates subsection (1) or (2) is guilty as follows:

(a) In the case of a first offense, a misdemeanor punishable by a fine of not less than \$5,000.00 or more than \$25,000.00, or imprisonment for not more than 1 year, or both.

(b) In the case of a second or subsequent offense, a misdemeanor punishable by a fine of not less than \$5,000.00 or more than \$25,000.00, or imprisonment for not more than 2 years, or both.

(c) In the case of an offense that causes death or serious injury, a felony punishable by a fine of not less than \$5,000.00 or more than \$25,000.00, or imprisonment for not more than 4 years, or both.

(7) Any violation of this act shall include a requirement that restitution be made, based upon proofs submitted to and findings made by the trier of fact as provided by law.

(8) Notwithstanding the existence and pursuit of any other remedy, an affected person may maintain injunctive action to restrain or prevent a person from violating subsection (1) or (2). If successful in obtaining injunctive relief, the affected person shall be entitled to actual costs and attorney fees.

(9) This act does not apply to a person engaging in or practicing the following:

(a) Interior design.

(b) Building design.

(c) Any activity for which the person is licensed under the state plumbing act, 2002 PA 733, MCL 338.3511 to 338.3569.

(d) Any activity for which the person is licensed under the Forbes mechanical contractors act, 1984 PA 192, MCL 338.971 to 338.988.

(e) Any activity for which the person is licensed under the electrical administrative act, 1956 PA 217, MCL 338.881 to 338.892.

(10) As used in subsection (8), “affected person” means a person directly affected by the actions of a person suspected of violating subsection (1) or (2) and includes, but is not limited to, a licensee or registrant, a board established pursuant to this act, the department, a person who has utilized the services of the person engaging in or attempting to engage in an occupation regulated under this act or using a title designated by this act without being licensed or registered by the department, or a private association composed primarily of members of the occupation in which the person is engaging in or attempting to engage in or in which the person is using a title designated under this act without being registered or licensed by the department.

(11) An investigation may be conducted under article 5 to enforce this section. A person who violates this section shall be subject to this section and sections 506, 602, and 606.

(12) The department, the attorney general, or a county prosecutor may utilize forfeiture as a remedy in the manner provided for in section 606.

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

(14) An interior designer may perform services in connection with the design of interior spaces including preparation of documents relative to finishes, systems furniture, furnishings, fixtures, equipment, and interior partitions that do not affect the building mechanical, structural, electrical, or fire safety systems.

(15) Upon entering a conviction under subsection (4), (5), or (6), a court entering the conviction shall notify, by mail, facsimile transmission, or electronic mail, the bureau of commercial services at the department.

339.602 Violation of act, rule, or order; penalties.

Sec. 602. A person, school, or institution that violates this act or a rule or order promulgated or issued under this act shall be assessed 1 or more of the following penalties:

(a) Placement of a limitation on a license or certificate of registration for an occupation regulated under articles 8 to 25.

(b) Suspension of a license or certificate of registration.

(c) Denial of a license, certificate of registration, or renewal of a license or certificate of registration.

(d) Revocation of a license or certificate of registration.

(e) In the case of a person licensed or registered under this act and except as otherwise provided for by this act, an administrative fine to be paid to the department, not to exceed \$10,000.00.

(f) Censure.

(g) Probation.

(h) A requirement that restitution be made, based upon proofs submitted to and findings made by the hearing examiner after a contested case.

339.605 Action in name of state; intervention and prosecution by attorney general; action by department; standing.

Sec. 605. (1) The department may bring any appropriate action, including mediation or other alternative dispute resolution, in the name of the people of this state to carry out this act and to enforce this act.

(2) If the attorney general considers it necessary, the attorney general shall intervene in and prosecute all cases arising under this act.

(3) This section does not prohibit the department from bringing any civil, criminal, or administrative action for the enforcement of section 601.

(4) The department has standing to bring an administrative action or to directly bring an action in a court of competent jurisdiction regarding unlicensed practice of an occupation.

339.2402 Residential builders' and maintenance and alteration contractors' board; creation; qualifications of members.

Sec. 2402. (1) A residential builders' and maintenance and alteration contractors' board is created. Of the 9-member board, 4 members shall be licensed residential builders, and 2 members shall be licensed maintenance and alteration contractors.

(2) Of the members representing the general public, at least 1 member shall be registered under the building officials and inspectors registration act, 1986 PA 54, MCL 338.2301 to 338.2313.

339.2404 Evidence of good moral character and financial stability; submission; examination; issuance of residential maintenance and alteration contractor's license; scope of crafts and trades; place of business; branch office license; duration of license; documentation of continuing competency requirements.

Sec. 2404. (1) The department may require an applicant, licensee, or each partner, trustee, director, officer, member, or shareholder to submit evidence of good moral character, and financial stability. Before the issuance of a license, an applicant shall submit the following:

(a) Any amount required to be paid under the construction lien act, 1980 PA 497, MCL 570.1101 to 570.1305.

(b) A copy of an operator's license or state personal identification card, to be used by the department only for proof of identity of the applicant.

(2) The department shall require an applicant for a license to pass an examination establishing that the applicant has a fair knowledge of the obligations of a residential builder or residential maintenance and alteration contractor to the public and the applicant's principal, and the statutes relating to the applicant's licensure.

(3) The department, upon application, may issue a residential maintenance and alteration contractor's license to an applicant who, upon examination, qualifies for a license, which shall authorize the licensee according to the applicant's qualifications, crafts, and trades to engage in the activities of a residential maintenance and alteration contractor. A license shall include the following crafts and trades: carpentry; concrete; swimming pool installation; waterproofing a basement; excavation; insulation work; masonry work; painting and decorating; roofing; siding and gutters; screen or storm sash installation; tile and marble work; and house wrecking. The license shall specify the particular craft or trade for which the licensee has qualified. This subsection shall not prohibit a specialty contractor from taking and executing a contract involving the use of 2 or more crafts or trades if the performance of the work in the craft or trade, other than in which the person is licensed, is incidental and supplemental to the performance of work in the craft for which the specialty contractor is licensed.

(4) A residential builder or residential maintenance and alteration contractor shall maintain a place of business in this state. If a residential builder or residential maintenance and alteration contractor maintains more than 1 place of business within this state, a branch office license shall be issued to the builder or contractor for each place of business so maintained.

(5) Beginning the license cycle after the effective date of the amendatory act that added this subsection, the department shall issue the license of a residential builder and residential maintenance and alteration contractor for a period of 3 years in duration. Beginning the effective date of the amendatory act that added this subsection, an applicant for renewal of a residential builder or maintenance and alteration contractor license shall state that he or she has a current copy of the Michigan residential code and has fulfilled the appropriate requirements regarding continuing competency.

(6) Beginning the effective date of the amendatory act that added this subsection, a licensee shall maintain documentation, for at least 5 years, of activities meeting the continuing competency requirements as prescribed under this article.

339.2404b Licensure as residential builder or residential maintenance and alteration contractor; completion of prelicensure course of study; exemption; continuing competency requirements; violation; approved courses; waiver of requirement of membership in trade association; subject matter and instructional qualifications; rules; alternate forms of continuing competency; department audit; application for inactive status; designation of licensee as inactive.

Sec. 2404b. (1) Beginning the effective date of the amendatory act that added this section, applicants for initial licensure either as a residential builder or as a residential maintenance

and alteration contractor shall successfully complete a prelicensure course of study as prescribed by this subsection. Licensees holding a residential builder or a residential maintenance and alteration contractor license on the effective date of the amendatory act that added this section that are renewing a license in the capacity of an individual or qualifying officer, or both, are exempt from the requirement of successfully completing prelicensure courses described in this subsection. The department shall require an applicant not exempted under this subsection to successfully complete 60 hours of approved prelicensure courses consisting of at least 6 hours of courses in each of the following areas of competency:

- (a) Business management, estimating, and job costing.
- (b) Design and building science.
- (c) Contracts, liability, and risk management.
- (d) Marketing and sales.
- (e) Project management and scheduling.
- (f) The current Michigan residential code.

(g) Construction safety standards promulgated under the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1001 to 408.1094.

(2) Beginning the calendar year after the effective date of the amendatory act that added this section, a person obtaining initial licensure under this article as a residential builder or a residential maintenance and alteration contractor shall successfully complete not less than 3 hours of activities demonstrating continuing competency per calendar year, during the first 6 calendar years of licensure, and 21 hours per 3-year time period since the issuance of his or her license. At least 3 hours shall be devoted to those activities designed to develop a licensee's understanding and ability to apply state building codes and laws relating to the licensed occupation, safety, and changes in construction and business management laws. A licensee who has held a license for more than 6 years or who has not been determined by the department in a final order to have violated this act or a rule adopted under this act shall successfully complete at least 3 hours of activities demonstrating continuing competency per license cycle to include 1 hour of codes, 1 hour of safety, and 1 hour of legal issues as described in this subsection.

(3) In the case of a licensee who has been determined by the department in a final order to have violated this act or a rule adopted under this act, he or she shall successfully complete, during the next complete license cycle, up to 21 hours of activities that demonstrate the development of continuing competency during that next license cycle as determined appropriate by order of the department, at least 3 hours of that continuing competency to include 1 hour of codes, 1 hour of safety, and 1 hour of legal issues as described in subsection (2).

(4) As activities that demonstrate the development of continuing competency, the education courses described in section 3, pages 3-6 through 3-58 of the January 2005 edition of the publication "NAHB University of Housing, Blueprint for Success", published by the national association of home builders, and taught by instructors meeting the requirements of section 4, pages 4-5 through 4-9 of the January 2005 edition of "NAHB University of Housing, Blueprint for Success", are considered approved, are considered appropriate for fulfilling the prelicensure and continuing competency requirements of subsections (1), (2), and (3), and are incorporated by reference. A licensee may take any courses equivalent to those courses incorporated by reference by this subsection. Updates to the courses described in this subsection or equivalent courses are acceptable unless the department determines that the courses do not provide a means of developing and maintaining continuing competency for those applicants or licensees who successfully fulfill the course requirements. Any construction code update courses approved by the bureau of construction codes as well as fire safety or workplace safety courses approved or sponsored by the department are also considered

appropriate for fulfilling the continuing competency requirements of this subsection. The department may, by rule, amend, supplement, update, substitute, or determine equivalency regarding any courses or alternate activities for developing continuing competency described in this subsection.

(5) The department may waive the requirement of membership in a local, state, or national trade association contained in the instructor standards of section 4, pages 4-5 through 4-9 of the January 2005 edition of the publication “NAHB University of Housing, Blueprint for Success”, published by the national association of home builders, and incorporated by reference. By rule, the department may amend, supplement, update, substitute, or determine equivalency regarding the standards in this subsection and shall establish instructor qualifications for courses not incorporated by reference in subsection (4).

(6) The subject matter of the prelicensure and continuing competency activities may be offered by a high school, intermediate school district, community college, university, bureau of construction codes, Michigan occupational safety and health administration, trade association, or a proprietary school licensed by the department as meeting the subject matter qualifications described in subsection (4) and the instructional qualifications described in subsection (5).

(7) The department shall promulgate rules to provide for the following:

(a) Requirements other than those listed in subsection (4) for determining that a course meets the minimum criteria for developing and maintaining continuing competency.

(b) Requirements for acceptable courses offered at seminars and conventions by trade associations, research institutes, risk management entities, manufacturers, suppliers, governmental agencies other than those named in subsection (4), consulting agencies, or other entities.

(c) Acceptable distance learning.

(d) Alternate forms of continuing competency, including comprehensive testing, participation in mentoring programs, research, participation in code hearings conducted by the international code council, and publication of articles in a trade journal or regional magazine as an expert in the field. The alternate forms shall be designed to maintain and improve the licensee’s ability to perform the occupation with competence and shall prescribe proofs that are necessary to demonstrate that the licensee has fulfilled the requirements of continuing competency.

(8) Each licensee may select approved courses in his or her subject matter area or specialty. Service as a lecturer or discussion leader in an approved course shall be counted toward the continuing competency requirements of this section. Alternate forms of continuing competency may be earned and documented as promulgated in rules by the department.

(9) The department may audit a predetermined percentage of licensees who renew in a year for compliance with the requirements of this section. Failure to comply with the audit or the requirements shall result in the investigation of a complaint initiated by the department, and the licensee is subject to the penalties prescribed in this act.

(10) A licensee as a residential builder or residential alteration and maintenance contractor may apply for inactive status by completing an application, made available by the department, in which he or she declares that he or she is no longer actively engaged in the practice authorized by his or her license and temporarily intends to suspend activity authorized by his or her license. Upon submission of a completed application, the department shall designate the licensee as inactive and note that status on records available to the public. A licensee designated as inactive must have a current copy of the Michigan residential code and is exempt from the continuing competency requirements imposed under this section, but must still pay the per-year license fee. An inactive licensee may activate his or her

license by submitting an application to the department requesting activation of the license. Upon activation of a license, the licensee must complete at least 1 credit hour of continuing competency for that calendar year.

339.2405 Application for license by corporation, partnership, association, limited liability company, or other entity; designation and responsibilities of qualifying officer; age and license requirements; suspension, revocation, or denial of license.

Sec. 2405. (1) If a license is applied for by a corporation, partnership, association, limited liability company, or other entity, the applicant shall designate 1 of its officers, partners, members, or managing agent as a qualifying officer who, upon taking and passing the examination, and upon meeting all other requirements of this article, is entitled to a license to act for the corporation, partnership, association, limited liability company, or other entity. The qualifying officer shall also obtain and maintain a license under this article as an individual. The qualifying officer shall be responsible for exercising the supervision or control of the building or construction operations necessary to secure full compliance with this article and the rules promulgated under this article. A license shall not be issued to a corporation, partnership, association, limited liability company, or other entity unless each partner, trustee, director, officer, member, and a person exercising control is at least 18 years of age, and meets the requirements for a license under this article other than those relating to knowledge and experience. If an individual licensee is also a qualifying officer, the individual's name and license number shall be listed on any license issued to the individual as a qualifying officer. In the case of a license issued under this subsection, each officer, partner, member, or managing agent, whether or not he or she is the qualifying officer, shall provide a copy of his or her operator's license or state personal identification card to the department for use by the department only for identification purposes. A licensee granted inactive status under section 2404b is not eligible to serve as a qualifying officer.

(2) The license of a corporation, partnership, association, limited liability company, or other entity shall be suspended when a license or license application of a qualifying officer, partner, trustee, director, officer, member, or a person exercising control of the corporation, partnership, association, limited liability company, or other entity is suspended, revoked, or denied. The suspension shall remain in force until the board determines that the disability created by the suspension, revocation, or denial has been removed.

(3) A suspension, revocation, or denial of a license of an individual shall suspend, revoke, or deny any other license held or applied for by that individual issued under this article. A suspension, revocation, or denial of a license by the department shall suspend, revoke, or deny any other license held or applied for under this article by the qualifying officer of a corporation, partnership, association, limited liability company, or other entity whose license is suspended, revoked, or denied.

(4) If the qualifying officer of a licensee ceases to be its qualifying officer, the license is suspended. However, upon request, the department may permit the license to remain in force for a reasonable time to permit the qualification of a new qualifying officer.

339.2411 Complaint; conduct subject to penalty; suspension or revocation of license; violations; administrative proceedings regarding workmanship; order of default; "verified complaint" defined.

Sec. 2411. (1) A complaint filed under this section or article 5, or both, shall be made within 18 months after the latest of the following regarding a residential structure or a combination of residential and commercial structure as follows:

- (a) In the case of a maintenance and alteration contract:
 - (i) Completion.

(ii) Occupancy.

(iii) Purchase.

(b) In the case of a project requiring an occupancy permit:

(i) Issuance of the certificate of occupancy or temporary certificate of occupancy.

(ii) Closing.

(2) A licensee or applicant who commits 1 or more of the following shall be subject to the penalties set forth in article 6:

(a) Abandonment without legal excuse of a contract, construction project, or operation engaged in or undertaken by the licensee.

(b) Diversion of funds or property received for prosecution or completion of a specific construction project or operation, or for a specified purpose in the prosecution or completion of a construction project or operation, and the funds or property application or use for any other construction project or operation, obligation, or purposes.

(c) Failure to account for or remit money coming into the person's possession which belongs to others.

(d) A willful departure from or disregard of plans or specifications in a material respect and prejudicial to another, without consent of the owner or an authorized representative and without the consent of the person entitled to have the particular construction project or operation completed in accordance with the plans and specifications.

(e) A willful violation of the building laws of the state or of a political subdivision of the state.

(f) In a residential maintenance and alteration contract, failure to furnish to a lender the purchaser's signed completion certificate executed upon completion of the work to be performed under the contract.

(g) If a licensed residential builder or licensed residential maintenance and alteration contractor, failure to notify the department within 10 days of a change in the control or direction of the business of the licensee resulting from a change in the licensee's partners, directors, officers, or trustees, or a change in the control or direction of the business of the licensee resulting from any other occurrence or event.

(h) Failure to deliver to the purchaser the entire agreement of the parties including finance and any other charge arising out of or incidental to the agreement when the agreement involves repair, alteration, or addition to, subtraction from, improvement of, wrecking of, or demolition of a residential structure or combination of residential and commercial structure, or building of a garage, or laying of concrete on residential property, or manufacture, assembly, construction, sale, or distribution of a residential or combination residential and commercial structure which is prefabricated, preassembled, precut, packaged, or shell housing.

(i) If a salesperson, failure to pay over immediately upon receipt money received by the salesperson, in connection with a transaction governed by this article to the residential builder or residential maintenance and alteration contractor under whom the salesperson is licensed.

(j) Aiding or abetting an unlicensed person to evade this article, or knowingly combining or conspiring with, or acting as agent, partner, or associate for an unlicensed person, or allowing one's license to be used by an unlicensed person, or acting as or being an ostensible licensed residential builder or licensed residential maintenance and alteration contractor for an undisclosed person who does or shall control or direct, or who may have the right to control or direct, directly or indirectly, the operations of a licensee.

(k) Acceptance of a commission, bonus, or other valuable consideration by a salesperson for the sale of goods or the performance of service specified in the article from a person other

than the residential builder or residential maintenance and alteration contractor under whom the person is licensed.

(l) Becoming insolvent, filing a bankruptcy action, becoming subject to a receivership, assigning for the benefit of creditors, failing to satisfy judgments or liens, or failing to pay an obligation as it becomes due in the ordinary course of business.

(m) Workmanship not meeting the standards of the Michigan residential code as promulgated under the Stille-DeRossett-Hale single state construction code act, 1972 PA 230, MCL 125.1501 to 125.1531.

(3) The department shall suspend or revoke the license of a person licensed under this article whose failure to pay a lien claimant results in a payment being made from the homeowner construction lien recovery fund pursuant to the construction lien act, 1980 PA 497, MCL 570.1101 to 570.1305, regardless of whether the person was performing services as a licensee under this article; under the electrical administrative act, 1956 PA 217, MCL 338.881 to 338.892; or under the state plumbing act, 2002 PA 733, MCL 338.3511 to 338.3569. The department shall not renew a license or issue a new license until the licensee has repaid in full to the fund the amount paid out plus the costs of litigation and interest at the rate set by section 6013 of the revised judicature act of 1961, 1961 PA 236, MCL 600.6013.

(4) The department shall conduct a review upon notice that the licensee has violated the asbestos abatement contractors licensing act, 1986 PA 135, MCL 338.3101 to 338.3319. The department may suspend or revoke that person's license for a knowing violation of the asbestos abatement contractors licensing act, 1986 PA 135, MCL 338.3101 to 338.3319.

(5) Notwithstanding article 5, the following apply to administrative proceedings regarding workmanship under subsection (2)(m):

(a) A complaint submitted by an owner shall describe in writing to the department the factual basis for the allegation. The homeowner shall send a copy of the initial complaint to the licensee concurrent with the submission of the complaint to the department.

(b) The department shall presume the innocence of the licensee throughout the proceeding until the administrative law hearing examiner finds otherwise in a determination of findings of fact and conclusions of law under article 5. The licensee has the burden of refuting evidence submitted by a person during the administrative hearing. The licensee also has the burden of proof regarding the reason deficiencies were not corrected.

(c) Upon receipt of a building inspection report issued to the department by a state or local building enforcement official authorized to do so under the Stille-DeRossett-Hale single state construction code act, 1972 PA 230, MCL 125.1501 to 125.1531, which report verifies or confirms the substance of the complaint, the department shall send by certified mail a copy of the verified complaint to the licensee. Failure of the department to send a copy of the verified complaint within 30 days of receipt of the building inspection report prevents the department from assessing a fine against the licensee under article 6 but does not prevent the department from pursuing restitution, license suspension, or other remedies provided under this act.

(d) A licensee may contractually provide for an alternative dispute resolution procedure to resolve complaints filed with the department. The procedure shall be conducted by a neutral third party for determining the rights and responsibilities of the parties and shall be initiated by the licensee, who shall provide notice of the initiation of the procedure to the complainant by certified mail not less than 30 days before the commencement of that procedure. The procedure shall be conducted at a location mutually agreed to by the parties.

(e) The department shall not initiate a proceeding against a licensee under this subsection in the case of a licensee who contractually provides for an alternative dispute resolution

procedure that has not been utilized and completed unless it is determined that the licensee has not complied with a decision or order issued as a result of that alternative dispute resolution procedure, that alternative dispute resolution procedure was not fully completed within 90 days after the filing of the complaint with the department, or an alternative dispute resolution procedure meeting the requirements of subdivision (d) is not available to the complainant.

(f) The complainant shall demonstrate that notice has been provided to the licensee describing reasonable times and dates that the residential structure was accessible for any needed repairs and proof acceptable to the department that the repairs were not made within 60 days after the sending of the notice. This subdivision does not apply where the department determines a necessity to safeguard the structure or to protect the occupant's health and safety and, in such case, the department may utilize any remedy available under section 504(3)(a) through (d).

(g) In the case where the owner and licensee have agreed contractually on mutually acceptable performance guidelines relating to workmanship, the department shall consider those guidelines in its evaluation of a complaint. The guidelines shall be consistent with the Stille-DeRossett-Hale single state construction code act, 1972 PA 230, MCL 125.1501 to 125.1531.

(6) In any case where the licensee or respondent fails to appear, participate, or defend any action, the board shall issue an order granting by default the relief requested, based upon proofs submitted to and findings made, by the hearing examiner after a contested case.

(7) As used in this section, "verified complaint" means a complaint in which all or a portion of the allegations have been confirmed by an affidavit of the state or local building official.

339.2411a Final order of board; posting on website.

Sec. 2411a. (1) The department shall post on its website any final order of the board and the date it was issued. The posting shall occur within 30 days after the final order is issued.

(2) The department shall annually post on its website the number of final orders of the board.

Conditional effective date.

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

- (a) Senate Bill No. 453.
- (b) Senate Bill No. 450.
- (c) Senate Bill No. 451.

Effective date of certain sections.

Enacting section 2. Sections 2402, 2404, 2405, and 2411 of the occupational code, 1980 PA 299, MCL 339.2402, 339.2404, 339.2405, and 339.2411, as amended by this amendatory act, and sections 2404b and 2411a of the occupational code, 1980 PA 299, as added by this amendatory act, take effect June 1, 2008.

This act is ordered to take immediate effect.

Approved December 20, 2007.

Filed with Secretary of State December 21, 2007.

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

Senate Bill No. 453 was filed with the Secretary of State December 21, 2007, and became 2007 PA 158, Eff. June 1, 2008.

Senate Bill No. 450 was filed with the Secretary of State December 21, 2007, and became 2007 PA 155, Imd. Eff. Dec. 21, 2007.

Senate Bill No. 451 was filed with the Secretary of State December 21, 2007, and became 2007 PA 156, Eff. June 1, 2008.

[No. 158]

(SB 453)

AN ACT to amend 1979 PA 152, entitled “An act to provide for the establishment and collection of fees for the investigation, regulation, and enforcement of certain occupations and professions, and for certain agencies and businesses; to create certain funds for certain purposes; and to prescribe certain powers and duties of certain state agencies and departments,” by amending section 39 (MCL 338.2239), as amended by 2007 PA 77.

The People of the State of Michigan enact:

338.2239 Residential builder or residential maintenance and alteration contractor, salesperson, or branch office; fees; builder enforcement fund; creation; administration; allocation; use; carryforward of unexpended balance.

Sec. 39. (1) Fees for a person licensed or seeking licensure as a residential builder or residential maintenance and alteration contractor, salesperson, or branch office under article 24 of the occupational code, MCL 339.2401 to 339.2412, are as follows:

- (a) Application processing fee \$ 15.00
- (b) Examination fees:
 - (i) Complete builder or maintenance and alteration contractor examination ... 50.00
 - (ii) Law and rules portion..... 30.00
 - (iii) Practice or trades portion..... 30.00
 - (iv) Salesperson examination..... 30.00
- (c) Examination review 20.00
- (d) License fee only for the first license cycle of an initial or renewal licensee following the effective date of the amendatory act that added subsection (2), per year..... 60.00
- (e) License fee, per year..... 50.00

(2) The builder enforcement fund is created in the state treasury and shall be administered by the department. The department shall be the administrator of the fund for audit purposes. A 1-time-only \$30.00 allocation from a license fee received by the department under subsection (1)(d) during a single 3-year license cycle shall be deposited into the builder enforcement fund. The department shall make the \$30.00 allocation only once per licensee. In the case of the \$50.00 license fee paid under subsection (1)(e), \$5.00 of that \$50.00 fee shall be allocated to the builder enforcement fund. If on December 1 of any year following the calendar year 2010, the department determines that the balance in the builder enforcement fund is more than \$3,000,000.00, the \$5.00 allocation to the builder enforcement fund from the \$50.00 renewal fee due after January 1 of the following year shall not be made. If on any subsequent December 1 the department determines that the balance in the fund is less than \$750,000.00, the \$5.00 allocation shall resume for any renewal fee due after January 1 of the following year. Notwithstanding section 3, the department shall utilize the builder enforcement fund only for the enforcement of article 24 of the occupational code, MCL 339.2401 to 339.2412, regarding unlicensed activity as further described in section 601(1) and (2) of the occupational code, MCL 339.601, and to reimburse the attorney general for the reasonable cost of services provided to the department and for expenses incurred in prosecutions for such unlicensed

practice or prosecuting attorney for expenses incurred in conducting prosecutions of such unlicensed practice. Any unexpended balance in the builder enforcement fund at the end of a fiscal year shall carry forward to the next fiscal year.

Conditional effective date.

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

- (a) Senate Bill No. 450.
- (b) Senate Bill No. 451.
- (c) Senate Bill No. 452.

Effective date.

Enacting section 2. This amendatory act takes effect June 1, 2008.

This act is ordered to take immediate effect.

Approved December 20, 2007.

Filed with Secretary of State December 21, 2007.

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

Senate Bill No. 450 was filed with the Secretary of State December 21, 2007, and became 2007 PA 155, Imd. Eff. Dec. 21, 2007.

Senate Bill No. 451 was filed with the Secretary of State December 21, 2007, and became 2007 PA 156, Eff. June 1, 2008.

Senate Bill No. 452 was filed with the Secretary of State December 21, 2007, and became 2007 PA 157, Imd. Eff. Dec. 21, 2007.

[No. 159]

(SB 174)

AN ACT to amend 1978 PA 368, entitled "An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to provide for the levy of taxes against certain health facilities or agencies; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for the implementation of federal law; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to provide for an appropriation and supplements; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates," (MCL 333.1101 to 333.25211) by adding part 54C.

The People of the State of Michigan enact:

PART 54C. TOXIC SUBSTANCES IN CHILDREN'S PRODUCTS

333.5491 Definitions.

Sec. 5491. As used in this part:

(a) "Child care article" means a product designed or intended by the manufacturer to facilitate the sleep, relaxation, or feeding of children or to help children with sucking or teething.

(b) "Children" means individuals who are 7 years old or younger.

(c) "Consumer" means that term as used in the consumer product safety act, 15 USC 2051 to 2085.

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

(e) "Toxic substance" means a substance that contains lead, or a coating on an item that contains lead, so that the lead content is more than 0.06% of the total weight. Toxic substance does not include glass or crystal decorative components.

(f) "Toy" means an article designed and made for the amusement of a minor or for the minor's use in play.

333.5492 Toxic substance in toy or child care article; prohibited conduct; exception.

Sec. 5492. (1) A person shall not use or apply a toxic substance in or on any toy or child care article in this state.

(2) A person shall not sell, offer for sale, or transfer a toy or child care article in this state that contains a toxic substance.

(3) This section does not apply to the sale of a collectible toy that is not marketed to or intended to be used by a minor.

333.5493 Violation; penalties; waiver.

Sec. 5493. (1) Except as otherwise provided in subsection (2), a person who violates this part is subject to the following:

(a) If the person is not an individual consumer and the violation is the person's first offense under this part, a civil fine of not more than \$100.00 per item not to exceed \$5,000.00 total.

(b) If a person is not an individual consumer and the violation is the person's second offense under this part, a civil fine of not more than \$500.00 per item not to exceed \$25,000.00 total.

(c) If the person is not an individual consumer and the violation is the person's third or subsequent offense under this part, a civil fine of not more than \$1,000.00 per item not to exceed \$50,000.00 total.

(d) If a person knowingly violates this part and the person is not an individual consumer, a civil fine equal to 3 times the amounts in subdivision (c).

(2) A civil fine imposed under this section shall be waived if it is determined that a person acted in good faith to be in compliance with this part, pursued compliance with due diligence, and promptly corrected any noncompliance after discovery of the violation.

Effective date.

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.

Conditional effective date.

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

- (a) House Bill No. 4132.
- (b) House Bill No. 4399.
- (c) House Bill No. 4936.

This act is ordered to take immediate effect.

Approved December 20, 2007.

Filed with Secretary of State December 21, 2007.

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

House Bill No. 4132 was filed with the Secretary of State December 21, 2007, and became 2007 PA 161, Eff. Mar. 20, 2008.

House Bill No. 4399 was filed with the Secretary of State December 21, 2007, and became 2007 PA 160, Eff. Mar. 20, 2008.

House Bill No. 4936 was filed with the Secretary of State December 21, 2007, and became 2007 PA 162, Imd. Eff. Dec. 21, 2007.

[No. 160]**(HB 4399)**

AN ACT to amend 1978 PA 368, entitled “An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to provide for the levy of taxes against certain health facilities or agencies; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for the implementation of federal law; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to provide for an appropriation and supplements; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates,” (MCL 333.1101 to 333.25211) by adding section 5485.

The People of the State of Michigan enact:

333.5485 Lunch box containing lead-bearing substance; exception; “lunch box” defined.

Sec. 5485. (1) A person shall not sell or offer for sale in this state or for use in this state a lunch box that contains a lead-bearing substance.

(2) This section does not apply to the sale of a collectible lunch box or any other lunch box no longer intended to be used to carry food or drink for human consumption.

(3) As used in this section, “lunch box” means a fabricated container marketed or intended to be used to carry packaged or unpackaged food or drink for human consumption.

Effective date.

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.

Conditional effective date.

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

- (a) Senate Bill No. 174.
- (b) House Bill No. 4132.
- (c) House Bill No. 4936.

This act is ordered to take immediate effect.

Approved December 20, 2007.

Filed with Secretary of State December 21, 2007.

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

Senate Bill No. 174 was filed with the Secretary of State December 21, 2007, and became 2007 PA 159, Eff. Mar. 20, 2008.

House Bill No. 4132 was filed with the Secretary of State December 21, 2007, and became 2007 PA 161, Eff. Mar. 20, 2008.

House Bill No. 4936 was filed with the Secretary of State December 21, 2007, and became 2007 PA 162, Imd. Eff. Dec. 21, 2007.

[No. 161]

(HB 4132)

AN ACT to amend 1978 PA 368, entitled “An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to provide for the levy of taxes against certain health facilities or agencies; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for the implementation of federal law; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to provide for an appropriation and supplements; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates,” (MCL 333.1101 to 333.25211) by adding part 54B.

The People of the State of Michigan enact:

PART 54B. LEAD-BEARING SUBSTANCES

333.5481 Definitions.

Sec. 5481. As used in this part:

(a) “Children” means individuals who are 7 years old or younger.

(b) “Consumer” means that term as used in the consumer product safety act, 15 USC 2051 to 2085.

(c) “Children’s jewelry” means jewelry that is made for, marketed for use by, or marketed to children, including, but not limited to, the following:

(i) Jewelry represented in its packaging, display, or advertising as appropriate for use by children.

(ii) Jewelry sold in conjunction with, attached to, or packaged together with other products that are packaged, displayed, or advertised as appropriate for use by children.

(iii) Jewelry sized for children and not intended for use by adults.

(iv) Jewelry sold in a vending machine.

(v) Jewelry sold in a retail store, catalog, or online website in which a person exclusively offers for sale products that are packaged, displayed, or advertised as appropriate for use by children.

(vi) Jewelry sold in a discrete portion of a retail store, catalog, or online website in which a person offers for sale products that are packaged, displayed, or advertised as appropriate for use by children.

(d) “Lead-bearing substance” means an item or substance that contains lead, or a coating on an item that contains lead, so that the lead content is more than 0.06% of the total weight. Lead-bearing substance does not include glass or crystal decorative components.

(e) “Person” means an individual, partnership, corporation, association, governmental entity, or other legal entity.

333.5482 Children’s jewelry; use or application of lead-bearing substance prohibited.

Sec. 5482. A person shall not use or apply a lead-bearing substance in or on any children’s jewelry in this state.

333.5483 Children’s jewelry containing lead-bearing substance; sale, offer for sale, or transfer prohibited.

Sec. 5483. A person shall not sell, offer for sale, or transfer to any person any children’s jewelry in this state that contains a lead-bearing substance.

333.5484 Hazards of lead-bearing substances; posting information on website.

Sec. 5484. The department shall post on its website information about the hazards of lead-bearing substances and any programs it offers designed to educate individuals about those hazards.

333.5486 Violations; penalties; waiver.

Sec. 5486. (1) Except as otherwise provided in subsection (2), a person who violates this part is subject to the following:

(a) If the person is not an individual consumer and the violation is the person’s first offense under this part, a civil fine of not more than \$100.00 per item, not to exceed \$5,000.00 total.

(b) If the person is not an individual consumer and the violation is the person's second offense under this part, a civil fine of not more than \$500.00 per item, not to exceed \$25,000.00 total.

(c) If the person is not an individual consumer and the violation is the person's third or subsequent offense under this part, a civil fine of not more than \$1,000.00 per item, not to exceed \$50,000.00 total.

(d) If a person knowingly violates this part and the person is not an individual consumer, a civil fine equal to 3 times the amounts in subdivision (c).

(2) A civil fine imposed under this section shall be waived if it is determined that a person acted in good faith to be in compliance with this part, pursued compliance with due diligence, and promptly corrected any noncompliance after discovery of the violation.

Effective date.

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted.

Conditional effective date.

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

- (a) Senate Bill No. 174.
- (b) House Bill No. 4399.
- (c) House Bill No. 4936.

This act is ordered to take immediate effect.

Approved December 20, 2007.

Filed with Secretary of State December 21, 2007.

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

Senate Bill No. 174 was filed with the Secretary of State December 21, 2007, and became 2007 PA 159, Eff. Mar. 20, 2008.

House Bill No. 4399 was filed with the Secretary of State December 21, 2007, and became 2007 PA 160, Eff. Mar. 20, 2008.

House Bill No. 4936 was filed with the Secretary of State December 21, 2007, and became 2007 PA 162, Imd. Eff. Dec. 21, 2007.

[No. 162]

(HB 4936)

AN ACT to amend 1978 PA 368, entitled "An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to provide for the levy of taxes against certain health facilities or agencies; to promote the efficient and economical delivery of health care services, to provide for the

appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for the implementation of federal law; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to provide for an appropriation and supplements; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates," (MCL 333.1101 to 333.25211) by adding sections 5478 and 5479; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

333.5478 Childhood lead poisoning prevention and control commission; reinstatement; membership; appointment; terms; vacancy; public hearings; receipt of input from certain individuals or groups; conduct of business under open meetings act; availability of writings under freedom of information act; "commission" defined; repeal of section.

Sec. 5478. (1) It is the intent of the legislature that the childhood lead poisoning prevention and control commission created in the department under former section 5474a shall be reinstated with minimal interruption. To this end, the following 9 members appointed by the governor with the advice and consent of the senate under former section 5474a and serving on the childhood lead poisoning prevention and control commission on June 30, 2007 shall be reinstated to serve on the commission:

(a) One member representing the department of community health. The member appointed under this subdivision shall serve as chairperson.

(b) One member representing the department of human services.

(c) One member representing the department of environmental quality.

(d) One member representing the Michigan state housing development authority.

(e) One member representing "Get the Lead Out!". The member appointed under this subdivision shall be from a county with a population of more than 500,000 but not more than 700,000.

(f) One member representing a local health department located in a county with a population of more than 170,000 but not more than 200,000.

(g) One member representing certified lead-abatement contractors.

(h) Two members representing the general public. One of the members appointed under this subdivision shall be from a city with a population of 750,000 or more and be a parent of a child who has experienced lead poisoning or a child advocate who has experience with lead poisoning in children. The second member appointed under this subdivision shall represent property owners and developers in this state.

(2) Effective 30 days after the effective date of this section, the childhood lead poisoning prevention and control commission reinstated under subsection (1) shall consist of 16 voting members. In addition to the 9 members under subsection (1), the following additional 7 members shall be appointed by the governor within 30 days after the effective date of this section, with the advice and consent of the senate:

(a) One member representing the Michigan municipal league.

(b) One member representing the department of labor and economic growth.

(c) One member representing the Michigan chapter of the American academy of pediatrics.

(d) One member representing the prosecuting attorneys coordinating council.

(e) One member representing the department of education.

(f) One member representing the Michigan association of home builders remodelers council.

(g) One member representing the early childhood investment corporation.

(3) On and after the effective date of this section, the term of office of individual members of the commission, except those appointed to fill vacancies, expires 3 years after appointment on December 31 of the year in which the term will expire. Members are eligible for reappointment to the commission.

(4) Members of the commission shall serve without compensation but, subject to appropriations, may receive reimbursement for their actual and necessary expenses while attending meetings or performing other authorized official business of the commission. If a vacancy occurs on the commission, that vacancy shall be filled in the same manner as the original appointment.

(5) The commission may hold public hearings as it determines necessary or appropriate to carry out its duties under this part. The commission shall seek input from the general public and all of the following individuals or groups that have an interest in childhood lead poisoning prevention and control:

(a) The Michigan association of osteopathic family physicians or its successor organization.

(b) The Michigan nurses association or its successor organization.

(c) The Michigan council of nurse practitioners or its successor organization.

(d) The Michigan association of health plans or its successor organization.

(e) The Michigan association for local public health or its successor organization.

(f) Blue cross blue shield of Michigan or its successor organization.

(g) The Michigan health and hospital association or its successor organization.

(h) The Michigan head start association or its successor organization.

(i) The Michigan council for maternal and child health or its successor organization.

(j) Michigan's children or its successor organization.

(k) Michigan league for human services or its successor organization.

(l) Detroit public schools or its successor organization.

(m) The rental property owners association or its successor organization.

(n) The Michigan associated general contractors or its successor organization.

(o) The Michigan association of realtors or its successor organization.

(p) The Michigan environmental council or its successor organization.

(q) The Michigan adult blood lead epidemiology and surveillance program or its successor organization.

(r) The Michigan state university extension program or its successor organization.

(s) The Detroit lead partnership or its successor organization.

(t) The Michigan lead safe partnership or its successor organization.

- (u) The Detroit mayor's lead-based paint task force or its successor organization.
 - (v) United parents against lead or its successor organization.
 - (w) The Michigan department of community health medical services administration or its successor organization.
 - (x) The Michigan occupational safety and health administration or its successor organization.
 - (y) The Michigan department of community health bureau of laboratories or its successor organization.
 - (z) An occupational and environmental medicine specialist.
 - (aa) Parents or patient advocates of children who have experienced lead poisoning.
 - (bb) A local housing authority.
 - (cc) A community reinvestment officer.
 - (dd) The Michigan state medical society or its successor organization.
 - (ee) The Michigan academy of family physicians or its successor organization.
 - (ff) Saint Mary's field neurosciences institute or its successor organization.
 - (gg) The ARC Michigan organization or its successor organization.
 - (hh) Any other interested organization or association concerned with the prevention, treatment, and control of lead poisoning that the department determines necessary.
- (6) The commission shall conduct its business at a public meeting held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. The commission shall give public notice of the time, date, and place of the meeting in the manner required by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. The commission shall make available a writing prepared, owned, used, in the possession of, or retained by the childhood lead poisoning prevention and control commission to the public in compliance with the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.
- (7) As used in this section and section 5479, "commission" means the commission created and appointed by the governor under former section 5474a and this section.
- (8) This section is repealed effective July 1, 2010.

333.5479 Commission; duties; recommendations; report; repeal of section.

Sec. 5479. (1) The commission shall do all of the following:

- (a) Study and report on the environmental threats of lead poisoning to children's health, including, but not limited to, the incidence of exposure, source of exposure, and degree of exposure.
- (b) Review this state's lead poisoning prevention program and evaluate the effectiveness of the program, including, but not limited to, the ability of the program to satisfy federal law requirements that 100% of all young children enrolled in medicaid shall be screened with a blood lead test.
- (c) Make recommendations for improvements to this state's lead poisoning prevention program.
- (d) Evaluate and report on whether there is a need to adjust the lead content level referenced in the definitions of lead-bearing substance and toxic substance in parts 54B and 54C in order to reduce the incidence of lead poisoning in children.

(2) The commission shall consider all information received from its public hearings, review information from other sources, and study the experiences of other states. The commission shall develop short- and long-range strategic recommendations for childhood lead poisoning prevention and control in this state. The recommendations shall include, but are not limited to, strategies to do all of the following:

(a) Enhance public and professional awareness of lead poisoning as a child health emergency.

(b) Significantly increase blood lead testing rates for young children.

(c) Eliminate or manage the sources of lead poisoning, especially focusing on lead-based paint in aged housing.

(d) Assure state interagency as well as public and private cooperation and communication regarding resolution of this complex environmental and public health problem.

(3) The childhood lead poisoning prevention and control commission shall submit a written report of its findings, including the recommendations under subsection (2), to the governor and the legislature by March 31, 2008 and annually thereafter by March 31 of each year. A representative of the department of community health shall provide testimony summarizing the findings and recommendations of the commission to the standing committees of the senate and house of representatives with jurisdiction over issues pertaining to public health and children.

(4) This section is repealed effective July 1, 2010.

Conditional effective date.

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

(a) Senate Bill No. 174.

(b) House Bill No. 4132.

(c) House Bill No. 4399.

This act is ordered to take immediate effect.

Approved December 20, 2007.

Filed with Secretary of State December 21, 2007.

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

Senate Bill No. 174 was filed with the Secretary of State December 21, 2007, and became 2007 PA 159, Eff. Mar. 20, 2008.

House Bill No. 4132 was filed with the Secretary of State December 21, 2007, and became 2007 PA 161, Eff. Mar. 20, 2008.

House Bill No. 4399 was filed with the Secretary of State December 21, 2007, and became 2007 PA 160, Eff. Mar. 20, 2008.

[No. 163]

(SB 386)

AN ACT to amend 1931 PA 328, entitled "An act to revise, consolidate, codify, and add to the statutes relating to crimes; to define crimes and prescribe the penalties and remedies; to provide for restitution under certain circumstances; to provide for the competency of evidence at the trial of persons accused of crime; to provide immunity from prosecution for certain witnesses appearing at such trials; and to repeal certain acts and parts of acts inconsistent with