

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

(i) The property has a value of \$20,000.00 or more.

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

(3) A person who violates subsection (2)(a) or (b) and who breaks, tears, cuts, or otherwise damages any part of the motor vehicle, house trailer, trailer, or semitrailer is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$10,000.00, or both, regardless of the value of the property.

(4) The values of property stolen or unlawfully removed in separate incidents pursuant to a scheme or course of conduct within any 12-month period may be aggregated to determine the total value of property stolen or unlawfully removed.

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

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

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

**Effective date.**

Enacting section 1. This amendatory act takes effect April 1, 2009.

This act is ordered to take immediate effect.

Approved January 9, 2009.

Filed with Secretary of State January 12, 2009.

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**[No. 476]**

**(HB 6022)**

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 356a (MCL 750.356a), as amended by 1998 PA 311.

*The People of the State of Michigan enact:*

**750.356a Larceny; motor vehicles or trailers; aggregate value; prior convictions; breaking or entering; damaging.**

Sec. 356a. (1) A person who commits larceny by stealing or unlawfully removing or taking any wheel, tire, air bag, catalytic converter, radio, stereo, clock, telephone, computer, or other electronic device in or on any motor vehicle, house trailer, trailer, or semitrailer is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$10,000.00, or both.

(2) Except as provided in subsection (3), a person who enters or breaks into a motor vehicle, house trailer, trailer, or semitrailer to steal or unlawfully remove property from it is guilty of a crime as follows:

(a) If the value of the property is less than \$200.00, the person is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00 or 3 times the value of the property, whichever is greater, or both imprisonment and a fine.

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

(i) The value of the property is \$200.00 or more but less than \$1,000.00.

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

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

(i) The value of the property is \$1,000.00 or more but less than \$20,000.00.

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

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

(i) The property has a value of \$20,000.00 or more.

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

(3) A person who violates subsection (2)(a) or (b) and who breaks, tears, cuts, or otherwise damages any part of the motor vehicle, house trailer, trailer, or semitrailer is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$10,000.00, or both, regardless of the value of the property.

(4) The values of property stolen or unlawfully removed in separate incidents pursuant to a scheme or course of conduct within any 12-month period may be aggregated to determine the total value of property stolen or unlawfully removed.

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

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

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

#### **Effective date.**

Enacting section 1. This amendatory act takes effect April 1, 2009.

#### **Conditional effective date.**

Enacting section 2. This amendatory act does not take effect unless Senate Bill No. 1193 of the 94th Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved January 9, 2009.

Filed with Secretary of State January 12, 2009.

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**Compiler's note:** Senate Bill No. 1193, referred to in enacting section 2, was filed with the Secretary of State January 12, 2009, and became 2008 PA 475, Eff. Apr. 1, 2009.

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**[No. 477]**

**(HB 6036)**

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 2926a (MCL 600.2926a).

*The People of the State of Michigan enact:*

**600.2926a Cemetery receivers and conservators; appointments; term; accounting; compensation and expenses.**

Sec. 2926a. (1) Circuit court judges in the exercise of their equitable powers in matters relating to cemeteries or other entities regulated under the cemetery regulation act, 1968 PA 251, MCL 456.521 to 456.543; 1869 PA 12, MCL 456.101 to 456.119; 1855 PA 87, MCL 456.1 to 456.36; 1915 PA 58, MCL 456.201 to 456.213; and 1882 (Ex Sess) PA 13, MCL 456.251 to 456.253, may appoint receivers and conservators.

(2) Appointments under subsection (1) shall be limited to 1 year with reappointment permissible. Any person appointed under this section shall be required to make an accounting to the court at least once each 90 days. Compensation and reimbursable expenses for such receivers and conservators shall be determined and approved by the appointing court.

**Conditional effective date.**

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 674 of the 94th Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved January 9, 2009.

Filed with Secretary of State January 12, 2009.

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**Compiler's note:** Senate Bill No. 674, referred to in enacting section 1, was filed with the Secretary of State January 12, 2009, and became 2008 PA 478, Imd. Eff. Jan. 12, 2009.

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**[No. 478]**

**(SB 674)**

AN ACT to amend 1968 PA 251, entitled "An act to regulate the creation and management of cemeteries; to provide for a cemetery commissioner; and to prescribe the powers and duties of the commissioner; to require the registration and audit of cemeteries; to provide for long-term care of certain cemeteries; to regulate persons selling burial, entombment, or columbarium rights; and to prescribe remedies and penalties," by amending the title and sections 2, 2a, 8, 9, 10, 12, 12a, 13, 15, 16, 18, and 21 (MCL 456.522, 456.522a, 456.528, 456.529, 456.530, 456.532, 456.532a, 456.533, 456.535, 456.536, 456.538, and 456.541), the title and sections 2, 8, 9, 10, 12, 12a, 13, 15, 16, 18, and 21 as amended by 2004 PA 22 and section 2a as added by 1982 PA 132, and by adding sections 9a, 9b, and 13a; and to repeal acts and parts of acts.

*The People of the State of Michigan enact:*

TITLE

An act to regulate the creation and management of cemeteries; to provide for a cemetery commissioner and to prescribe the powers and duties of the commissioner; to require the registration and audit of cemeteries; to provide standards regarding the long-term care of certain cemeteries and trusting of certain funds; to regulate persons selling burial, entombment, or columbarium rights and certain merchandise; to provide for qualifications for owners, operators, employees, and transferees of cemeteries under certain circumstances; to allow the cemetery commissioner to conduct certain investigations; and to prescribe administrative and civil remedies and penalties.

**456.522 Definitions.**

Sec. 2. As used in this act:

(a) “Cemetery” means 1 or a combination of more than 1 of the following:

(i) A burial ground for earth interments.

(ii) A mausoleum for crypt entombments.

(iii) A crematory for the cremation for human remains.

(iv) A columbarium for the inurnment of cremated remains.

(b) “Interment” means the disposition of human remains by earth interment, entombment, or inurnment.

(c) “Burial right” means a right of earth interment.

(d) “Entombment right” means the right of crypt entombment in a mausoleum or in an aboveground vault.

(e) “Columbarium right” means the right of inurnment in a columbarium for cremated remains.

(f) “Mausoleum” means a building or other aboveground structure that is affixed to land and is a permanent repository for human remains.

(g) “Crypt” means a chamber in a mausoleum of sufficient size to entomb the uncremated remains of a deceased person.

(h) “Columbarium” means a building or other aboveground structure that is affixed to land and is a permanent repository for cremated human remains.

(i) “Crematory” means a building or structure, within which the remains of deceased persons are or are intended to be cremated.

(j) “Cremation” means the incineration of the body of the deceased person.

(k) “Cemetery commissioner” or “commissioner” means the director of the department of labor and economic growth or a designee of the director.

(l) “Endowment and perpetual care” means all general work necessary to keep the cemetery property in a presentable condition at all times, including, but not limited to, the cutting of grass at reasonable intervals; the raking, cleaning, filling, seeding, and sodding of graves; the replacement, pruning, or removal of shrubs and trees in order to assure access to interment rights; and the repair and maintenance of enclosures, buildings, drives, walks, and the various memorial gardens.

(m) “Merchandise trust” means trusts required by section 16, composed of deposits made in connection with merchandise and service sales made prior to January 1, 2005.

(n) “Municipal corporation” means a county, city, village, or township.

(o) “Regulated financial institution” means a state or nationally chartered bank, savings and loan association or savings bank, credit union, trust company, or other state or federally chartered lending institution or a regulated affiliate or regulated subsidiary of any of these entities.

(p) “Person” means an individual, group of individuals, sole proprietorship, partnership, limited liability company, association, corporation, government agency, cemetery, or a combination of these legal entities.

(q) “Good moral character” means that term as defined and determined under 1974 PA 381, MCL 338.41 to 338.47.

(r) “Cemetery owner” means the person who has title to the cemetery.

(s) “Operator” means any of the following:

(i) A person, an officer of a person, a partner of a person, or a member or manager of a limited liability company, who holds more than 50% voting rights in a cemetery owner.

(ii) A person who is a member of the board of directors of a cemetery owner, a partner in a cemetery owner, or a member or manager of a limited liability company that is a cemetery owner.

(iii) An administrative official of the cemetery owner or the person described in subparagraph (i), comparable to a chief administrative officer, chief executive officer, or chief financial officer.

(t) “Affiliated person” means a person directly or indirectly controlling the cemetery and includes all of the following:

(i) A person who holds at least a 50% interest in a cemetery.

(ii) A person who is a member of the board of directors or a cemetery owner, a partner in a cemetery owner, or a member or manager of a limited liability company that is a cemetery owner.

(iii) A person who is an officer of the person who holds at least a 10% interest in a cemetery corporation or other entity having control of the cemetery.

#### **456.522a Commissioner, spouse, or child; financial interest in cemetery, cemetery operations, supplier, or funeral establishment prohibited.**

Sec. 2a. The cemetery commissioner, or the commissioner’s spouse or child, shall not have a direct or indirect financial interest in a cemetery, cemetery operations, a supplier of cemetery services or cemetery memorials, or a funeral establishment as defined in section 1801 of the occupational code, 1980 PA 299, MCL 339.1801.

#### **456.528 Commissioner; rules.**

Sec. 8. (1) The commissioner shall promulgate rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to implement and administer this act, including, but not limited to, rules regarding all of the following:

(a) The maintenance of records relative to the financial aspects of cemeteries.

(b) Requirements for applications for the granting of permits and registrations required under this act, including, but not limited to, the good moral character and financial security, responsibility, and stability of persons having an interest in the cemetery and all persons with decision-making authority that are employed by the applicant, registrant, or permittee.

(c) The formal and informal procedures governing the conduct of contested cases under this act before the commissioner or a hearing officer designated by the commissioner.

(d) The establishment, control, record keeping, and auditing of endowment care trusts, merchandise trust accounts, and related trust funds.

(e) Requirements for trust agreements, endowment care trusts, and merchandise trust accounts.

(f) The full disclosure of the source, nature, and amount of consideration to be used in the sale or transfer of a cemetery.

(g) Submission of annual reports in accordance with section 16(12) and (13), including requests for extensions.

(2) The commissioner shall update any existing rules that must be changed due to the amendatory act that added this subsection within 12 months after the effective date of the amendatory act that added this subsection.

**456.529 Commissioner; hearings; investigations; oaths; testimony; witnesses; production of books and records; subpoena; abandoned cemeteries; failure to obey subpoena; perjury; violation of act, rule, or order; powers of commissioner; injunction or restraining order; appointment of receiver or conservator; powers; sale of cemetery; notice to creditors and filing of claims; denial of application; suspension or revocation of permit or registration.**

Sec. 9. (1) The commissioner may hold hearings, conduct investigations, administer oaths, take testimony under oath, and request in writing the appearance and testimony of witnesses, including the production of books and records. The commissioner may petition the circuit court for Ingham county for an order to issue, as part of the commissioner's general investigative and enforcement authority, a subpoena or a subpoena duces tecum relating to any person's appearance and testimony and for the production, examination, or copying of books, papers, or other documents pertaining to an investigation or hearing that is within the scope of the commissioner's authority under this act. The court shall issue an order for the issuance of subpoenas when reasonable grounds are shown.

(2) The commissioner has the authority to control, manage, and dispose of or transfer abandoned cemeteries or to require acceptance of responsibility for an abandoned cemetery according to law. The commissioner may promulgate rules that are necessary for the department to carry out its powers and duties under this subsection.

(3) Failure to obey a subpoena issued to any person by the commissioner through an order of the circuit court may subject the person to punishment by the circuit court as a contempt of court.

(4) Any person required by this act to take any oath or affirmation and who knowingly makes any false oath or affirmation is considered to have committed the crime of perjury.

(5) When it appears to the commissioner that a person or registrant has engaged in, or is about to engage in, any act or practice constituting a violation of this act or a rule promulgated or order issued under this act, the commissioner may do 1 or more of the following:

(a) Issue a cease and desist order.

(b) Accept an assurance of discontinuance of the violation.

(c) Bring an action in the circuit court for the county in which the person resides or in the circuit court for the county of Ingham, to enforce compliance with this act or a rule promulgated or order issued under this act.

(6) Upon a proper showing regarding an action brought under subsection (5)(c), a permanent or temporary injunction or a restraining order may be granted and a receiver or conservator may be appointed by the court. A receiver or conservator appointed by the court shall receive compensation from the cemetery as determined by the court. The receiver or conservator may operate the cemetery and take possession of the assets. The receiver or conservator shall have the rights and obligations of the cemetery as to all trust and escrow accounts and may sell, assign, transfer, or convey the cemetery and any of the assets to a municipal corporation or other person other than the holder of a license for the practice of mortuary science or a person who owns, manages, supervises, operates, or maintains, either directly or indirectly, a funeral establishment, under conditions prescribed by the court, in order to discharge outstanding contractual obligations. A receiver or conservator appointed under this section or section 2926a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2926a, has all the powers, authority, and remedies of an assignee for the benefit of creditors under chapter 52 of the revised judicature act of 1961, 1961 PA 236, MCL 600.5201 to 600.5265. The court may allow the receiver or conservator to file for protection under the bankruptcy code.



(7) Subject to court approval, a receiver or conservator may do any of the following:

- (a) Take possession of the books, records, and assets of the cemetery or cemetery entity.
- (b) Employ employees and agents, legal counsel, actuaries, accountants, appraisers, consultants, and such other personnel as he or she considers necessary.
- (c) Fix the reasonable compensation of employees and agents, legal counsel, actuaries, accountants, appraisers, and consultants with the court's approval.

(8) In the order of sale of the cemetery, the court shall make provision for notice to creditors and the filing of claims against the receivership or conservatorship. Money held by the cemetery in trust or in escrow shall not be distributed to the general creditors of the cemetery. This section does not prohibit the court from allowing the sale of the cemetery to a person other than the holder of a license for the practice of mortuary science or a person who owns, manages, supervises, operates, or maintains, either directly or indirectly, a funeral establishment, or from allowing the sale of the cemetery to a municipal corporation.

(9) In addition to an action taken under this section, the commissioner may deny an application or may suspend or revoke a permit or registration after an administrative hearing as provided for in this act.

#### **456.529a Performance of duties of commissioner; assistance from all departments, state agencies, public bodies corporate, committees, commissioners, officers of state, and any political subdivision.**

Sec. 9a. All departments, state agencies, public bodies corporate, committees, commissioners, or officers of this state, and any political subdivision of this state, so far as is compatible with their duties, shall give the commissioner or his or her designee any necessary assistance required by the commissioner in the performance of the duties of the commissioner. All departments, state agencies, public bodies corporate, committees, commissioners, or officers of this state, and any political subdivision of this state, shall provide the commissioner free access to any book, record, or document in their custody relating to the matters within the scope of the commissioner in the performance of his or her duties.

#### **456.529b Consultants; contracts.**

Sec. 9b. The commissioner may enter into contracts to accomplish requirements under this act, including for the engagement of consultants. The commissioner may use an authorized employee or agent, who is an attorney, to represent the commissioner or the department in a contested case proceeding brought under this act.

#### **456.530 Commissioner; auditing trust funds; registration of cemeteries; exemptions.**

Sec. 10. (1) The commissioner shall institute and maintain a system of auditing trust funds required by this act and of registering each cemetery authorized to be created, maintained, and operated in this state, as well as any other cemetery operating under state law or local ordinance. A cemetery owned and operated by a municipal corporation, church, or religious institution is exempt from this act. However, a municipal corporation may pass ordinances necessary for regulating that municipal corporation's cemeteries.

(2) A cemetery for earth interment of 10 acres or less in size, which is owned and operated entirely and exclusively by an existing nonprofit entity and in which a burial has taken place before September 15, 1968, is exempt from the fee provisions of this act, shall have the trust fund required by this act audited at the discretion of the commissioner, and is exempt from the endowment care trust fund requirements of section 16, except for the report requirements if the cemetery maintains endowment and perpetual care trust funds.



**456.532 Permit for registration required; acquisition of controlling interest in cemetery company; application for certificate of approval; contents; issuance; fee; noncompliance; escrow of endowment and perpetual care trust fund; prohibited use of funds; “controlling interest” defined.**

Sec. 12. (1) A person shall not establish a cemetery without a valid permit or operate an existing cemetery except under a valid registration issued under this act.

(2) If a person proposes to purchase or otherwise acquire a controlling interest in an existing cemetery company, that person shall first apply to the commissioner for a certificate of approval of a proposed change of control of a cemetery company. The application shall contain all of the following:

(a) The name and address of the proposed new owner or operator.

(b) A sworn statement from the seller attesting to the assets and liabilities related to the cemetery, including all trust accounts and the value of those accounts.

(c) Sworn statements from both the seller and the purchaser stating who will assume the assets and liabilities related to the cemetery.

(d) A sworn statement that the principal from the endowment and perpetual care trust accounts will be held in escrow for 6 months from the later of the following:

(i) The commissioner’s approval of the application.

(ii) The close of the sale of a controlling interest in the cemetery owner or the sale of a substantial portion of the assets of the cemetery owner.

(iii) The transfer of title of the cemetery.

(e) Any other information the commissioner requires.

(3) The commissioner shall issue a certificate of approval for a change of control only after he or she is satisfied that the proposed new cemetery owner or operator is qualified by good moral character, experience, and financial stability, responsibility, and security to control and operate the cemetery in a legal and proper manner, and that the interest of the public generally will not be jeopardized by the proposed change in ownership and management. The application for a purchase or change of control must be accompanied by an initial filing or investigation fee of \$1,500.00.

(4) If a person fails to comply with this section, the commissioner may do any of the following if a transfer of controlling interest is found to have taken place without prior commissioner approval:

(a) Suspend or revoke the registration of the cemetery.

(b) Issue a cease and desist order or other order requiring a person to immediately take remedial action as prescribed by the commissioner.

(c) Seek injunctive or other equitable action from a court of competent jurisdiction.

(d) Take other appropriate action until the person purchasing or otherwise acquiring a controlling interest in an existing cemetery, purchasing an existing cemetery, or otherwise acquiring the cemetery demonstrates compliance with this section or divests itself of any interest or control of the cemetery.

(5) After the sale, transfer, purchase, or acquisition of a controlling interest in a cemetery is completed, the endowment and perpetual care trust fund for the cemetery shall be escrowed into an account for the first 6 months of the new ownership. This subsection shall not be construed to prevent or prohibit the cemetery from receiving interest or income from the endowment and perpetual care trust fund to maintain the cemetery.

(6) The endowment and perpetual care trust funds of a cemetery being sold shall not be used by the new owner of an existing cemetery in any manner to purchase or otherwise finance the purchase of that cemetery from the previous owner.

(7) As used in this section, “controlling interest” means the capability to decide the operating and financial policies of the cemetery company or to select the officers or directors with majority control of the cemetery company.

**456.532a Examining affairs of cemetery or person; inspection or audit of books, papers, records, and documents; audit charges.**

Sec. 12a. (1) The commissioner or an examiner, investigator, or other person the commissioner may appoint, may visit and examine the affairs of any cemetery or person required to register under this act and shall have free access to the books, papers, records, and documents of the cemetery corporation, person, affiliated person, or agent acting on its behalf that relate to the business of the cemetery or person required to register under this act.

(2) The books, papers, records, and documents shall be available for inspection or audit at any time during regular business hours with reasonable notice. One or more qualified persons designated by the commissioner shall conduct the audit, whose services shall be charged to and paid by the cemetery.

**456.533 Establishment of cemetery; application for permit; investigation fee; conduct of investigation; notice to commissioner of certain changes; order to void certain appointments.**

Sec. 13. (1) Any person desiring to establish a cemetery shall file with the commissioner, on forms furnished by the commissioner, an application for a permit to establish a cemetery. The application shall be accompanied by a nonrefundable investigation fee of \$1,500.00.

(2) After a receipt of an application, the commissioner shall conduct an investigation pertaining to the physical plans, the community need for the planned cemetery, and pertinent information pertaining to the applicant’s experience, financial security, responsibility, and stability, ability, and good moral character and the source, nature, and amount of consideration to be used in the purchase of the cemetery. If the applicant is not an individual, the same investigation shall be made of the owners, directors, officers, partners, members, or any person occupying a similar status or performing similar functions, or any affiliated person.

(3) A cemetery company shall immediately notify the commissioner of any change in its directors, officers, partners, members, affiliated persons, or any persons occupying a similar status or performing similar functions. If after investigation the commissioner determines that any new director, officer, partner, member, affiliated person, or a person occupying a similar status or performing a similar function does not have suitable experience, financial security, responsibility, and stability, ability, and good moral character, the commissioner shall order the cemetery company to void the appointment of the director, officer, partner, member, affiliated person, or any persons occupying a similar status or performing a similar function.

**456.533a Circumstances causing person to be ineligible as cemetery owner or holder of controlling interest; factors for determining eligibility.**

Sec. 13a. (1) Notwithstanding any other provisions governing eligibility as a cemetery owner, a person may be ineligible to become a cemetery owner or hold a controlling interest in a cemetery company if any of the following circumstances exist:

(a) The person has been convicted of a felony under the laws of this state, any other state, or the United States.

(b) The person has been convicted of a misdemeanor involving gambling, theft, dishonesty, or fraud in any state, or has been convicted under a local ordinance in any state involving gambling, dishonesty, theft, or fraud that substantially corresponds to a misdemeanor in this state.

(c) The person has knowingly submitted an application for a license under this act that contains false information.

(d) The person lacks the requisite character, experience, and financial responsibility to control and operate the cemetery in a legal and proper manner, as determined by the commissioner, and the proposed ownership or change in ownership and management is likely to jeopardize the public.

(2) In determining whether to allow a person to become a cemetery owner, the commissioner shall also consider all of the following:

(a) The past and present compliance of the person and its affiliated person with cemetery or cemetery-related licensing requirements, cemetery-related agreements, or compacts with the state of Michigan or any other jurisdiction.

(b) Whether the person has been indicted, charged, arrested, or convicted, has pleaded guilty or nolo contendere, or has forfeited bail concerning any criminal offense under the laws of any jurisdiction, either felony or misdemeanor, not including traffic violations, unless the offense has been expunged, pardoned, or reversed on appeal or otherwise nullified as determined by the commissioner.

(c) Whether the person has filed, or had filed against it, a proceeding for bankruptcy or has ever been involved in any formal process to adjust, defer, suspend, or otherwise work out the payment of any debt.

(d) Whether the person has been served with a complaint or other notice filed with any public body regarding a payment of any tax required under federal, state, or local law that has been delinquent for 1 or more years.

(e) The person has a history of noncompliance with any regulatory requirements in this state, any other jurisdiction, or the federal government.

#### **456.535 Registration of cemetery; date; application; form; fee; expiration; procedure for denying registration; late penalty filing fee.**

Sec. 15. (1) Each person owning, managing, or operating a cemetery shall register the cemetery by filing with the commissioner a registration application before June 2 of each year, on a form furnished by the commissioner, and accompanied by the registration fee. A registration expires on July 1 of each year.

(2) If the commissioner intends to deny registration, the procedure set forth in section 19 shall be followed. The commissioner may impose a late penalty filing fee of \$10.00 per day on a person which filed a registration application after June 1.

#### **456.536 Irrevocable endowment and perpetual care trust fund; establishment and maintenance; commingling prohibited; annual report; application for modification or waiver; expenses; bundling of funds with common ownership; pooling of trust or escrow funds for investment purposes; agreement with regulated financial institutions with trust powers; deposits; agent or seller; deposit requirements; use of interest or income; merchandise trust account; deposit for sale of burial vaults or containers; repayment; installation of vault; contents of cemetery merchandise and services contract; annual reports; deficit in amount of required deposits; penalty; hearing; additional penalty; powers and jurisdiction of attorney general and courts; disposition of fees, charges, and penalties; notice of financial transaction or investment; failure to submit reports under subsections (12) and (13); civil actions.**

Sec. 16. (1) The commissioner shall require each cemetery to establish and maintain an irrevocable endowment and perpetual care trust fund. The amounts deposited into an endowment and perpetual care trust fund pursuant to subsection (5) shall be held in perpetuity by

the trustee and may only be distributed to the cemetery upon order of a court following petition by the commissioner. Interest or income shall be used only for endowment care. Except as otherwise provided in subsection (2), money in the endowment and perpetual care trust fund shall not be commingled with any other money or trust accounts. The cemetery shall report annually before July 1 of each year, on forms approved and furnished by the commissioner, endowment and perpetual care trust fund information required to be reported to the commissioner by other statutes and information regarding the funds as the commissioner considers pertinent in the public interest. A cemetery applying to the commissioner as authorized by other statutes for an endowment and perpetual care trust fund deposit modification or waiver shall be assessed the actual expenses for an examination or investigation by the commissioner.

(2) Notwithstanding subsection (1), bundling of funds held in trust or escrow, for each cemetery or among cemeteries with common ownership, is permissible only under the following circumstances:

(a) Each cemetery maintains separate trust and escrow account records pursuant to statutory and rule requirements for endowed care, merchandise, or prepaid funeral and cemetery sales.

(b) A cemetery, or cemeteries with common ownership, has all its trust or escrow accounts on deposit with 1 or more regulated financial institutions with trust powers in this state.

(c) The trustee, or the trustee's trading block nominee, holds title in the name of each individual trust or escrow account for that trust or escrow account assets and the assets are promptly settled back to the individual accounts by the trustee in the ordinary course of business.

(3) Notwithstanding subsection (2), other comparable methods of bundling or pooling of trust or escrow funds for investment purposes may be permissible upon terms and conditions approved in writing by the commissioner and only after the commissioner is reasonably satisfied that the title to, character of, and accounting for funds held in trust or escrow is preserved.

(4) Not later than January 1, 2010, the irrevocable endowment and perpetual care trust fund shall be established, or reestablished, with 1 or more regulated financial institutions with trust powers that shall be the trustee of the portion of the fund allocated to it. The cemetery shall enter into agreements of irrevocable trust agreements with each trustee. Those agreements shall provide that the investing of the assets are subject to the Michigan prudent investor rule as set forth in sections 1501 to 1511 and 7302 of the estates and protected individuals code, 1998 PA 386, MCL 700.1501 to 700.1511 and 700.7302, except that the agreement shall not be modified or amended, as allowed under sections 1502(2) and 7302 of the estates and protected individuals code, 1998 PA 386, MCL 700.1502 and 700.7302, to provide less than the standard of care in the prudent investor rule. The cemetery shall notify the commissioner, in writing, not later than 14 days prior to the effective date of an appointment of a trustee. The cemetery may remove and replace a trustee at any time, subject to the consent of the commissioner, and subject to the terms of the cemetery's agreement with the trustee. The fees and costs of the trustee may, in accordance with the terms of the trust agreement, be paid from the principal of the trust. A cemetery that establishes its irrevocable endowment and perpetual care trust with 1 or more regulated financial institutions with trust powers, and which cemetery does not reserve, retain, or otherwise exercise any power of direction of specific investments, shall not be liable for any deficiencies in the irrevocable endowment and perpetual care trust caused by performance of the investments. A cemetery may reserve the right to recommend, to a trustee, an investment advisor, registered with the securities and exchange commission under the investment advisers act of 1940, 15 USC 80b-1 to 80b-21, or

under the uniform securities act, 1964 PA 265, MCL 451.501 to 451.818, to advise the trustee in the trustee's decisions on asset allocation, investment managers, and investments, except that a trustee is not required to heed such advice. Alternatively, and notwithstanding any other provisions of this section, and at all times subject to the Michigan prudent investor rule, a cemetery may direct the trustees to make certain investments, provided that the trust is a named beneficiary of fiduciary liability insurance covering the cemetery's or other fiduciaries' actions in an amount equal to 100% of the amount so directed. Proof of such fiduciary liability coverage shall be provided not less than annually to the commissioner, in a form to be determined by the commissioner, prior to any direction being given. The commissioner or the attorney general may prosecute a claim against the fiduciary liability insurance on behalf of the trust. The trustees shall not be liable, or otherwise punishable, for complying with such direction of investments except that the trustees shall retain custody of all such investments.

(5) Beginning the effective date of the amendatory act that added this subsection, an irrevocable endowment and perpetual care trust fund shall be created by the deposit of at least \$50,000.00 into the fund before any sale of burial rights, entombment rights, or columbarium rights is made.

(6) Each month, not less than 15% of all proceeds received during the previous month from the sales of burial rights, entombment rights, or columbarium rights shall be deposited with the trustee for inclusion in the endowment and perpetual care trust fund. No total deposit for a single burial right sale or assignment shall be less than \$20.00. A cemetery may apply to the commissioner for a modification of the minimum deposit requirement. The commissioner shall take testimony and investigate as he or she considers necessary and if the commissioner determines that the applicant's endowment and perpetual care trust fund will generate sufficient income to meet all current costs of keeping the applicant's cemetery in good condition, the commissioner may modify the minimum deposit requirement. A cemetery applying to the commissioner for a modification of the endowment and perpetual care trust fund deposit requirements shall be assessed the actual costs for the commissioner's examination and investigation. Excess sums on deposit in the fund may be applied by a cemetery against future deposits and shall be annually reported to the commissioner in a manner prescribed by the commissioner.

(7) The commissioner shall require each person engaged as agent or seller in the selling of burial rights, entombment rights, or columbarium rights owned by a party other than a cemetery or corporation subject to the irrevocable endowment and perpetual care trust fund requirements of this act and other laws, to deposit 15% of all gross proceeds received from the sales of those rights into the irrevocable endowment and perpetual care trust fund of the cemetery in which the rights are located if an irrevocable endowment and perpetual care trust fund exists for that cemetery. A deposit required to be made by those persons shall be modified or waived if the cemetery has received an irrevocable endowment and perpetual care trust fund deposit modification or waiver approved by the commissioner. The total deposit for a single adult burial right sale or assignment shall not be less than \$20.00.

(8) Interest or income from the money in the endowment and perpetual care trust fund shall be used exclusively for endowment and perpetual care. No portion of the interest or income may be used directly or indirectly for salaries or other payments to the officers, directors, partners, members, or managers of the entity owning the cemetery. Withdrawals of accumulated interest or income from the endowment and perpetual care trust fund may be authorized by the trustee, and such withdrawals shall be documented in the manner provided by rule of the commissioner. A cemetery shall maintain records showing that interest from the endowment and perpetual care trust fund is used exclusively for endowment and perpetual care. The trustees shall not be responsible for ascertaining that such amounts paid over to the cemetery are expended for the limited purposes permitted by this subsection.

(9) Subject to subsection (17), a cemetery that is required to register pursuant to this act and an agent authorized by a cemetery or acting on its behalf under an agreement or sales contract to sell cemetery merchandise or cemetery services shall establish a merchandise trust account and deposit a percentage of the gross proceeds received from the sales as determined by the commissioner. The merchandise trust account shall be maintained exclusively for the deposit of the money into a regulated financial institution under the terms of a written trust agreement approved by the commissioner. All documents, reports, and records regarding the trust shall be kept in this state. It shall be the responsibility of each registrant under this act to assure that documents relating to the merchandise trust account are provided to the commissioner upon request. If a subpoena is issued to obtain these documents, the registrant shall pay all costs related to obtaining the documents. The funds shall be deposited not later than the month following their receipt.

(10) Subject to subsection (17), the total deposits to a merchandise trust for the sale of cemetery burial vaults or other outside containers, other than crypts installed underground and sold as part of a cemetery lot, shall at all times be not less than the greater of \$100.00 per vault or outside container or 130% of the total costs of the containers covered by the trust. Money deposited in connection with a sale shall be repaid within 30 days upon written demand of purchaser. A burial vault shall be installed only at need or by separate written authorization of the purchaser. The cemetery shall have the right to withdraw the amount on deposit for the delivered vault or outside container.

(11) Subject to subsection (17), a contract or agreement made with a purchaser of cemetery merchandise and cemetery services shall contain a complete description of the cemetery merchandise purchased and of the cemetery services to be rendered.

(12) The commissioner shall require the cemetery owner or operator to report annually before July 1 of each year on forms provided by the commissioner. The reports shall contain information as the commissioner considers necessary to ascertain that the requirements of this act and rules promulgated under this act are being implemented. Subject to approval of the department, the cemetery owner or operator may ask for an extension not to exceed 90 days to submit the report required by this subsection. All reports required by this subsection and subsection (13) shall include a sworn statement by the cemetery owner or operator that includes the following:

(a) A certification that the signing cemetery owner or operator has reviewed the report.

(b) Based on the operator's or owner's knowledge, that the report does not contain any untrue statement of material fact related to the financial condition of the endowment and perpetual care trust fund or merchandise trust accounts.

(c) Based on the operator's or owner's knowledge, that the report fairly presents all material information regarding the financial condition of the endowment and perpetual care trust fund or merchandise trust accounts.

(d) That the signing operators or owners are responsible for establishing and maintaining internal controls; have designed those internal controls to ensure the accuracy of material information relating to the condition of the endowment and perpetual care trust fund or merchandise trust accounts; have evaluated the effectiveness of the internal controls within 90 days prior to the issuance of the report; and have included information evaluating the effectiveness of those internal controls.

(13) At a minimum, the commissioner shall require the following information concerning the endowment and perpetual care trust fund, the accuracy of which shall be certified by a certified public accountant:

(a) Beginning and ending balances.

(b) Receipts from the sale of burial, entombment, and columbarium rights.



- (c) Deposits to the endowment and perpetual care trust fund.
- (d) Itemized payments of interest or income.
- (e) Documentation that interest was utilized solely for endowment care.

(14) If, after an audit by the commissioner's staff, a deficit in the amount of required deposits to the trust funds is found, the commissioner may assess a penalty in the amount allowed under this act. The cemetery entity may request an administrative hearing before the commissioner or a hearing officer designated by the commissioner within 30 days after being notified of a deficit by the commissioner. If, following the administrative hearing, the commissioner determines that a deficit does exist, an additional penalty may be assessed each month on the unpaid monthly balance until the deficit is paid in full.

(15) In addition to all other remedies at law or in equity, the attorney general and the circuit court of the county in which the cemetery is located shall have all the powers and jurisdiction granted to the attorney general and court as to trusts covered by 1915 PA 280, MCL 554.351 to 554.353. The remedies granted include all endowment and perpetual care trust funds without regard to uncertainty or indefiniteness of beneficiaries.

(16) All fees, charges, and penalties, or other money from any source, collected under this act, other than fines prescribed in section 21, shall be paid to the commissioner. Upon receipt, the commissioner shall remit funds received to the department of treasury for deposit in the general fund of the state.

(17) Any preneed contracts for cemetery merchandise or services entered into on or after January 1, 2005 are subject to the prepaid funeral and cemetery sales act, 1986 PA 255, MCL 328.211 to 328.235.

(18) Not less than 7 days before 30% of the endowment and perpetual care or perpetual care funds established under this act are moved from an account or otherwise engaged in some type of financial transaction or investment, the cemetery owner or operator shall notify the commissioner of the transaction on appropriate forms that the commissioner shall authorize. The commissioner may allow the submission of a notification up to 7 days after the transaction, for good cause shown. Failure to comply with this subsection is considered a violation of this act.

(19) The commissioner, upon finding after notice and an opportunity for a hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, that a cemetery owner or operator has failed to timely submit a report required under subsections (12) and (13), regardless of whether he or she acted alone or through an employee or agent, may impose an administrative fine, payable to the commissioner, for the enforcement of this act. If the commissioner finds that a violation occurred despite the exercise of due care, the commissioner may issue a warning instead of imposing an administrative fine.

(20) The commissioner shall advise the attorney general of the failure of a person to pay an administrative fine imposed under this section. The attorney general may bring an action in a court of competent jurisdiction for the failure to pay an administrative fine imposed under this section.

(21) Applicable provisions of the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9948, apply to civil actions filed pursuant to this section.

**456.538 Denial, suspension, or revocation of permit or registration, and other disciplinary action; grounds; effect; fulfillment of contractual obligations and agreements; administrative fine.**

Sec. 18. (1) The commissioner may deny an application filed under this act and refuse to issue a permit or registration, or may suspend or revoke a permit or registration, or may reprimand, place on probation, or take other disciplinary action against the applicant if the



commissioner's investigation reveals facts which, with reference to the establishment of a cemetery, show inappropriate physical plans; lack of community need; inadequate experience, financial stability, or integrity to protect the public welfare; or when the commissioner finds that the cemetery owner, operator, or applicant or the officers, cemetery owners, directors, members, affiliated persons, or general manager of those entities has done 1 or more of the following:

(a) Made a false statement of a material fact in the application.

(b) Not complied with this act.

(c) Been guilty of an unlawful or fraudulent act in connection with selling or otherwise dealing in cemetery lots and burial rights regulated by this act or funeral or cemetery merchandise and services regulated by the prepaid funeral and cemetery sales act, 1986 PA 255, MCL 328.211 to 328.235.

(d) Been guilty in the judgment of the commissioner of other conduct whether of the same or different character than specified in this act which constitutes dishonest and unfair dealing or a demonstration of lack of good moral character.

(e) Violated article 18 of the occupational code, 1980 PA 299, MCL 339.1801 to 339.1812.

(f) Violated the terms of an assurance of discontinuance entered into with the commissioner pursuant to section 9(5).

(g) Violated the prepaid funeral and cemetery sales act, 1986 PA 255, MCL 328.211 to 328.235.

(h) Failed to comply with section 2080 of the insurance code of 1956, 1956 PA 218, MCL 500.2080.

(i) Adopted, enforced, or attempted to enforce a regulation of the cemetery that prohibits the installation of a grave memorial or burial vault unless the grave memorial or burial vault was purchased from the cemetery. This subdivision does not prohibit a cemetery from adopting and enforcing consistent rules and regulations to be followed by both the cemetery and outside vendors as to the quality, size, shape, type, installation, and maintenance of the grave memorial or burial vault.

(2) If the commissioner denies an application for a permit or registration, or suspends or revokes an existing permit or registration required by this act, the denial, revocation, or suspension shall revoke the cemetery operation as to the sale or assignment of burial rights, entombment rights, or columbarium rights, cemetery merchandise, or cemetery services after the date of the suspension, revocation, or denial. The cemetery owner or operator shall fulfill all contractual obligations and agreements entered into before the date of the suspension, revocation, or denial, and shall make required interments for the owners of burial rights, entombment rights, or columbarium rights purchased before the date of suspension, revocation, or denial.

(3) The commissioner may impose an administrative fine of not more than \$5,000.00 for each separate violation of this act.

#### **456.541 Violations; penalties.**

Sec. 21. (1) Except as otherwise provided for in subsection (2), a person who violates this act is guilty of a misdemeanor punishable by a fine of not more than \$10,000.00.

(2) If the violator is an individual, the offense is punishable by a fine of not more than \$10,000.00 or imprisonment for not more than 1 year, or both.

#### **Repeal of MCL 456.35, 456.35a, 456.107, and 456.107a.**

Enacting section 1. (1) Sections 107 and 107a of 1869 PA 12, MCL 456.107 and 456.107a, are repealed.

(2) Sections 35 and 35a of 1855 PA 87, MCL 456.35 and 456.35a, are repealed.

**Conditional effective date.**

Enacting section 2. This amendatory act does not take effect unless House Bill No. 6036 of the 94th Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved January 9, 2009.

Filed with Secretary of State January 12, 2009.

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**Compiler's note:** House Bill No. 6036, referred to in enacting section 2, was filed with the Secretary of State January 12, 2009, and became 2008 PA 477, Imd. Eff. Jan. 12, 2009.

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**[No. 479]****(HB 6426)**

AN ACT to amend 1936 (Ex Sess) PA 1, entitled "An act to protect the welfare of the people of this state through the establishment of an unemployment compensation fund, and to provide for the disbursement thereof; to create certain other funds; to create the Michigan employment security commission, and to prescribe its powers and duties; to provide for the protection of the people of this state from the hazards of unemployment; to levy and provide for contributions from employers; to provide for the collection of such contributions; to enter into reciprocal agreements and to cooperate with agencies of the United States and of other states charged with the administration of any unemployment insurance law; to furnish certain information to certain governmental agencies for use in administering public benefit and child support programs and investigating and prosecuting fraud; to provide for the payment of benefits; to provide for appeals from redeterminations, decisions and notices of assessments; and for referees and a board of review to hear and decide the issues arising from redeterminations, decisions and notices of assessment; to provide for the cooperation of this state and compliance with the provisions of the social security act and the Wagner-Peyser act passed by the Congress of the United States of America; to provide for the establishment and maintenance of free public employment offices; to provide for the transfer of funds; to make appropriations for carrying out the provisions of this act; to prescribe remedies and penalties for the violation of the provisions of this act; and to repeal all acts and parts of acts inconsistent with the provisions of this act," by amending section 20 (MCL 421.20), as amended by 2003 PA 174.

*The People of the State of Michigan enact:*

**421.20 Charging benefits against employer's account; benefits improperly paid; basis; separate determination of amount and duration of benefits; disqualifying act or discharge; order of charges; separating employee; limitation on charges for regular benefits; benefits based on multiemployer credit weeks; training benefits and extended benefits; notice of charges; spouse as full-time member of United States armed forces.**

Sec. 20. (a) Benefits paid shall be charged against the employer's account as of the quarter in which the payments are made. If the bureau determines that any benefits charged against an employer's account were improperly paid, an amount equal to the charge based on those benefits shall be credited to the employer's account and a corresponding charge shall be made to the nonchargeable benefits account as of the current period or, in the discretion of the bureau, as of the date of the charge. Benefits paid to an individual as a result of an employer's

failure to provide the unemployment agency with separation, employment, and wage data as required by section 32 shall be considered as benefits properly paid to the extent that the benefits are chargeable to the noncomplying employer.

(b) For benefit years established before October 1, 2000, benefits paid to an individual shall be based upon the credit weeks earned during the individual's base period and shall be charged against the experience accounts of the contributing employers or charged to the accounts of the reimbursing employers from whom the individual earned credit weeks. If the individual earned credit weeks from more than 1 employer, a separate determination shall be made of the amount and duration of benefits based upon the total credit weeks and wages earned with each employer. Benefits paid in accordance with the determinations shall be charged against the experience account of a contributing employer or charged to the account of a reimbursing employer beginning with the most recent employer first and thereafter as necessary against other base period employers in inverse order to that in which the claimant earned his or her last credit week with those employers. If there is any disqualifying act or discharge under section 29(1) with an employer, benefits based upon credit weeks earned from that employer before the disqualifying act or discharge shall be charged only after the exhaustion of charges as provided above. Benefits based upon those credit weeks shall be charged first against the experience account of the contributing employer involved or to the account of the reimbursing employer involved in the most recent disqualifying act or discharge and thereafter as necessary in similar inverse order against other base period employers involved in disqualifying acts or discharges. The order of charges determined as of the beginning date of a benefit year shall remain fixed during the benefit year. For benefit years established on or after October 1, 2000, the claimant's full weekly benefit rate shall be charged to the account or experience account of the claimant's most recent separating employer for each of the first 2 weeks of benefits payable to the claimant in the benefit year in accordance with the monetary determination issued pursuant to section 32. However, if the total sum of wages paid by an employer totals \$200.00 or less, those wages shall be used for purposes of benefit payment, but any benefit charges attributable to those wages shall be charged to the nonchargeable benefits account. Thereafter, remaining weeks of benefits payable in the benefit year shall be paid in accordance with the monetary determination and shall be charged proportionally to all base period employers, with the charge to each base period employer being made on the basis of the ratio that total wages paid by the employer in the base period bears to total wages paid by all employers in the base period. However, if the claimant did not perform services for the most recent separating employer or employing entity and receive earnings for performing the services of at least the amount a claimant must earn, in the manner prescribed in section 29(3), to requalify for benefits following a disqualification under section 29(1)(a), (b), (i), or (k) during the claimant's most recent period of employment with the employer or employing entity, then all weeks of benefits payable in the benefit year shall be charged proportionally to all base period employers, with the charge to each base period employer being made on the basis of the ratio that total wages paid by the employer in the base period bears to total wages paid by all employers in the base period. If the claimant performed services for the most recent separating employing entity and received earnings for performing the services of at least the amount a claimant must earn, in the manner prescribed in section 29(3), to requalify for benefits following a disqualification under section 29(1)(a), (b), (i), or (k) during the claimant's most recent period of employment for the employing entity but the separating employing entity was not a liable employer, the first 2 weeks of benefits payable to the claimant shall be charged proportionally to all base period employers, with the charge to each base period employer made on the basis of the ratio that total wages paid by the employer in the base period bears to total wages paid by all employers in the base period. The "separating employer" is the employer that caused the individual to be unemployed as defined in section 48.

(c) For benefit years established before October 1, 2000, and except as otherwise provided in section 11(d) or (g) or section 46a, the charges for regular benefits to any reimbursing employer or to any contributing employer's experience account shall not exceed the weekly benefit rate multiplied by  $\frac{3}{4}$  the number of credit weeks earned by the individual during his or her base period from that employer. If the resultant product is not an even multiple of  $\frac{1}{2}$  the weekly benefit rate, the amount shall be raised to an amount equal to the next higher multiple of  $\frac{1}{2}$  the weekly benefit rate, and in the case of an individual who was employed by only 1 employer in his or her base period and who earned 34 credit weeks with that employer, the product shall be raised to the next higher multiple of the weekly benefit rate.

(d) For benefit years beginning on or after October 1, 2000, and except as otherwise provided in section 11(d) or (g) or section 46, the charges for regular benefits to any reimbursing employer's account or to any contributing employer's experience account shall not exceed either the amount derived by multiplying by 2 the weekly benefit rate chargeable to the employer in accordance with subsection (b) if the employer is the separating employer and is chargeable for the first 2 weeks of benefits, or the amount derived from the percentage of the weekly benefit rate chargeable to the employer in accordance with subsection (b), multiplied by the number of weeks of benefits chargeable to base period employers based on base period wages, to which the individual is entitled as provided in section 27(d), if the employer is a base period employer, or both of these amounts if the employer was both the chargeable separating employer and a base period employer.

(e) For benefit years beginning before October 1, 2000:

(1) If an individual has multiemployer credit weeks in his or her base period, and if it becomes necessary to use those credit weeks as a basis for benefit payments, a single determination shall be made of the individual's weekly benefit rate and maximum amount of benefits based on the individual's multiemployer credit weeks and the wages earned in those credit weeks. Each employer involved in the individual's multiemployer credit weeks shall be an interested party to the determination. The proviso in section 29(2) does not apply to multiemployer credit weeks, nor does the reduction provision of section 29(4) apply to benefit entitlement based upon those credit weeks.

(2) The charge for benefits based on multiemployer credit weeks shall be allocated to each employer involved on the basis of the ratio that the total wages earned during the total multiemployer credit weeks counted under section 50(b) with the employer bears to the total amount of wages earned during the total multiemployer credit weeks counted under section 50(b) with all such employers, computed to the nearest cent. However, if an adjusted weekly benefit rate is determined in accordance with section 27(f), the charge to the employer who has contributed to the financing of the retirement plan shall be reduced by the same amount by which the weekly benefit rate was adjusted under section 27(f). Benefits for a week of unemployment allocated under this subsection to a contributing employer shall be charged to the nonchargeable benefits account if the claimant during that week earns remuneration with that employer that equals or exceeds the amount of benefits allocated to that employer.

(3) Benefits paid in accordance with the determination based on multiemployer credit weeks shall be allocated to each employer involved and charged as of the quarter in which the payments are made. Notice of charges made under this subsection shall be given to each employer by means of a current listing of charges, at least weekly, or of a quarterly statement of charges. The listing or statement shall specify the weeks for which benefits were paid based on multiemployer credit weeks and the amount of benefits paid chargeable to that employer for each week. The notice shall be considered to satisfy the requirements of

sections 21(a) and 32(d) that notification be given each employer of benefits charged against that employer's account by means of a copy or listing of the benefit check, and all protest and appeal rights applicable to benefit check copies or listings shall also apply to the notice of charges. If an employer receives both a current listing of charges and a quarterly statement of charges under this subsection, all protest and appeal rights shall only apply to the first notice given.

(f) For benefit years beginning on or after October 1, 2000, if benefits for a week of unemployment are charged to 2 or more base period employers, the share of the benefits allocated and charged under this section to a contributing employer shall be charged to the nonchargeable benefits account if the claimant during that week earns remuneration with that employer that equals or exceeds the amount of benefits charged to that employer.

(g) For benefit years beginning before October 1, 2000:

(1) Training benefits as provided in section 27(g), and extended benefits as provided in section 64, shall be allocated to each reimbursing employer involved in the individual's base period of the claim to which the benefits are related, on the basis of the ratio that the total wages earned during the total credit weeks counted under section 50(b) with a reimbursing employer bears to the total amount of wages earned during the total credit weeks counted under section 50(b) with all employers.

(2) Training benefits and extended benefits, to the extent that they are not reimbursable by the federal government and have been allocated to a reimbursing employer, shall be charged to that reimbursing employer. A contributing employer's experience account shall not be charged with training benefits. Training benefits based on service with a contributing employer, to the extent that they are not reimbursable by the federal government, shall be charged to the nonchargeable benefits account. Extended benefits paid and based on service with a contributing employer, to the extent that they are not reimbursable by the federal government, shall be charged to that employer's experience account.

(3) If the training benefits or extended benefits are chargeable only to a single reimbursing employer, the benefits shall be charged in accordance with subsection (a). If the training benefits or extended benefits are chargeable to more than 1 reimbursing employer, or to 1 or more reimbursing employers and the nonchargeable benefits account, the benefits shall be charged as of the quarter in which the payments are made.

(4) Notice of charges made under this subsection shall be given to each employer by means of a current listing of charges, at least weekly, and subsequently by a quarterly summary statement of charges. The listing shall specify the name and social security number of each claimant paid benefits during the week, the weeks for which the benefits were paid, and the amount of benefits chargeable to that employer paid for each week. The quarterly statement of charges shall list each claimant by name and social security number and shall show total benefit payments chargeable to that employer and made to each claimant during the calendar quarter. The listing shall be considered to satisfy the requirements of sections 21(a) and 32(d) that notification be given each employer of benefits charged against that employer's account by means of a listing of the benefit check. All protest and appeal rights applicable to benefit check listings shall also apply to the notice of charges. If an employer receives both a current listing of charges and a quarterly statement of charges under this subsection, all protest and appeal rights shall only apply to the first notice given.

(h) For benefit years beginning on or after October 1, 2000:

(1) Training benefits as provided in section 27(g), and extended benefits as provided in section 64, shall be charged to each reimbursing employer in the base period of the claim to which the benefits are related, on the basis of the ratio that the total wages paid by a

reimbursing employer during the base period bears to the total wages paid by all reimbursing employers in the base period.

(2) Training benefits, and extended benefits to the extent they are not reimbursable by the federal government and have been allocated to a reimbursing employer, shall be charged to that reimbursing employer. A contributing employer's experience account shall not be charged with training benefits. Training benefits based on service with a contributing employer, to the extent they are not reimbursable by the federal government, shall be charged to the nonchargeable benefits account. Except as provided in section 17(3)(m), extended benefits paid and based on service with a contributing employer, to the extent they are not reimbursable by the federal government, shall be charged to that employer's experience account.

(3) If the training benefits or extended benefits are chargeable only to a single reimbursing employer, the benefits shall be charged in accordance with subsection (a). If the training benefits or extended benefits are chargeable to more than 1 reimbursing employer, or to 1 or more reimbursing employers and the nonchargeable benefits account, the benefits shall be charged as of the quarter in which the payments are made.

(4) Notice of charges made under this subsection shall be given to each employer by means of a current listing of charges, at least weekly, and subsequently by a quarterly summary statement of charges. The listing shall specify the name and social security number of each claimant paid benefits in the week, the weeks for which the benefits were paid, and the amount of benefits chargeable to that employer paid for each week. The quarterly summary statement of charges shall list each claimant by name and social security number and shall show total benefit payments chargeable to that employer and made to each claimant during the calendar quarter. The listing shall be considered to satisfy the requirements of sections 21(a) and 32(d) that notification be given to each employer of benefits charged against that employer's account by means of a listing of the benefit check. All protest and appeal rights applicable to benefit check listings shall also apply to the notice of charges. If an employer receives both a current listing of charges and a quarterly summary statement of charges under this subsection, all protest and appeal rights shall only apply to the first notice given.

(i) If a benefit year is established on or after October 1, 2000, the portion of benefits paid in that benefit year that are based on wages used to establish the immediately preceding benefit year that began before October 1, 2000 shall not be charged to the employer or employers who paid those wages but shall be charged instead to the nonchargeable benefits account.

(j) For benefits years beginning after March 30, 2009, benefits paid to a person who leaves employment to accompany a spouse who is a full-time member of the United States armed forces and is reassigned for military service in a different geographic location are not chargeable to the employer, but shall be charged to the nonchargeable benefits account.

### **Conditional effective date.**

Enacting section 1. This amendatory act does not take effect unless House Bill No. 6427 of the 94th Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved January 9, 2009.

Filed with Secretary of State January 12, 2009.



**[No. 480]****(HB 6427)**

AN ACT to amend 1936 (Ex Sess) PA 1, entitled “An act to protect the welfare of the people of this state through the establishment of an unemployment compensation fund, and to provide for the disbursement thereof; to create certain other funds; to create the Michigan employment security commission, and to prescribe its powers and duties; to provide for the protection of the people of this state from the hazards of unemployment; to levy and provide for contributions from employers; to provide for the collection of such contributions; to enter into reciprocal agreements and to cooperate with agencies of the United States and of other states charged with the administration of any unemployment insurance law; to furnish certain information to certain governmental agencies for use in administering public benefit and child support programs and investigating and prosecuting fraud; to provide for the payment of benefits; to provide for appeals from redeterminations, decisions and notices of assessments; and for referees and a board of review to hear and decide the issues arising from redeterminations, decisions and notices of assessment; to provide for the cooperation of this state and compliance with the provisions of the social security act and the Wagner-Peyser act passed by the Congress of the United States of America; to provide for the establishment and maintenance of free public employment offices; to provide for the transfer of funds; to make appropriations for carrying out the provisions of this act; to prescribe remedies and penalties for the violation of the provisions of this act; and to repeal all acts and parts of acts inconsistent with the provisions of this act,” by amending section 29 (MCL 421.29), as amended by 2002 PA 192.

*The People of the State of Michigan enact:*

**421.29 Disqualification from benefits.**

Sec. 29. (1) Except as provided in subsection (5), an individual is disqualified from receiving benefits if he or she:

(a) Left work voluntarily without good cause attributable to the employer or employing unit. An individual who left work is presumed to have left work voluntarily without good cause attributable to the employer or employing unit. An individual claiming benefits under this act has the burden of proof to establish that he or she left work involuntarily or for good cause that was attributable to the employer or employing unit. However, if either of the following conditions is met, the leaving does not disqualify the individual:

(i) The individual has an established benefit year in effect and during that benefit year leaves unsuitable work within 60 days after the beginning of that work.

(ii) The individual is the spouse of a full-time member of the United States armed forces, and the leaving is due to the military duty reassignment of that member of the United States armed forces to a different geographic location.

(b) Was suspended or discharged for misconduct connected with the individual's work or for intoxication while at work.

(c) Failed without good cause to apply for available suitable work after receiving from the employment office or the commission notice of the availability of that work.

(d) Failed without good cause while unemployed to report to the individual's former employer or employing unit within a reasonable time after that employer or employing unit provided notice of the availability of an interview concerning available suitable work with the former employer or employing unit.

(e) Failed without good cause to accept suitable work offered to the individual or to return to the individual's customary self-employment, if any, when directed by the employment



office or the commission. An employer that receives a monetary determination under section 32 may notify the unemployment agency regarding the availability of suitable work with the employer on the monetary determination or other form provided by the unemployment agency. Upon receipt of the notice of the availability of suitable work, the unemployment agency shall notify the claimant of the availability of suitable work.

(f) Lost his or her job due to absence from work resulting from a violation of law for which the individual was convicted and sentenced to jail or prison. This subdivision does not apply if conviction of an individual results in a sentence to county jail under conditions of day parole as provided in 1962 PA 60, MCL 801.251 to 801.258, or if the conviction was for a traffic violation that resulted in an absence of less than 10 consecutive work days from the individual's place of employment.

(g) Is discharged, whether or not the discharge is subsequently reduced to a disciplinary layoff or suspension, for participation in either of the following:

(i) A strike or other concerted action in violation of an applicable collective bargaining agreement that results in curtailment of work or restriction of or interference with production.

(ii) A wildcat strike or other concerted action not authorized by the individual's recognized bargaining representative.

(h) Was discharged for an act of assault and battery connected with the individual's work.

(i) Was discharged for theft connected with the individual's work.

(j) Was discharged for willful destruction of property connected with the individual's work.

(k) Committed a theft after receiving notice of a layoff or discharge, but before the effective date of the layoff or discharge, resulting in loss or damage to the employer who would otherwise be chargeable for the benefits, regardless of whether the individual qualified for the benefits before the theft.

(l) Was employed by a temporary help firm, which as used in this section means an employer whose primary business is to provide a client with the temporary services of 1 or more individuals under contract with the employer, to perform services for a client of that firm if each of the following conditions is met:

(i) The temporary help firm provided the employee with a written notice before the employee began performing services for the client stating in substance both of the following:

(A) That within 7 days after completing services for a client of the temporary help firm, the employee is under a duty to notify the temporary help firm of the completion of those services.

(B) That a failure to provide the temporary help firm with notice of the employee's completion of services pursuant to sub-subparagraph (A) constitutes a voluntary quit that will affect the employee's eligibility for unemployment compensation should the employee seek unemployment compensation following completion of those services.

(ii) The employee did not provide the temporary help firm with notice that the employee had completed his or her services for the client within 7 days after completion of his or her services for the client.

(m) Was discharged for illegally ingesting, injecting, inhaling, or possessing a controlled substance on the premises of the employer; refusing to submit to a drug test that was required to be administered in a nondiscriminatory manner; or testing positive on a drug test, if the test was administered in a nondiscriminatory manner. If the worker disputes the result

of the testing, a generally accepted confirmatory test shall be administered and shall also indicate a positive result for the presence of a controlled substance before a disqualification of the worker under this subdivision. As used in this subdivision:

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

(ii) “Drug test” means a test designed to detect the illegal use of a controlled substance.

(iii) “Nondiscriminatory manner” means administered impartially and objectively in accordance with a collective bargaining agreement, rule, policy, a verbal or written notice, or a labor-management contract.

(2) A disqualification under subsection (1) begins the week in which the act or discharge that caused the disqualification occurs and continues until the disqualified individual requalifies under subsection (3), except that for benefit years beginning before October 1, 2000, the disqualification does not prevent the payment of benefits if there are credit weeks, other than multiemployer credit weeks, after the most recent disqualifying act or discharge.

(3) After the week in which the disqualifying act or discharge described in subsection (1) occurs, an individual who seeks to requalify for benefits is subject to all of the following:

(a) For benefit years established before October 1, 2000, the individual shall complete 6 requalifying weeks if he or she was disqualified under subsection (1)(c), (d), (e), (f), (g), or (l), or 13 requalifying weeks if he or she was disqualified under subsection (1)(h), (i), (j), (k), or (m). A requalifying week required under this subdivision is each week in which the individual does any of the following:

(i) Earns or receives remuneration in an amount at least equal to an amount needed to earn a credit week, as that term is defined in section 50.

(ii) Otherwise meets all of the requirements of this act to receive a benefit payment if the individual were not disqualified under subsection (1).

(iii) Receives a benefit payment based on credit weeks subsequent to the disqualifying act or discharge.

(b) For benefit years established before October 1, 2000, if the individual is disqualified under subsection (1)(a) or (b), he or she shall requalify, after the week in which the disqualifying discharge occurred by earning in employment for an employer liable under this act or the unemployment compensation act of another state an amount equal to, or in excess of, 7 times the individual’s potential weekly benefit rate, calculated on the basis of employment with the employer involved in the disqualification, or by earning in employment for an employer liable under this act or the unemployment compensation act of another state an amount equal to, or in excess of, 40 times the state minimum hourly wage times 7, whichever is the lesser amount.

(c) For benefit years established before October 1, 2000, a benefit payable to an individual disqualified under subsection (1)(a) or (b) shall be charged to the nonchargeable benefits account, and not to the account of the employer with whom the individual was involved in the disqualification.

(d) For benefit years beginning on or after October 1, 2000, after the week in which the disqualifying act or discharge occurred, an individual shall complete 13 requalifying weeks if he or she was disqualified under subsection (1)(c), (d), (e), (f), (g), or (l), or 26 requalifying weeks if he or she was disqualified under subsection (1)(h), (i), (j), (k), or (m). A requalifying week required under this subdivision is each week in which the individual does any of the following:

(i) Earns or receives remuneration in an amount equal to at least 1/13 of the minimum amount needed in a calendar quarter of the base period for an individual to qualify for benefits, rounded down to the nearest whole dollar.

(ii) Otherwise meets all of the requirements of this act to receive a benefit payment if the individual was not disqualified under subsection (1).

(e) For benefit years beginning on or after October 1, 2000 and beginning before April 26, 2002, if the individual is disqualified under subsection (1)(a) or (b), he or she shall requalify, after the week in which the disqualifying act or discharge occurred by earning in employment for an employer liable under this act or the unemployment compensation law of another state at least the lesser of the following:

(i) Seven times the individual's weekly benefit rate.

(ii) Forty times the state minimum hourly wage times 7.

(f) For benefit years beginning on or after April 26, 2002, if the individual is disqualified under subsection (1)(a), he or she shall requalify, after the week in which the disqualifying act or discharge occurred by earning in employment for an employer liable under this act or the unemployment compensation law of another state at least 12 times the individual's weekly benefit rate.

(g) For benefit years beginning on or after April 26, 2002, if the individual is disqualified under subsection (1)(b), he or she shall requalify, after the week in which the disqualifying act or discharge occurred by earning in employment for an employer liable under this act or the unemployment compensation law of another state at least 17 times the individual's weekly benefit rate.

(h) A benefit payable to the individual disqualified or separated under disqualifying circumstances under subsection (1)(a) or (b), shall be charged to the nonchargeable benefits account, and not to the account of the employer with whom the individual was involved in the separation. Benefits payable to an individual determined by the commission to be separated under disqualifying circumstances shall not be charged to the account of the employer involved in the disqualification for any period after the employer notifies the commission of the claimant's possible ineligibility or disqualification. If a disqualifying act or discharge occurs during the individual's benefit year, any benefits that may become payable to the individual in a later benefit year based on employment with the employer involved in the disqualification shall be charged to the nonchargeable benefits account.

(4) The maximum amount of benefits otherwise available under section 27(d) to an individual disqualified under subsection (1) is subject to all of the following conditions:

(a) For benefit years established before October 1, 2000, if the individual is disqualified under subsection (1)(c), (d), (e), (f), (g), or (l) and the maximum amount of benefits is based on wages and credit weeks earned from an employer before an act or discharge involving that employer, the amount shall be reduced by an amount equal to the individual's weekly benefit rate as to that employer multiplied by the lesser of either of the following:

(i) The number of requalifying weeks required of the individual under this section.

(ii) The number of weeks of benefit entitlement remaining with that employer.

(b) If the individual has insufficient or no potential benefit entitlement remaining with the employer involved in the disqualification in the benefit year in existence on the date of the disqualifying determination, a reduction of benefits described in this subsection applies in a succeeding benefit year with respect to any benefit entitlement based upon credit weeks earned with the employer before the disqualifying act or discharge.

(c) For benefit years established before October 1, 2000, an individual disqualified under subsection (1)(h), (i), (j), (k), or (m) is not entitled to benefits based on wages and credit weeks earned before the disqualifying act or discharge with the employer involved in the disqualification.

(d) The benefit entitlement of an individual disqualified under subsection (1)(a) or (b) is not subject to reduction as a result of that disqualification.

(e) A denial or reduction of benefits under this subsection does not apply to benefits based upon multiemployer credit weeks.

(f) For benefit years established on or after October 1, 2000, if the individual is disqualified under subsection (1)(c), (d), (e), (f), (g), or (l), the maximum number of weeks otherwise applicable in calculating benefits for the individual under section 27(d) shall be reduced by the lesser of the following:

(i) The number of requalifying weeks required of the individual under this section.

(ii) The number of weeks of benefit entitlement remaining on the claim.

(g) For benefit years beginning on or after October 1, 2000, the benefits of an individual disqualified under subsection (1)(h), (i), (j), (k), or (m) shall be reduced by 13 weeks and any weekly benefit payments made to the claimant thereafter shall be reduced by the portion of the payment attributable to base period wages paid by the base period employer involved in a disqualification under subsection (1)(h), (i), (j), (k), or (m).

(5) If an individual leaves work to accept permanent full-time work with another employer and performs services for that employer, or if an individual leaves work to accept a recall from a former employer, all of the following apply:

(a) Subsection (1) does not apply.

(b) Wages earned with the employer whom the individual last left, including wages previously transferred under this subsection to the last employer, for the purpose of computing and charging benefits, are wages earned from the employer with whom the individual accepted work or recall, and benefits paid based upon those wages shall be charged to that employer.

(c) When issuing a determination covering the period of employment with a new or former employer described in this subsection, the commission shall advise the chargeable employer of the name and address of the other employer, the period covered by the employment, and the extent of the benefits that may be charged to the account of the chargeable employer.

(6) In determining whether work is suitable for an individual, the commission shall consider the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness and prior training, the individual's length of unemployment and prospects for securing local work in the individual's customary occupation, and the distance of the available work from the individual's residence. Additionally, the commission shall consider the individual's experience and prior earnings, but an unemployed individual who refuses an offer of work determined to be suitable under this section shall be denied benefits if the pay rate for that work is at least 70% of the gross pay rate he or she received immediately before becoming unemployed.

(7) Work is not suitable and benefits shall not be denied under this act to an otherwise eligible individual for refusing to accept new work under any of the following conditions:

(a) If the position offered is vacant due directly to a strike, lockout, or other labor dispute.

(b) If the remuneration, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality.

(c) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining a bona fide labor organization.

(8) All of the following apply to an individual who seeks benefits under this act:

(a) An individual is disqualified from receiving benefits for a week in which the individual's total or partial unemployment is due to either of the following:

(i) A labor dispute in active progress at the place at which the individual is or was last employed, or a shutdown or start-up operation caused by that labor dispute.

(ii) A labor dispute, other than a lockout, in active progress or a shutdown or start-up operation caused by that labor dispute in any other establishment within the United States that is both functionally integrated with the establishment described in subparagraph (i) and operated by the same employing unit.

(b) An individual's disqualification imposed or imposable under this subsection is terminated if the individual performs services in employment with an employer in at least 2 consecutive weeks falling wholly within the period of the individual's total or partial unemployment due to the labor dispute, and in addition earns wages in each of those weeks in an amount equal to or greater than the individual's actual or potential weekly benefit rate with respect to those weeks based on the individual's employment with the employer involved in the labor dispute.

(c) An individual is not disqualified under this subsection if the individual is not directly involved in the labor dispute. An individual is not directly involved in a labor dispute unless any of the following are established:

(i) At the time or in the course of a labor dispute in the establishment in which the individual was then employed, the individual in concert with 1 or more other employees voluntarily stopped working other than at the direction of the individual's employing unit.

(ii) The individual is participating in, financing, or directly interested in the labor dispute that causes the individual's total or partial unemployment. The payment of regular union dues, in amounts and for purposes established before the inception of the labor dispute, is not financing a labor dispute within the meaning of this subparagraph.

(iii) At any time a labor dispute in the establishment or department in which the individual was employed does not exist, and the individual voluntarily stops working, other than at the direction of the individual's employing unit, in sympathy with employees in some other establishment or department in which a labor dispute is in progress.

(iv) The individual's total or partial unemployment is due to a labor dispute that was or is in progress in a department, unit, or group of workers in the same establishment.

(d) As used in this subsection, "directly interested" shall be construed and applied so as not to disqualify individuals unemployed as a result of a labor dispute the resolution of which may not reasonably be expected to affect their wages, hours, or other conditions of employment, and to disqualify individuals whose wages, hours, or conditions of employment may reasonably be expected to be affected by the resolution of the labor dispute. A "reasonable expectation" of an effect on an individual's wages, hours, or other conditions of employment exists, in the absence of a substantial preponderance of evidence to the contrary, in any of the following situations:

(i) If it is established that there is in the particular establishment or employing unit a practice, custom, or contractual obligation to extend within a reasonable period to members of the individual's grade or class of workers in the establishment in which the individual is or was last employed changes in terms and conditions of employment that are substantially similar or related to some or all of the changes in terms and conditions of employment that are made for the workers among whom there exists the labor dispute that has caused the individual's total or partial unemployment.

(ii) If it is established that 1 of the issues in or purposes of the labor dispute is to obtain a change in the terms and conditions of employment for members of the individual's grade or class of workers in the establishment in which the individual is or was last employed.

(iii) If a collective bargaining agreement covers both the individual's grade or class of workers in the establishment in which the individual is or was last employed and the workers in another establishment of the same employing unit who are actively participating in the

labor dispute, and that collective bargaining agreement is subject by its terms to modification, supplementation, or replacement, or has expired or been opened by mutual consent at the time of the labor dispute.

(e) In determining the scope of the grade or class of workers, evidence of the following is relevant:

(i) Representation of the workers by the same national or international organization or by local affiliates of that national or international organization.

(ii) Whether the workers are included in a single, legally designated, or negotiated bargaining unit.

(iii) Whether the workers are or within the past 6 months have been covered by a common master collective bargaining agreement that sets forth all or any part of the terms and conditions of the workers' employment, or by separate agreements that are or have been bargained as a part of the same negotiations.

(iv) Any functional integration of the work performed by those workers.

(v) Whether the resolution of those issues involved in the labor dispute as to some of the workers could directly or indirectly affect the advancement, negotiation, or settlement of the same or similar issues in respect to the remaining workers.

(vi) Whether the workers are currently or have been covered by the same or similar demands by their recognized or certified bargaining agent or agents for changes in their wages, hours, or other conditions of employment.

(vii) Whether issues on the same subject matter as those involved in the labor dispute have been the subject of proposals or demands made upon the employing unit that would by their terms have applied to those workers.

(9) Notwithstanding subsections (1) to (8), if the employing unit submits notice to the commission of possible ineligibility or disqualification beyond the time limits prescribed by commission rule, the notice shall not form the basis of a determination of ineligibility or disqualification for a claim period compensated before the receipt of the notice by the commission.

(10) An individual is disqualified from receiving benefits for any week or part of a week in which the individual has received, is receiving, or is seeking unemployment benefits under an unemployment compensation law of another state or of the United States. If the appropriate agency of the other state or of the United States finally determines that the individual is not entitled to unemployment benefits, the disqualification described in this subsection does not apply.

This act is ordered to take immediate effect.

Approved January 9, 2009.

Filed with Secretary of State January 12, 2009.

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**[No. 481]**

**(HB 6542)**

AN ACT to amend 1867 PA 35, entitled "An act to provide for the formation of street railway companies, defining their powers and duties and authorizing the construction, use, maintenance and ownership of street railways for the transportation of passengers, and for accumulating, storing, manufacturing, conducting, using, selling, furnishing and supplying electricity and electric power, by such companies," by amending the title and sections 1, 3,



5, 7, 9, 11, 13, 15, 17, 19, and 27 (MCL 472.1, 472.3, 472.5, 472.7, 472.9, 472.11, 472.13, 472.15, 472.17, 472.19, and 472.27) and by adding section 21; and to repeal acts and parts of acts.

*The People of the State of Michigan enact:*

#### TITLE

An act to provide for the formation of nonprofit street railway companies, defining their powers and duties and authorizing the construction, use, maintenance and ownership of street railways for the transportation of passengers, and for accumulating, storing, manufacturing, conducting, using, selling, furnishing and supplying electricity and electric power, by such companies; to prescribe powers and duties of certain state and local agencies and officials; to provide remedies and penalties; to provide for the establishment of a transit development finance zone; and to authorize the use of tax increment financing.

#### **472.1 Short title.**

Sec. 1. This act shall be known and may be cited as the “nonprofit street railway act”.

#### **472.3 Legislative intent.**

Sec. 3. The legislature finds and declares that there exists in this state a need to encourage the development of transportation facilities and the provision of public transportation services by authorizing the acquiring, owning, constructing, furnishing, equipping, completing, operating, improving, and maintaining of nonprofit street railway companies and systems and that public assistance in acquiring, owning, constructing, furnishing, equipping, completing, operating, improving, and maintaining nonprofit street railway companies and systems in this state is declared to be a public purpose. It is the intent of the legislature that a street railway system constructed by a nonprofit corporation under this act be designed to adapt to or connect with other public transit systems. It is the intent of the legislature that resources expended to construct a street railway system under this act qualify as state and local match funds for transit systems eligible for federal funding.

#### **472.5 Construction of act.**

Sec. 5. (1) This act shall be construed liberally to effectuate the legislative intent and the purpose of the act as complete and independent authorization for the performance of each and every act and thing authorized in this act and all powers granted in this act shall be broadly interpreted to effectuate the intent and purposes of this act and not as a limitation of powers.

(2) The powers conferred in this act upon a street railway shall be in addition to any other powers the street railway possesses under law.

(3) Unless permitted by the state constitution of 1963 or this act or agreed to by a street railway, any restrictions, standards, conditions, or prerequisites of a city, village, or township otherwise applicable only to a street railway and enacted after the effective date of the amendatory act that added section 21 do not apply to a street railway. This subsection is intended to prohibit special local legislation or ordinances applicable exclusively or primarily to a street railway and not to exempt a street railway from laws generally applicable to other persons or entities.

#### **472.7 Definitions.**

Sec. 7. As used in this act:

(a) “Department” means the department of transportation, the principal department of state government created under section 350 of the executive organization act of 1965, 1965 PA 380, MCL 16.450.



(b) “Nonprofit corporation” means that term as defined under section 108 of the nonprofit corporation act, 1982 PA 162, MCL 450.2108.

(c) “Public street or highway” means any state trunk line highway, county road, or city or village street maintained by a road authority.

(d) “Railroad” means that term as defined under section 109 of the railroad code of 1993, 1993 PA 354, MCL 462.109.

(e) “Operating license agreement” means an agreement entered into under section 13 by and among a street railway and each road authority with jurisdiction over public streets and highways upon which the street railway operates or seeks to operate a street railway system, including, but not limited to, each city, village, or township road authority in the city, village, or township in which the street railway operates or seeks to operate a street railway system.

(f) “Road authority” means each governmental agency with jurisdiction over public streets and highways. Road authority includes the department, any other state agency, and intergovernmental, county, city, and village governmental agencies responsible for the construction, repair, and maintenance of streets and highways. When a street railway operates or seeks to operate a street railway system over public streets and highways over which more than 1 road authority possesses jurisdiction, road authority includes each road authority with jurisdiction over public streets and highways upon which the street railway operates or seeks to operate a street railway system.

(g) “Street railway” means a nonprofit corporation organized under this act for the purpose of operating a street railway system other than a railroad train for transporting persons or property.

(h) “Street railway system” means the facilities, equipment, and personnel required to provide and maintain a public transportation system operated on rails at grade or above or below ground within a city, village, or township utilizing streetcars, trolleys, light rail vehicles, or trams for the transportation of persons or property. Street railway system also includes necessary power feeds, signals, and stops or stations within a public right-of-way. Street railway system excludes facilities and improvements not required to maintain a public transportation system.

#### **472.9 Street railway; organization; articles of incorporation; filing; applicability of the nonprofit corporation act.**

Sec. 9. (1) After the effective date of the amendatory act that added this subsection, 1 or more persons may organize a street railway under this act for the purpose of acquiring, owning, constructing, furnishing, equipping, completing, operating, improving, and maintaining a street railway system by signing in ink and filing articles of incorporation for the street railway. The articles shall include all of the following:

(a) The name of the street railway, which shall include the words “rail”, “railway”, “street railway”, “light rail”, or “metro rail”.

(b) The purpose for which the corporation is organized, which shall be limited to acquiring, owning, constructing, furnishing, equipping, completing, operating, improving, and maintaining a street railway system.

(c) The city, village, or township in which the street railway system will principally operate.

(2) Articles of incorporation shall be filed with the bureau of commercial services of the department of energy, labor, and economic growth as provided under the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192.

(3) The nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192, shall apply to a street railway organized under this section unless otherwise provided in or inconsistent with this act.

#### **472.11 Nonprofit corporation as street railway; amendment of articles of incorporation required; provisions; adoption; filing; applicability of the nonprofit corporation act.**

Sec. 11. (1) A nonprofit corporation may become a street railway under this act and acquire, own, construct, furnish, equip, complete, operate, improve, and maintain a street railway system in a city if on and after the effective date of the amendatory act that added this subsection the articles of incorporation for the nonprofit corporation are amended to include all of the following provisions:

(a) A provision authorizing the name of the corporation, to include the words “rail”, “railway”, or “street railway”, “light rail”, or “metro rail”.

(b) A provision detailing the purposes for which the corporation is organized, which shall be limited to purposes related to acquiring, owning, constructing, furnishing, equipping, completing, operating, improving, and maintaining a street railway system.

(c) A provision indicating the city in which the street railway system will principally operate.

(2) Amendments to the articles of incorporation of a nonprofit corporation under this section shall be adopted and filed with the bureau of commercial services of the department of energy, labor, and economic growth as provided under the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192.

(3) The nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192, shall apply to a street railway organized under this section unless otherwise provided in or inconsistent with this act.

#### **472.13 Acquiring, constructing, operating, and maintaining street railway system on highways of road authority; approval; terms and conditions; operating license agreement; public hearing; decision as final and binding; costs; easements; revoking consent or depriving rights and privileges; powers of street railway.**

Sec. 13. (1) A street railway may acquire, own, construct, furnish, equip, complete, operate, improve, and maintain a street railway system in and upon the streets and highways of a road authority with the approval of the road authority, on terms and conditions imposed by the road authority. The approval shall be embodied in an operating license agreement by and among a street railway and each road authority with jurisdiction over public streets and highways upon which the street railway operates or seeks to operate a street railway system, including, but not limited to, a city, village, or township road authority located in the city, village, or township in which the street railway system operates or seeks to operate. The operating license agreement shall include the terms and conditions for operation of the street railway system. Before approving an agreement, a road authority shall hold a public hearing on the proposed operating license agreement. The hearing shall be held in the city, village, or township in which the street railway seeks to operate a street railway system and shall be held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Notice of the public hearing shall be provided not less than 20 days before the date of the hearing. One or more road authorities may conduct a joint public hearing under this section. At a public hearing, a street railway and a road authority may present information regarding the proposed operating licensing agreement as the street railway or the road authority deems appropriate. When operating in and upon the streets and highways of a road authority, a street railway is subject to rules, regulations, or ordinances imposed by the road

authority. A street railway shall not construct any street railway system in and upon the streets and highways of a road authority until the street railway accepts in writing any terms and conditions imposed by the road authority, the operating license agreement is approved under this section, and the agreement is filed with each road authority with jurisdiction over public streets and highways upon which the street railway will operate. A road authority has the power in its discretion to approve or disapprove an operating license agreement. A decision of a road authority regarding an operating license agreement shall be final and binding upon a street railway and other interested persons. The street railway shall pay the road authority for all of the road authority's costs incurred in constructing the street railway system, mitigating the impact of the street railway system on road users, the environment, and the surrounding neighborhoods, and modifying the streets or highways impacted by construction of the street railway system.

(2) A street railway may acquire, own, construct, furnish, equip, complete, operate, improve, maintain a street railway system upon public or private rights of way, and obtain easements when necessary for a street railway to acquire and use private property for acquiring, owning, constructing, furnishing, equipping, completing, operating, improving, and maintaining a street railway system.

(3) After a road authority consents to the acquiring, owning, constructing, furnishing, equipping, completing, operating, improving, and maintaining of a street railway system on the streets or highways of the road authority or grants a right or privilege to the street railway by entering into an operating license agreement with the street railway, the road authority may not revoke the consent or deprive the street railway of the rights and privileges conferred without affording the street railway procedural due process of law if and to the extent provided in the operating license agreement for the street railway.

(4) A street railway may do 1 or more of the following:

(a) Acquire by gift, devise, transfer, exchange, purchase, lease, or otherwise on terms and conditions and in a manner the street railway considers proper property or rights or interests in property relating to the operation of the street railway or street railway system.

(b) Take, transport, or carry and convey persons and property on a street railway system and receive just and fair compensation from users of the street railway system for that purpose.

(c) Erect and maintain all necessary and convenient buildings, structures, stations, depots, fixtures, and machinery for the accommodation and use of persons and property transported by the street railway.

(d) Regulate the time and manner in which persons and property may be transported by the street railway and fares or other compensation may be paid for that purpose. A street railway may charge just and fair compensation for the use of its street railway system.

(e) Borrow money and issue bonds and notes for any indebtedness incurred and may mortgage their street railway property and rights to secure the payment of bonds, notes, money borrowed, and any and all debts and liabilities which the street railway may incur. A street railway shall not use tax increments to repay bonds and notes.

(f) Transfer a street railway system to a public entity operating a public transportation system if the transfer is authorized by a law enacted after the effective date of the amendatory act that added section 21.

#### **472.15 Use or consumption of electricity and electric power by street railway and street railway system; relocation and modification of public utility facilities.**

Sec. 15. (1) Subject to applicable law and applicable regulations of this state, a city, a township, or a village, a street railway may generate, store, transmit, distribute, dispense,

furnish, or use electricity and electric power for use or consumption by the street railway and the street railway system.

(2) If a street railway requests a public utility to modify or relocate facilities of the public utility that lie within a public street or highway right of way, or if, in response to the construction, expansion, or modification of a street railway system a public utility determines that the public utility should modify or relocate the public utility's facilities, consistent with law, regulation, or good utility practice and unless the street railway and the public utility agree otherwise, the street railway shall pay all costs of the relocation and modification of the facilities to the public utility.

#### **472.17 Street or highway grades; conformance by company; alteration or change; consent required; manner of laying and maintaining track.**

Sec. 17. (1) In constructing a street railway system, a street railway shall conform to grades established by a road authority for a public street or highway traversed by the street railway.

(2) A street railway shall not alter or change the grade or line of any public street or highway, without the consent of the road authority with public jurisdiction over the public street or highway.

(3) A street railway shall lay and maintain the track of a street railway system in a manner and with the type of track to keep the track and the pavement of the public street or highway adjacent to the track in a state of condition and repair as prescribed by the road authority with jurisdiction over the public street or highway.

#### **472.19 Rules and regulations; establishment by road authority.**

Sec. 19. A road authority may establish and prescribe rules and regulations applicable to a street railway operating in or upon a public street or highway under the jurisdiction of a road authority relating to 1 or more of the following subjects:

- (a) Grading, paving, obstruction, or repairing of a street or highway.
- (b) Construction, maintenance, or obstruction of public service facilities and infrastructure, including water, light, heat, power, sewage disposal, and transportation.
- (c) Construction, maintenance, or obstruction of traffic control and parking control facilities and infrastructure.

#### **472.21 Refusal of person to pay fare or obey regulations; removal of person; placement of impediment upon track as felony; throwing stone, brick, or other missile as misdemeanor.**

Sec. 21. (1) If a person refuses to pay a fare owed to a street railway or refuses to obey regulations established by the street railway for the convenience and safety of passengers, the street railway may remove the person from the streetcar, tram, or trolley at a usual stopping place.

(2) A person who causes or attempts to cause the derailment of a streetcar, tram, or trolley of a street railway by the placing of an impediment upon the track of a street railway, whether the streetcar, tram, or trolley is dislodged from the track or not, or who by any other means whatsoever willfully endangers or attempts to endanger the life of any person engaged in the work of the street railway, or any person traveling on the streetcar, tram, or trolley of the street railway, is guilty of a felony punishable by imprisonment for life or any number of years. Proof that the person intended to injure or endanger the life of any particular person is not required to prove a violation of this section.

(3) A person who throws a stone, brick, or other missile at a streetcar, tram, or trolley of a street railway is guilty of a misdemeanor punishable by a fine of not less than \$100.00 or more than \$500.00 or imprisonment for not less than 10 days or more than 90 days, or both.

**472.27 Transfer of records to bureau of commercial services; organization of entity; street railway not subject to railroad code of 1993.**

Sec. 27. (1) Within 30 days of the effective date of the amendatory act that added section 21, the secretary of state or any other agency having records of a street railway formed under this act prior to the effective date of the amendatory act that added section 21 shall certify and transfer the records to the bureau of commercial services of the department of energy, labor, and economic growth.

(2) Any entity formed on or after the effective date of the amendatory act that added section 21 for the purpose of acquiring, owning, constructing, furnishing, equipping, completing, operating, improving, and maintaining a street railway or street railway system shall be organized under this act.

(3) A street railway is not subject to the railroad code of 1993, 1993 PA 354, MCL 462.101 to 462.451.

**Repeal of sections.**

Enacting section 1. Sections 2, 4, 6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 25, 28, 29, 30, 31, 31a, 32, 34, 35, and 36 of 1867 PA 35, MCL 472.2, 472.4, 472.6, 472.8, 472.10, 472.12, 472.14, 472.16, 472.18, 472.20, 472.22, 472.24, 472.25, 472.28, 472.29, 472.30, 472.31, 472.31a, 472.32, 472.34, 472.35, and 472.36, are repealed.

**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. 1588.
- (b) Senate Bill No. 1589.
- (c) Senate Bill No. 1590.
- (d) Senate Bill No. 1592.

This act is ordered to take immediate effect.

Approved January 9, 2009.

Filed with Secretary of State January 12, 2009.

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

Senate Bill No. 1588 was filed with the Secretary of State January 12, 2009, and became 2008 PA 485, Imd. Eff. Jan. 12, 2009.

Senate Bill No. 1589 was filed with the Secretary of State January 12, 2009, and became 2008 PA 486, Imd. Eff. Jan. 12, 2009.

Senate Bill No. 1590 was filed with the Secretary of State January 12, 2009, and became 2008 PA 487, Imd. Eff. Jan. 12, 2009.

Senate Bill No. 1592 was filed with the Secretary of State January 12, 2009, and became 2008 PA 488, Imd. Eff. Jan. 12, 2009.

**[No. 482]**

**(HB 6543)**

AN ACT to amend 1982 PA 162, entitled "An act to revise, consolidate, and classify the laws relating to the organization and regulation of certain nonprofit corporations; to prescribe their duties, rights, powers, immunities, and liabilities; to provide for the authorization of foreign nonprofit corporations within this state; to impose certain duties on certain state departments; to prescribe fees; to prescribe penalties for violations of this act; and to repeal certain acts and parts of acts," by amending section 123 (MCL 450.2123), as amended by 1990 PA 39.

*The People of the State of Michigan enact:*

**450.2123 Applicability to corporation organized under other act not repealed by this act; organizations to which act inapplicable.**

Sec. 123. (1) Unless otherwise provided in, and to the extent not inconsistent with, the act under which a corporation is or has been formed, this act applies to a corporation that is or has been organized under an act other than this act and not repealed by this act.

(2) A corporation covered by subsection (1) includes, but is not limited to, all of the following:

(a) A cooperative corporation classified as a nonprofit corporation under section 98 of 1931 PA 327, MCL 450.98.

(b) A secret society or lodge.

(c) A trustee corporation holding property for charitable, religious, benevolent, educational, or other public benefit purposes.

(d) A church trustee corporation.

(e) An educational corporation that is organized as a trustee corporation or a nonprofit corporation.

(f) An ecclesiastical corporation.

(g) A public building corporation.

(h) A street railway under the nonprofit street railway act, 1867 PA 35, MCL 472.1 to 472.31.

(3) Except as provided in subsection (2)(h), this act does not apply to insurance, surety, credit unions, savings and loan associations, fraternal benefit societies, railroad, bridge, or tunnel companies, union depot companies, and banking corporations.

**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. 1588.

(b) Senate Bill No. 1589.

(c) Senate Bill No. 1590.

(d) Senate Bill No. 1592.

This act is ordered to take immediate effect.

Approved January 9, 2009.

Filed with Secretary of State January 12, 2009.

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

Senate Bill No. 1588 was filed with the Secretary of State January 12, 2009, and became 2008 PA 485, Imd. Eff. Jan. 12, 2009.

Senate Bill No. 1589 was filed with the Secretary of State January 12, 2009, and became 2008 PA 486, Imd. Eff. Jan. 12, 2009.

Senate Bill No. 1590 was filed with the Secretary of State January 12, 2009, and became 2008 PA 487, Imd. Eff. Jan. 12, 2009.

Senate Bill No. 1592 was filed with the Secretary of State January 12, 2009, and became 2008 PA 488, Imd. Eff. Jan. 12, 2009.

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**[No. 483]**

**(HB 6546)**

AN ACT to amend 1993 PA 354, entitled "An act to revise, consolidate, and codify the laws relating to railroads and their employees; to prescribe powers and duties of certain state

and local agencies and officials; to prescribe fees; to create certain funds; to provide for the disposition of certain money; to provide remedies and penalties; and to repeal certain acts and parts of acts,” by amending section 109 (MCL 462.109), as amended by 2002 PA 658, and by adding section 450.

*The People of the State of Michigan enact:*

#### **462.109 Definitions; R to W.**

Sec. 109. (1) “Railroad” means a person, partnership, association, or corporation, their respective lessees, trustees, or receivers, appointed by a court, or other legal entity operating in this state either as a common carrier for hire or for private use as a carrier of persons or property upon cars operated upon stationary rails and includes any person, partnership, association, corporation, trustee, or receiver appointed by a court or any other legal entity owning railroad tracks.

(2) “Road authority” means a governmental agency having jurisdiction over public streets and highways. Road authority includes the department, any other state agency, and county, city, and village governmental agencies responsible for the construction, repair, and maintenance of streets and highways.

(3) “Serious impairment of a body function” means that term as defined in section 58c of the Michigan vehicle code, 1949 PA 300, MCL 257.58c.

(4) “Street railway” means an organization formed under the laws of this state for the purpose of operating a street railway system other than a railroad train for transporting persons or property. A street railway system is operated upon rails principally within a municipality utilizing streetcars, trolleys, and trams for the transportation of persons or property. Such organizations may accumulate, store, manufacture, conduct, use, sell, furnish, and supply electricity and electric power. Street railway does not include a street railway organized under the nonprofit street railway act, 1867 PA 35, MCL 472.1 to 472.31.

(5) “Street railway system” means the facilities, equipment, and personnel required to provide and maintain a public transportation service. Street railway system does not include a street railway system under the nonprofit street railway act, 1867 PA 35, MCL 472.1 to 472.31.

(6) “Traffic control device” means a sign, signal, marking, or other device placed on or adjacent to a street or highway by the road authority having jurisdiction over that street or highway to regulate, warn, or guide traffic.

(7) “Watchperson” means a railroad employee who is stationed at an at-grade crossing to signal to operators of vehicles approaching the crossing of the impending movement of a train or other railroad on-track equipment over the crossing.

#### **462.450 Applicability of act to street railway organized under MCL 472.1 to 472.31.**

Sec. 450. This act does not apply to a street railway organized under the nonprofit street railway act, 1867 PA 35, MCL 472.1 to 472.31.

#### **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. 1588.
- (b) Senate Bill No. 1589.



- (c) Senate Bill No. 1590.  
 (d) Senate Bill No. 1592.

This act is ordered to take immediate effect.  
 Approved January 9, 2009.  
 Filed with Secretary of State January 12, 2009.

**Compiler's note:** The bills referred to in enacting section 1 were enacted into law as follows:  
 Senate Bill No. 1588 was filed with the Secretary of State January 12, 2009, and became 2008 PA 485, Imd. Eff. Jan. 12, 2009.  
 Senate Bill No. 1589 was filed with the Secretary of State January 12, 2009, and became 2008 PA 486, Imd. Eff. Jan. 12, 2009.  
 Senate Bill No. 1590 was filed with the Secretary of State January 12, 2009, and became 2008 PA 487, Imd. Eff. Jan. 12, 2009.  
 Senate Bill No. 1592 was filed with the Secretary of State January 12, 2009, and became 2008 PA 488, Imd. Eff. Jan. 12, 2009.

**[No. 484]**

**(HB 6625)**

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 14m of chapter XVII (MCL 777.14m), as amended by 2002 PA 659.

*The People of the State of Michigan enact:*

CHAPTER XVII

**777.14m Applicability of chapter to certain felonies; MCL 462.257(1) to 472.36.**

Sec. 14m. This chapter applies to the following felonies enumerated in chapters 460 to 473 of the Michigan Compiled Laws:

M.C.L.	Category	Class	Description	Stat Max
462.257(1)	Person	A	Trains — endangering travel	Life

462.353(5)	Pub saf	E	Operating a locomotive under the influence — third or subsequent offense	5
462.353(6)	Person	C	Operating locomotive under the influence or while impaired causing death	15
462.353(7)	Person	E	Operating locomotive under the influence or while impaired causing serious impairment	5
472.21	Pub saf	A	Causing derailment of streetcar, tram, or trolley or endangering life of person engaged in the work of or traveling by streetcar, tram, or trolley	Life
472.36	Pub saf	A	Street railways — obstruction of track	Life

**Conditional effective date.**

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 1589 of the 94th Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved January 9, 2009.

Filed with Secretary of State January 12, 2009.

**Compiler's note:** Senate Bill No. 1589, referred to in enacting section 1, was filed with the Secretary of State January 12, 2009, and became 2008 PA 486, Imd. Eff. Jan. 12, 2009.

**[No. 485]**

**(SB 1588)**

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

deposits in the state trunk line fund, critical bridge fund, comprehensive transportation fund, and certain other funds of money raised by specific taxes and fees; to provide for definitions of public transportation functions and criteria; to define the purposes for which Michigan transportation funds may be allocated; to provide for Michigan transportation fund grants; to provide for review and approval of transportation programs; to provide for submission of annual legislative requests and reports; to provide for the establishment and functions of certain advisory entities; to provide for conditions for grants; to provide for the issuance of bonds and notes for transportation purposes; to provide for the powers and duties of certain state and local agencies and officials; to provide for the making of loans for transportation purposes by the state transportation department and for the receipt and repayment by local units and agencies of those loans from certain specified sources; and to repeal acts and parts of acts,” by amending section 10c (MCL 247.660c), as amended by 2005 PA 45.

*The People of the State of Michigan enact:*

### **247.660c Definitions.**

Sec. 10c. As used in this act:

(a) “Urban or rural area” means a contiguous developed area, including the immediate surrounding area, where transportation services should reasonably be provided presently or in the future; the area within the jurisdiction of an eligible authority; or for the purpose of receiving funds for public transportation, a contiguous developed area having a population of less than 50,000 that has an urban public transportation program approved by the state transportation department and for which the state transportation commission determines that public transportation services should reasonably be provided presently or in the future.

(b) “Eligible authority” means an authority organized under the metropolitan transportation authorities act of 1967, 1967 PA 204, MCL 124.401 to 124.426.

(c) “Eligible governmental agency” means a county, city, or village or an authority created under 1963 PA 55, MCL 124.351 to 124.359; the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512; 1967 (Ex Sess) PA 8, MCL 124.531 to 124.536; 1951 PA 35, MCL 124.1 to 124.13; the public transportation authority act, 1986 PA 196, MCL 124.451 to 124.479; or the revenue bond act of 1933, 1933 PA 94, MCL 141.101 to 141.140.

(d) “Transit vehicle” means a bus, rapid transit vehicle, railroad car, street railway car, water vehicle, taxicab, or other type of public transportation vehicle or individual unit, whether operated singly or in a group which provides public transportation.

(e) “Transit vehicle mile” means a transit vehicle operated for 1 mile in public transportation service including demand actuated and line-haul vehicle miles.

(f) “Demand actuated vehicle” means a bus or smaller transit vehicle operated for providing group rides to members of the general public paying fares individually, and on demand rather than in regularly scheduled route service.

(g) “Demand actuated vehicle mile” means a demand actuated vehicle operated for 1 mile in service to the general public.

(h) “Public transportation”, “comprehensive transportation”, “public transportation service”, “comprehensive transportation service”, “public transportation purpose”, or “comprehensive transportation purpose” means the movement of people and goods by publicly or privately owned water vehicle, bus, railroad car, street railway, aircraft, rapid transit vehicle, taxicab, or other conveyance which provides general or special service to the public, but not including charter or sightseeing service or transportation which is exclusively for school purposes. Public transportation, public transportation services, or public transportation purposes; and comprehensive transportation, comprehensive transportation services,

or comprehensive transportation purposes as defined in this subdivision are declared by law to be transportation purposes within the meaning of section 9 of article IX of the state constitution of 1963.

(i) “State transportation commission” means the state transportation commission established in section 28 of article V of the state constitution of 1963.

(j) “Governmental unit” means the state transportation department, the state transportation commission, a county road commission, a city, or a village.

(k) “Department” or “department of transportation” means the state transportation department, the principal department of state government created under section 350 of the executive organization act of 1965, 1965 PA 380, MCL 16.450.

(l) “Preservation” means an activity undertaken to preserve the integrity of the existing roadway system. Preservation does not include new construction of highways, roads, streets, or bridges, a project that increases the capacity of a highway facility to accommodate that part of traffic having neither an origin nor destination within the local area, widening of a lane width or more, or adding turn lanes of more than 1/2 mile in length. Preservation includes, but is not limited to, 1 or more of the following:

(i) Maintenance.

(ii) Capital preventive treatments.

(iii) Safety projects.

(iv) Reconstruction.

(v) Resurfacing.

(vi) Restoration.

(vii) Rehabilitation.

(viii) Widening of less than the width of 1 lane.

(ix) Adding auxiliary weaving, climbing, or speed change lanes.

(x) Modernizing intersections.

(xi) Adding auxiliary turning lanes of 1/2 mile or less.

(xii) Installing traffic signs in new locations, installing signal devices in new locations, and replacing existing signal devices.

(m) “Maintenance” means routine maintenance or preventive maintenance, or both. Maintenance does not include capital preventive treatments, resurfacing, reconstruction, restoration, rehabilitation, safety projects, widening of less than 1 lane width, adding auxiliary turn lanes of 1/2 mile or less, adding auxiliary weaving, climbing, or speed-change lanes, modernizing intersections, or the upgrading of aggregate surface roads to hard surface roads. Maintenance of state trunk line highways does not include streetlighting except for freeway lighting for traffic safety purposes.

(n) “Routine maintenance” means actions performed on a regular or controllable basis or in response to uncontrollable events upon a highway, road, street, or bridge. Routine maintenance includes, but is not limited to, 1 or more of the following:

(i) Snow and ice removal.

(ii) Pothole patching.

(iii) Unplugging drain facilities.

(iv) Replacing damaged sign and pavement markings.

(v) Replacing damaged guardrails.

(vi) Repairing storm damage.

- (vii) Repair or operation of traffic signs and signal systems.
- (viii) Emergency environmental cleanup.
- (ix) Emergency repairs.
- (x) Emergency management of road closures that result from uncontrollable events.
- (xi) Cleaning streets and associated drainage.
- (xii) Mowing roadside.
- (xiii) Control of roadside brush and vegetation.
- (xiv) Cleaning roadside.
- (xv) Repairing lighting.
- (xvi) Grading.

(o) “Preventive maintenance” means a planned strategy of cost-effective treatments to an existing roadway system and its appurtenances that preserve assets by retarding deterioration and maintaining functional condition without significantly increasing structural capacity. Preventive maintenance includes, but is not limited to, 1 or more of the following:

- (i) Pavement crack sealing.
- (ii) Micro surfacing.
- (iii) Chip sealing.
- (iv) Concrete joint resealing.
- (v) Concrete joint repair.
- (vi) Filling shallow pavement cracks.
- (vii) Patching concrete.
- (viii) Shoulder resurfacing.
- (ix) Concrete diamond grinding.
- (x) Dowel bar retrofit.
- (xi) Bituminous overlays of 1-1/2 inches or less in thickness.
- (xii) Restoration of drainage.
- (xiii) Bridge crack sealing.
- (xiv) Bridge joint repair.
- (xv) Bridge seismic retrofit.
- (xvi) Bridge scour countermeasures.
- (xvii) Bridge painting.
- (xviii) Pollution prevention.
- (xix) New treatments as they may be developed.

(p) “County road commission” means the board of county road commissioners elected or appointed pursuant to section 6 of chapter IV of 1909 PA 283, MCL 224.6, or, in the case of a charter county with a population of 2,000,000 or more with an elected county executive that does not have a board of county road commissioners, the county executive for ministerial functions and the county commission provided for in section 14(1)(d) of 1966 PA 293, MCL 45.514, for legislative functions.

(q) “Capital preventive treatments” means any preventive maintenance category project on state trunk line highways that qualifies under the department’s capital preventive maintenance program.

**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) House Bill No. 6542.
- (b) House Bill No. 6543.
- (c) House Bill No. 6546.
- (d) House Bill No. 6625.

This act is ordered to take immediate effect.

Approved January 9, 2009.

Filed with Secretary of State January 12, 2009.

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

House Bill No. 6542 was filed with the Secretary of State January 12, 2009, and became 2008 PA 481, Imd. Eff. Jan. 12, 2009.

House Bill No. 6543 was filed with the Secretary of State January 12, 2009, and became 2008 PA 482, Imd. Eff. Jan. 12, 2009.

House Bill No. 6546 was filed with the Secretary of State January 12, 2009, and became 2008 PA 483, Imd. Eff. Jan. 12, 2009.

House Bill No. 6625 was filed with the Secretary of State January 12, 2009, and became 2008 PA 484, Imd. Eff. Jan. 12, 2009.

**[No. 486]****(SB 1589)**

AN ACT to amend 1867 PA 35, entitled "An act to provide for the formation of street railway companies, defining their powers and duties and authorizing the construction, use, maintenance and ownership of street railways for the transportation of passengers, and for accumulating, storing, manufacturing, conducting, using, selling, furnishing and supplying electricity and electric power, by such companies," by amending the title and section 23 (MCL 472.23); and to repeal acts and parts of acts.

*The People of the State of Michigan enact:*

**TITLE**

An act to provide for the formation of nonprofit street railway companies, defining their powers and duties and authorizing the construction, use, maintenance and ownership of street railways for the transportation of passengers, and for accumulating, storing, manufacturing, conducting, using, selling, furnishing and supplying electricity and electric power, by such companies; to prescribe powers and duties of certain state and local agencies and officials; to provide remedies and penalties; to provide for the establishment of a transit development finance zone; and to authorize the use of tax increment financing.

**472.23 Transit operations finance zone.**

Sec. 23. (1) At the request of a street railway, and with the consent of the department, a city, village, or township in which a street railway system is located may establish a transit operations finance zone for a street railway system if the city, village, or township and the department determine that it is necessary for the best interests of the public to promote and finance transit operations in a zone. A parcel shall not be included in more than 1 zone created under this section.

(2) The boundaries of a zone shall be established by the city, village, or township and may include parcels that are in whole or in part up to 1/4 mile in distance from the street railway



system. Before establishing a zone, the city, village, or township shall consult with the street railway, the department, affected taxing jurisdictions, and any other person or entity that the city, village, or township considers necessary. The city, village, or township may conduct a planning study and may designate a zone before implementation of street railway system service within the zone.

(3) If the city, village, or township and the department determine that it is necessary for the best interests of the public to promote and finance transit operations in a zone under subsection (1), the city, village, or township shall enter into an agreement with the street railway and the department for the creation of a zone. The agreement shall include, but not be limited to, all of the following:

(a) The geographic boundaries of the zone, including both of the following:

(i) The designation of boundaries of the zone in relation to highways, streets, streams, lakes, other bodies of water, or otherwise.

(ii) The location and extent of existing streets and other public facilities within the zone, designating the location, character, and extent of the categories of public and private land uses then existing in the zone, including residential, recreational, commercial, industrial, educational, and other uses, and including a legal description of the zone.

(b) A tax increment financing plan for the zone as provided under subsection (4).

(c) A description of specific actions to be taken by the parties under the agreement to help establish the zone.

(d) The requirement that amendments to the agreement must be approved by the city, village, or township, the department, and the street railway.

(e) Any other material that the city, village, or township, the department, or the street railway consider necessary or appropriate.

(4) A tax increment financing plan for a zone established under this section shall include a description of the tax increment financing procedure, the distribution of tax increment financing revenue to the street railway, and a statement of the estimated impact of tax increment financing on the assessed value of property in each taxing jurisdiction in the zone. The plan may exclude from captured assessed value growth in property value resulting solely from inflation and, if so, shall include the method for excluding that growth. The plan shall require that tax increment revenue received by a street railway under the plan be used only for the expenses of operating the street railway system. If the street railway subject to an agreement designating a zone under this section ceases to operate a street railway system in the city, village, or township that established the zone, the plan shall terminate and the zone shall be abolished. The plan shall restrict the revenue distributed to a street railway for any tax year to the lesser of 25% of any operating deficit of the street railway for the prior fiscal year or \$4,000,000.00. Before including a tax increment financing plan in an agreement, the city, village, or township shall provide taxing jurisdictions in the zone levying taxes subject to capture under the plan an opportunity to meet with the city, village, or township. The city, village, or township shall fully inform the taxing jurisdictions of the fiscal and economic implications of the plan and the taxing jurisdictions may present recommendations to the city, village, or township on the tax increment financing plan.

(5) Before entering into an agreement for the creation of a zone under this section, the city, village, or township shall conduct a public hearing on the proposed agreement. Notice of the public hearing shall be published twice in a newspaper of general circulation in the city, village, or township, not less than 20 or more than 40 days before the date of the hearing. The notice shall state the date, time, and place of the hearing and shall describe the proposed boundaries of the zone. A citizen, taxpayer, or property owner of the city, village, or township, or an official from a taxing jurisdiction within the zone has the right to be heard on the

agreement and the proposed boundaries of the zone. The agreement shall not include in the zone land not included in the description contained in the notice of public hearing, but the agreement may exclude described land from the zone in the final determination of the boundaries of the zone. A city, village, or township shall not execute an agreement for the creation of a zone under this section unless the city, village, or township finds that it is necessary for the best interests of the public to promote and finance transit operations in a zone.

(6) An agreement designating a zone and establishing its boundaries under this section and any amendments to the agreement shall be filed by the city, village, or township with the secretary of state.

(7) The municipal and county treasurers shall transmit tax increment revenues to the treasurer for the city, village, or township in which the street railway system is located for distribution to the street railway according to the tax increment financing plan and the agreement. The street railway shall expend the tax increment revenues only under the terms of the tax increment financing plan and the agreement under this section. Unused funds shall revert proportionately to the respective taxing jurisdictions. Tax increment revenues shall not be used to circumvent existing property tax limitations. The city, village, or township and the department may abolish the zone if the city, village, or township and the department find that the purposes for which the zone was established are accomplished. Annually, the city, village, or township, with assistance from the street railway, shall submit to the department and the state tax commission a report on the status of the tax increment financing revenue. The report shall include all of the following:

- (a) The amount and source of tax increment revenue received by the street railway.
- (b) The amount and purpose of expenditures from tax increment revenue.
- (c) The initial assessed value of the zone.
- (d) The captured assessed value retained within the zone.
- (e) A description of operating expenditures of the street railway.

(8) The state tax commission may institute proceedings to compel enforcement of this section. The state tax commission may promulgate rules necessary for the administration of this section under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(9) As used in this section:

(a) “Assessed value” means the taxable value as determined under section 27a of the general property tax act, 1893 PA 206, MCL 211.27a.

(b) “Captured assessed value” means the amount in any 1 year by which the current assessed value of a zone, including the assessed value of property for which specific local taxes are paid in lieu of property taxes, exceeds the initial assessed value. The state tax commission shall prescribe the method for calculating captured assessed value.

(c) “Initial assessed value” means the assessed value of all the taxable property within the boundaries of a zone at the time the tax increment financing plan is approved, as shown by the most recent equalized assessment roll of the city, village, or township at the time an agreement is approved under this section. Property exempt from taxation at the time of the determination of the initial assessed value shall be included as zero. For the purpose of determining initial assessed value, property for which a specific local tax is paid in lieu of a property tax shall not be considered to be property that is exempt from taxation.

(d) “Parcel” means an identifiable unit of land that is treated as separate for valuation or zoning purposes.

(e) “Specific local tax” means a tax levied under 1974 PA 198, 1976 PA 430, MCL 207.551 to 207.572, the commercial redevelopment act, 1978 PA 255, MCL 207.651 to 207.668, the

technology park development act, 1984 PA 385, MCL 207.701 to 207.718, the commercial rehabilitation act, 2005 PA 210, MCL 207.841 to 207.856, the neighborhood enterprise zone act, 1992 PA 147, MCL 207.771 to 207.786, the obsolete property rehabilitation act, 2000 PA 146, MCL 125.2781 to 125.2797, or 1953 PA 189, MCL 211.181 to 211.182. The initial assessed value or current assessed value of property subject to a specific local tax shall be the quotient of the specific local tax paid divided by the ad valorem millage rate. The state tax commission shall prescribe the method for calculating the initial assessed value and current assessed value of property for which a specific local tax was paid in lieu of a property tax.

(f) “Tax increment revenues” means the amount of ad valorem property taxes and specific local taxes attributable to the application of the levy of all taxing jurisdictions upon the captured assessed value of real and personal property in the zone. Tax increment revenues do not include any of the following:

(i) Taxes under the state education tax act, 1993 PA 331, MCL 211.901 to 211.906.

(ii) Taxes levied by local or intermediate school districts.

(iii) Taxes levied by a library established by 1901 LA 359.

(iv) Ad valorem property taxes attributable either to a portion of the captured assessed value shared with taxing jurisdictions within the jurisdictional area of the authority or to a portion of value of property that may be excluded from captured assessed value or specific local taxes attributable to the ad valorem property taxes.

(v) Ad valorem property taxes excluded by the tax increment financing plan of the authority from the determination of the amount of tax increment revenues to be transmitted to the authority or specific local taxes attributable to the ad valorem property taxes.

(vi) Ad valorem property taxes exempted from capture under this section or specific local taxes attributable to the ad valorem property taxes.

(vii) Ad valorem property taxes specifically levied for the payment of principal and interest of obligations approved by the electors or obligations pledging the unlimited taxing power of the local governmental unit or specific taxes attributable to those ad valorem property taxes.

(viii) Ad valorem taxes captured on property in a zone by any of the following authorities if the taxes were captured on the date that the property became subject to a tax increment financing plan under this section by any of the following authorities:

(A) A downtown development authority created under 1975 PA 197, MCL 125.1651 to 125.1681.

(B) A water resource improvement tax increment finance authority created under the water resource tax increment finance authority act, 2008 PA 94, MCL 125.1771 to 125.1794.

(C) A tax increment finance authority under the tax increment finance authority act, 1980 PA 450, MCL 125.1801 to 125.1830.

(D) A local development finance authority created under the local development finance authority act, 1986 PA 281, MCL 125.2151 to 125.2174.

(E) A brownfield redevelopment finance authority created under the brownfield redevelopment financing act, 1996 PA 381, MCL 125.2651 to 125.2672.

(F) A historical neighborhood tax increment finance authority created under the historical neighborhood tax increment finance authority act, 2004 PA 530, MCL 125.2841 to 125.2866.

(G) A corridor improvement authority created under the corridor improvement authority act, 2005 PA 280, MCL 125.2871 to 125.2899.

(H) A neighborhood improvement authority created under the neighborhood improvement authority act, 2007 PA 61, MCL 125.2911 to 125.2932.

(g) “Zone” means a transit operations finance zone established under this section.

**Repeal of sections.**

Enacting section 1. Sections 2, 4, 6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 25, 28, 29, 30, 31, 31a, 32, 34, 35, and 36 of 1867 PA 35, MCL 472.2, 472.4, 472.6, 472.8, 472.10, 472.12, 472.14, 472.16, 472.18, 472.20, 472.22, 472.24, 472.25, 472.28, 472.29, 472.30, 472.31, 472.31a, 472.32, 472.34, 472.35, and 472.36, are repealed.

**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. 6542.
- (b) House Bill No. 6543.
- (c) House Bill No. 6546.
- (d) House Bill No. 6625.

This act is ordered to take immediate effect.

Approved January 9, 2009.

Filed with Secretary of State January 12, 2009.

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

House Bill No. 6542 was filed with the Secretary of State January 12, 2009, and became 2008 PA 481, Imd. Eff. Jan. 12, 2009.

House Bill No. 6543 was filed with the Secretary of State January 12, 2009, and became 2008 PA 482, Imd. Eff. Jan. 12, 2009.

House Bill No. 6546 was filed with the Secretary of State January 12, 2009, and became 2008 PA 483, Imd. Eff. Jan. 12, 2009.

House Bill No. 6625 was filed with the Secretary of State January 12, 2009, and became 2008 PA 484, Imd. Eff. Jan. 12, 2009.

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**[No. 487]****(SB 1590)**

AN ACT to amend 1951 PA 51, entitled "An act to provide for the classification of all public roads, streets, and highways in this state, and for the revision of that classification and for additions to and deletions from each classification; to set up and establish the Michigan transportation fund; to provide for the deposits in the Michigan transportation fund of specific taxes on motor vehicles and motor vehicle fuels; to provide for the allocation of funds from the Michigan transportation fund and the use and administration of the fund for transportation purposes; to set up and establish the truck safety fund; to provide for the allocation of funds from the truck safety fund and administration of the fund for truck safety purposes; to set up and establish the Michigan truck safety commission; to establish certain standards for road contracts for certain businesses; to provide for the continuing review of transportation needs within the state; to authorize the state transportation commission, counties, cities, and villages to borrow money, issue bonds, and make pledges of funds for transportation purposes; to authorize counties to advance funds for the payment of deficiencies necessary for the payment of bonds issued under this act; to provide for the limitations, payment, retirement, and security of the bonds and pledges; to provide for appropriations and tax levies by counties and townships for county roads; to authorize contributions by townships for county roads; to provide for the establishment and administration of the state trunk line fund, local bridge fund, comprehensive transportation fund, and certain other funds; to provide for the deposits in the state trunk line fund, critical bridge fund, comprehensive transportation fund, and certain other funds of money raised by specific taxes and fees; to provide for definitions of public transportation functions and criteria; to define the purposes for which Michigan transportation funds may be allocated; to provide for Michigan transportation fund grants; to provide for review and approval of transportation programs; to provide for submission of annual legislative requests and reports; to provide for the establishment and functions of

certain advisory entities; to provide for conditions for grants; to provide for the issuance of bonds and notes for transportation purposes; to provide for the powers and duties of certain state and local agencies and officials; to provide for the making of loans for transportation purposes by the state transportation department and for the receipt and repayment by local units and agencies of those loans from certain specified sources; and to repeal acts and parts of acts," by amending section 10e (MCL 247.660e), as amended by 1998 PA 87.

*The People of the State of Michigan enact:*

**247.660e Comprehensive transportation fund; appropriation and expenditure; order of priority; capital grants; instructions; submission of local transportation program to department; department transportation program; proposed state transportation program; action by commission; approval of projects; agreement; approval of multiyear public transportation program; grant-in-aid instrument; audits; source of funds for payment of eligible capital projects, local bus new services, and intercity passenger operating assistance projects; use of vehicle purchased, leased, or rented; demand actuated service; plan; exceptions; annual report; appropriation.**

Sec. 10e. (1) The comprehensive transportation fund is appropriated for each fiscal year in the following order of priority.

(2) The first priority is to pay, but only from money restricted as to use by section 9 of article IX of the state constitution of 1963, the principal and interest on bonds or notes issued under section 18b for comprehensive transportation purposes as defined by law. A sufficient portion of the comprehensive transportation fund is irrevocably appropriated to pay, when due, the principal and interest on those bonds and notes.

(3) After making or setting aside payments required by subsection (2), the second priority of the comprehensive transportation fund is the payment of the department's cost in administering the comprehensive transportation fund. The amount to be expended pursuant to this subsection shall not exceed the costs appropriated for the administration of the fund in the fiscal year ending September 30, 1987, as adjusted annually on October 1, by the change for the preceding 12 months in the Detroit consumer price index for urban wage earners and shall be appropriated annually by the legislature.

(4) After making or setting aside payments required by subsections (2) and (3), the balance of the comprehensive transportation fund shall be expended each fiscal year as appropriated annually by the legislature pursuant to the state transportation program approved by the commission as follows:

(a) The third priority shall be the payment of operating grants to eligible authorities and eligible governmental agencies according to the following formulations and subject to the following requirements:

(i) For the fiscal year ending September 30, 1998, and for each fiscal year thereafter, each eligible authority and eligible governmental agency which provides public transportation services in urbanized areas under 49 USC 5307, with a Michigan population greater than 100,000 shall receive a grant of up to 50% of their eligible operating expenses as defined by the state transportation department.

(ii) For the fiscal year ending September 30, 1998, and each fiscal year thereafter, each eligible authority and eligible governmental agency which provides public transportation services in urbanized areas with a Michigan population less than or equal to 100,000 and nonurbanized areas under 49 USC 5311, shall receive a grant of up to 60% of their eligible operating expenses as defined by the state transportation department. For purposes of receiving a grant under this subparagraph in nonurbanized areas, eligible costs of services

provided by water vehicle shall be reimbursed at not less than 50% of the portion of the costs not eligible for reimbursement by the federal government.

(iii) Funds shall not be distributed to an eligible authority or eligible governmental agency under this act unless the eligible authority or eligible governmental agency provides or agrees to provide preferential fares for public transportation services to persons 65 years of age or over or persons with disabilities riding in off peak periods of service. As used in this section, “person with disabilities” means an individual with a disability as that term is defined in 61 FRP 56424 (November 1, 1996) and 49 CFR part 27. The preferential fares shall not be higher than 50% of the regular 1-way single fare.

(iv) Eligible authorities and eligible governmental agencies shall not engage in charter service using vehicles, facilities, or equipment funded under this act except on an incidental basis as defined by 49 CFR part 604.

(v) Notwithstanding any other provision of this subsection, for the fiscal year ending September 30, 1998, each eligible authority and eligible governmental agency shall receive a distribution from the comprehensive transportation fund not less than the distribution received for eligible operating expenses for the fiscal year ending September 30, 1997. Beginning with the fiscal year ending September 30, 1998 and each fiscal year thereafter, each eligible authority and eligible governmental agency shall receive a distribution from the comprehensive transportation fund for eligible operating expenses not less than the distribution received for the fiscal year ending September 30, 1997. As it relates to this subsection the ratio between comprehensive transportation funds and local funds in the fiscal year ending September 30, 1989 shall be maintained for all fiscal years by the eligible authority and eligible governmental agency. Reductions in this ratio shall require a proportionate reduction in the comprehensive transportation funds provided for any fiscal year.

(vi) Each eligible authority and eligible governmental agency receiving comprehensive transportation funds shall prepare and submit to the department a quarterly report of the progress made in carrying out its local transportation program within 40 days after the end of each fiscal year quarter. The progress report shall be made on forms authorized by the United States department of transportation under the provisions of the surface transportation and uniform relocation assistance act of 1987, Public Law 100-17, 101 Stat. 132.

(vii) The department shall periodically adjust or redistribute comprehensive transportation funds previously distributed under this subdivision.

(b) For the fiscal year ending September 30, 1997, and each fiscal year thereafter, not less than 10% shall be distributed by the department for intercity passenger and intercity freight transportation purposes.

(c) For the fiscal year ending September 30, 1997, and each fiscal year thereafter, funds remaining in the fund after payment of the amounts required by subdivisions (a) and (b) shall be distributed by the department for public transportation purposes. For the fiscal year ending September 30, 1998, and each fiscal year thereafter, funds shall be made available to match all projects for eligible authorities and eligible governmental agencies that are approved for federal funding as provided by federal law and for which an approved transportation improvement program (TIP) and state transportation improvement plan (STIP) exist. Funds distributed under this subdivision shall be expended pursuant to specific line item appropriation for, but are not limited to, the following public transportation purposes:

(i) The specialized services assistance program. The specialized services assistance program shall be funded with not less than \$3,600,100.00 from funds distributed under this subdivision. Funds shall be distributed according to guidelines developed by the department based upon the following considerations:

(A) Proposals for coordinated specialized services assistance funding shall be developed jointly between existing eligible authorities or eligible governmental agencies that provide



public transportation services and the area agencies on aging or any other organization representing specialized services interests, as defined in this subdivision. Plans shall be reviewed and approved by the bureau of urban and public transportation of the department. Upon approval, the department shall release the funds to the eligible authority or eligible governmental agency which shall then allocate the funds to the area agency on aging or any other organization representing specialized services interests, as defined in this subdivision for the purchase of services as approved in the plan by the department.

(B) If an eligible authority or eligible governmental agency does not exist to provide public transportation service in a county, coordinated proposals for specialized services assistance funding may be submitted by the area agency on aging or any other organization representing specialized services interests, as defined in this subdivision. The proposals shall be reviewed and approved by the bureau of urban and public transportation of the department. Upon approval, the department shall release the funds to the area agency on aging or any other organization representing specialized services interests, as defined in this subdivision for the purchase of services as approved in the plan by the department.

(C) For the purposes of this program, “specialized services” means public transportation primarily designed for persons with disabilities or persons who are 65 years of age or older.

(ii) Local bus capital. For the fiscal year ending September 30, 1998 and each fiscal year thereafter, not less than \$8,000,000.00 will be distributed for either matching federal funds for local bus capital or 100% capital projects for eligible authorities and eligible governmental agencies that are not eligible to receive federal capital formula funds under section 5307 of the federal intermodal surface transportation efficiency act, Public Law 102-240, or any successor act.

(iii) Local bus new services.

(iv) Not less than \$2,000,000.00 in each fiscal year for the credit program established under section 10*l*.

(v) Public transportation development.

(vi) Other public transportation programs approved by the commission.

(d) The unappropriated and unencumbered balance of the comprehensive transportation fund lapses at the end of each fiscal year and reverts to the comprehensive transportation fund for appropriation in the following fiscal year.

(5) Eligible authorities and eligible governmental agencies shall receive capital grants each fiscal year by the annual process described in this section. Amounts received by an eligible authority or eligible governmental agency pursuant to this subsection shall be expended by that authority or agency solely for capital projects which have been approved by the state transportation commission. Any funds approved by distribution to an eligible authority or eligible governmental agency pursuant to this section which have not been encumbered by that agency or authority for an approved capital project by the end of the following fiscal year in which the funds were approved shall not be expended by the authority or agency and be available for distribution from the comprehensive transportation fund for the purposes described in this section.

(6) The department, in carrying out the policy of the state transportation commission, shall annually prepare and distribute by December 1, instructions to eligible governmental agencies, eligible authorities, and intercity carriers to enable the preparation of a local transportation program. Eligible governmental agencies, eligible authorities, and intercity carriers shall give public notice of their intent to apply for money in the comprehensive transportation fund to the residents of the counties, townships, villages, and cities affected by the local transportation program and shall make their application available for a period

of 30 days. All comments received by the eligible governmental agency, eligible authority, or intercity carrier shall be transmitted to the department.

(7) On or before March 1 of each year, each intercity carrier, eligible authority, and eligible governmental agency shall submit to the department its local transportation program for the next succeeding fiscal year. The format for each local transportation program shall be as prescribed by the federal transportation improvement program insofar as practical and shall include project descriptions, funding sources, and justification for each line item, and summary budgets based on distributions anticipated under subsection (4). The program shall contain at a minimum the contemplated routes, hours of service, estimated transit vehicle miles, costs of public transportation services, and projected capital improvements or projects as exclusively determined by the eligible authority or eligible governmental agency. The costs of service and capital improvements or projects shall be in sufficient detail to permit the state transportation department to evaluate and approve the annual public transportation program. Determination of individual projects to be included in the local transportation programs other than those provided in this subsection shall be made by the governing body of the eligible authority or eligible governmental agency.

(8) On or before March 1 of each year, the department shall prepare and file for public inspection and review the department transportation program. The department transportation program shall be prepared on similar format to the local transportation programs, and shall include a summary description of projects, with funding sources and project justifications for each line item for the fiscal year immediately succeeding the fiscal year in which the program is submitted. In addition, the department transportation program shall include summary, nondetailed budget and project descriptions and justifications excluding projects contained in a local transportation program.

(9) On or before April 1 of each year, the department shall prepare and file with the commission the proposed state transportation program for the next succeeding fiscal year. The proposed state transportation program shall contain the local transportation programs of each intercity carrier, eligible authority and eligible governmental agency, the department transportation program, and the programs for the expenditure of the state trunk line fund as they may have been supplemented, amended, or modified since their original filing. The state transportation program shall include the estimated amount of money in the funds described in this subsection by revenue source, project justifications, project descriptions funding sources, and budget summaries.

(10) On or before May 1 of each year, the state transportation commission shall act on the state transportation program for the fiscal year commencing on the following October 1. In considering approval of the proposed projects of each intercity carrier, eligible authority, or eligible governmental agency, other than projects which are to be funded pursuant to subsection (5), the state transportation commission shall consider whether the projects comply with state law, are within funds allocated in this section, whether they may be funded within the approved budgets, whether there are intercity carriers, eligible authorities, and eligible governmental agencies responsible to implement the projects, and the recommendations of the department on individual projects. Upon making those determinations, the state transportation commission shall approve the projects which best meet the criteria of this subsection.

(11) By October 1, the department and each intercity carrier, eligible authority, or eligible governmental agency shall enter into a contractual agreement or standardized grant memorandum of agreement, which may cover 1 or more projects to be made from this section in the applicable fiscal year to the intercity carrier, eligible authority, or eligible governmental agency from the comprehensive transportation fund.