STATE OF MICHIGAN

IN THE SUPREME COURT

IN RE CERTIFIED QUESTION FROM THE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION,
_____/

Supreme Court No. 161492

USDC-WD: 1:20-cv-414

MIDWEST INSTITUTE OF HEALTH, PLLC, d/b/a GRAND HEALTH PARTNERS, WELLSTON MEDICAL CENTER, PLLC, PRIMARY HEALTH SERVICES, PC, and JEFFERY GULICK,

Plaintiffs,

v

GOVERNOR OF MICHIGAN, MICHIGAN ATTORNEY GENERAL, and MICHIGAN DEPARTMENT OF HEALTH AND HUMAN SERVICES DIRECTOR,

Defendants.

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Introduction

Michigan authority differentiates between laws that promote "public safety" and laws that further "public health." The former category does not encompass the latter; instead, they are two distinct objects of the State's overall police power. The State's power to prevent and respond to epidemics falls within the State's power to promote public health, not the State's power to promote public safety.

The EPGA respects this distinction, giving the Governor certain extraordinary powers only "when public safety is imperiled" by an emergency situation. MCL § 10.31(1). The Legislature chose those words carefully. When the EPGA was enacted in 1945, a different statute—MCL § 329.1—gave the Governor substantial powers when "public health is imperiled" by a "dangerous communicable disease." *Id.* As the text of each statute demonstrates, the two statutes were intended to apply in different circumstances. The Legislature knew how to make a statute apply in the public-health context, and it specifically chose to address epidemics and communicable diseases through the prior version of MCL § 329.1 while limiting the EPGA to the public-safety context. Because the EPGA is limited to the public-safety context, the EPGA does not provide the Governor with authority to respond to a public-health problem like an epidemic. The Governor's powers in the event of an epidemic are limited to the EMA (which specifically identifies "epidemics" as an appropriate circumstance for the exercise of the Governor's powers) and other public-health statutes.

Not only does the term "public safety" limit the EPGA to public-safety emergencies, but the remainder of the statutory text and the historical context also demonstrate that the EPGA was not intended to give the executive branch the ability to respond to an epidemic for months or years on end. A contrary interpretation of the EPGA would pose an extraordinary threat to the separation of powers. As counsel for the Governor admitted at oral argument in this

case, no Governor in the history of Michigan has asserted such sweeping authority, and—according to the Governor—the executive is entitled to determine when the emergency has concluded for purposes of the EPGA. The doctrine of constitutional avoidance was designed for precisely this sort of occasion. *People v Nyx*, 479 Mich 112, 124; 734 NW2d 548 (2007) (lead op). The EPGA should not be interpreted to authorize the Governor's continued use of emergency powers to address what has become a long-term public health challenge.

Argument

I. The EPGA allows the executive to exercise emergency powers only to the extent an emergency imperils "public safety," not if the emergency presents a public health concern.

A. The term "public safety" as used in the EPGA is a term of art.

The EPGA does not permit the executive to wield emergency powers with respect to all negative or challenging circumstances that confront the people of Michigan. Instead, the EPGA applies only in a specific class of circumstances. Not only must the circumstances constitute a "public emergency" that is "similar" in kind to a "great public crisis, disaster, rioting, [or] catastrophe," but the emergency must also be one that causes "public safety" to be "imperiled." MCL § 10.31(1). In other words, the EPGA does not apply to every generic crisis, disaster, riot, or catastrophe; it is intentionally limited only to those emergencies that threaten "public safety."[1] As the Governor and the Attorney General have admitted, the phrase "when public safety is imperiled" is a substantive limitation on the scope of the EPGA.

The term "public safety" as used in the EPGA has a specialized meaning. Statutes ordinarily are interpreted according to their plain meaning, "but technical words and phrases, and

[1] Thus, even if terms like "crisis" otherwise arguably could extend to the medical or public-health context, the EPGA filters out those applications of the statute by providing that the statute applies only to the particular crises that threaten public safety, not those that threaten public health.

such as may have acquired a peculiar and appropriate meaning in the law, shall be construed and understood according to such peculiar and appropriate meaning." MCL § 8.3a; *Mayberry v Gen Orthopedics, PC*, 474 Mich 1, 7; 704 NW2d 69 (2005). This Court has consistently employed this interpretive tool whenever a statute contains a technical term or phrase that has acquired a particular legal meaning. See, e.g., *Iliades v Dieffenbacher N Am Inc*, 501 Mich 326, 338; 915 NW2d 338 (2018) ("reasonably foreseeable" is a legal term of art); *People v Barrera*, 500 Mich 14, 18; 892 NW2d 789 (2017) ("asportation" is a legal term of art); *Fed Nat Mortg Ass'n v Lagoons Forest Condo. Ass'n*, 305 Mich App 258, 265; 852 NW2d 217 (2014) ("successors and assigns" is a legal term of art); *People v Blunt*, 282 Mich App 81, 86; 761 NW2d 427 (2009) ("physical properties" is a technical term of art).

This Court has held that the term "public use," as used in Michigan's Constitution, is a legal term of art that must be construed in its technical, legal sense, and the term "public safety," as used in the EPGA, is no different. *Cty of Wayne v Hathcock*, 471 Mich 445, 471; 684 N2d 765 (2004). As used in the EPGA, the term "public safety" refers to one of several separate objects of the state's general police power. The EPGA was enacted against a backdrop of Michigan precedent that clearly established that the state has the general police power to promote several distinct ends, including "public health, safety, morals and public welfare." *Grocers Dairy Co v McIntyre*, 377 Mich 71, 76; 138 NW2d 767 (1966) (noting precedent). Those are distinct categories or subsets of the police power, not a list of synonyms. See STATE POLICE POWER, Black's Law Dictionary (11th ed. 2019) (noting that "the health, welfare, morals, and safety" of citizens are separate "state interests"); PUBLIC SAFETY, Black's Law Dictionary (11th ed. 2019) (defined to include "[t]he welfare and protection of the general public" but not the public health).

The second portion of the EPGA—MCL § 10.32—does not alter the scope of the term "public safety" as used in § 10.31(1). Section 10.32 recognizes that the Governor's powers under the EPGA can be exercised under § 10.31(1) only when "public safety" is imperiled. In other words, § 10.32 does not expand the circumstances in which the Governor may issue an emergency declaration such that the Governor may also declare emergencies even in scenarios that do not imperil "public safety." Instead, § 10.32 simply permits the Governor to exercise broad authority once an emergency has been declared in the limited set of circumstances in which such a declaration is permissible.

B. "Public safety" is distinct from—and does not include—"public health."

The specialized meaning of the phrase "public safety" disposes of any argument that "public safety" encompasses "public health." Michigan authority is clear that "public safety" and "public health" are not synonyms and that the former does not swallow the latter. Instead, laws that are enacted to promote "public safety" are "those enacted to promote the public peace, preserve order, and provide that security to the individual which comes from an observance of law." *Naudzius v Lahr*, 253 Mich 216, 228; 234 NW 581 (1931) (citation omitted). Those goals do not encompass the public health.

1. When the EPGA was enacted in 1945, a different statute—MCL § 329.1—gave the Governor power to act when "public health is imperiled."

The public-health statutes that were on the books when the EPGA was enacted in 1945 show why the EPGA is limited to situations in which the "public safety is imperiled" and does not apply when the "public health is imperiled." When the EPGA was enacted, there was a different statute—a portion of Michigan's public health code, MCL § 329.1—that gave the Governor specific powers when "public health is imperiled" by a communicable disease:

> **329.1 Communicable diseases, quarantine; martial law.**
>
> Sec. 1. Whenever it shall be shown to the satisfaction of the state board of health, that cholera, diphtheria, or other dangerous communicable disease exists in any foreign country, neighboring state, or locality within this state whereby the public health is imperiled, and it shall be further shown that immigrants, passengers or other persons seeking to enter this state, or to travel from place to place within this state, are coming from any locality where such dangerous communicable disease exists, the state board of health shall be authorized to establish a system of quarantine for the state of Michigan and the governor shall have authority to order the state militia to any section of the state on request of the state board of health to enforce such quarantine.

MCL § 329.1 (1948) (emphasis added).[2]

This language is striking when compared to the EPGA, which applies "when public safety is imperiled." MCL § 10.31(1).

The Legislature's choice of words was deliberate. When the EPGA was enacted in 1945, the EPGA and § 329.1 functioned in tandem. Section 329.1 applied when "the public health is imperiled" and gave the Governor broad authority to declare martial law and to quarantine any "persons seeking . . . to travel from place to place within this state." MCL § 329.1 (1948). The EPGA, in turn, applied "when public safety is imperiled" and gave the Governor broad authority to declare martial law and to impose curfews and other restrictions. MCL § 10.31(1).

Each statute was intended to respond to a different type of crisis. Section 329.1 did not give the Governor authority to respond to a public-safety crisis; it applied only to public-health

[2] Chapter 329 of the Michigan Compiled Laws of 1948 is attached in full as **Exhibit 1**. The text of MCL § 329.1 is also available at https://babel.hathitrust.org/cgi/pt?id=mdp.39015081950175&view=1up&seq=1025 (last visited September 16, 2020). The complete text of MCL § 329.1 is also quoted in *Hurst v Warner*, 102 Mich 238, 241–42; 60 NW 440 (1894). The relevant statutory language was enacted in 1885 and amended in 1893. See 1885 PA 230; 1893 PA 47. Prior to 1948, MCL § 329.1 was last amended in 1911. *Id*. Ultimately, it was repealed when Michigan's Public Health Code was completely revised in 1978. See 1978 PA 368; MCL § 333.1101, *et seq*. Notably, a different portion of Chapter 329—MCL § 329.56—was repealed via 1945 PA 267, which went into immediate effect on May 25, 1945. (**Exhibit 1**, at 5). That is the same day on which the EPGA took immediate effect. See 1945 PA 302. Thus, the Legislature was demonstrably aware of MCL § 329.1, *et seq*. when it enacted the EPGA.

crises, and epidemics in particular. Nor does the EPGA give the Governor authority to respond to a public-health crisis; it applies only to public-safety crises. The Legislature intended the statutes to stay in their own lanes, giving the Governor two different sets of tools under two different statutes to respond to two different types of crises.

If former § 329.1 was still in force today, there would be no question that it—not the EPGA—would control the Governor's response to the COVID-19 epidemic. See *People v Meeks*, 293 Mich App 115, 118; 808 NW2d 825 (2011) (specific statute controls over a more general statute); *Bauer v Dep't of Treasury*, 203 Mich App 97, 100; 512 NW2d 42 (1993) (same, even where "the specific statute was enacted before the general statute"). That disposes of this case. The repeal of § 329.1 did not give the EPGA a broader scope than it previously possessed. And the phrase "when public safety is imperiled" has been part of the EPGA since it was enacted in 1945. If the EPGA did not authorize an executive response to an epidemic when it was enacted, it cannot do so now.

2. Michigan's statutes do not invoke the term "public safety" to include "public health."

The rest of Michigan's statutes likewise demarcate a clear distinction between public safety and public health. Michigan's current Public Health Code, for example, invokes the "public health" in order to grant the director of public health and local public health officers the ability to issue emergency orders in the event of an epidemic. See MCL §§ 333.2453(1), 333.2253(1). The "public safety" is mentioned nowhere in the statute. Other statutes that reference only the "public health" likewise are targeted at perceived dangers to physical health, as opposed to potential dangers requiring a law enforcement response. See, e.*g*., MCL § 325.1005(b) (discussing water quality standards necessary "to protect the public health"); MCL § 42.14a (noting township bonds "necessary to protect the public health by abating pollution"); MCL §

331.502 (describing laboratories and clinics as facilities that are related to the provision of "public health" services).

By contrast, when a statute refers only to "public safety" and contains no reference to public health, the statute relates to the threat of crime, violence, or property damage—not diseases. See, e.g., MCL § 28.283(1) (equating "public safety" with "apprehension of criminals, the prevention of crime," and "the maintenance of peace [and] order"); MCL § 750.498 (traffic signals may be erected "in the interest of public safety"); MCL § 750.507 (defining "public safety agency" as "any fire department, ambulance company, law enforcement agency, civil defense communications facility and the department of military affairs"); MCL § 333.5927 (distinguishing between "health care workers" and "public safety officers"); MCL § 28.6 (directing telecommunications companies to grant priority of service to police agencies when "public safety" requires); MCL § 484.3203 (distinguishing between "police, fire and other public safety organizations" and "medical entities").

Construing the term "public safety" to permit the EPGA to apply to infectious diseases would give the term an idiosyncratic meaning that conflicts with its otherwise consistent meaning across Michigan's statutes. That result would violate the rule that " 'absolutely identical phrases in our statutes' should have identical meanings." *Robinson v City of Lansing*, 486 Mich 1, 17; 782 NW2d 171 (2010) (quoting *Paige v Sterling Hts*, 476 Mich 495, 520; 720 NW2d 219 (2006)). *See also Thiel v Goyings*, 504 Mich 484, 502; 939 NW2d 152 (2019) (noting the "canon of consistent usage").

When a statute invokes only "public safety," it does not apply to public-health concerns like epidemics. If the Legislature intends to protect both the public safety and the public health, it says so—by including the phrase "public health" or "public health and safety" in the

statute. The Legislature's omission of any mention of the public health in the EPGA is not an oversight. It means that the EPGA does not apply in the context of threats to the public health because the Legislature intended it not to.

3. Precedential authority provides that "public safety" is a portion of the State's police power that is distinct from "public health."

The statutory distinction between public-health and public-safety regimes coheres with the case law. The relevant cases hold that the State's police power is comprised of several constitutive parts, and that the constitutive parts are not coextensive.

By the time that the EPGA was enacted in 1945, it was well-established that "public health" and "public safety" were (and still are) distinct and different objects of the police power. For example, in *Rock v Carney*, 216 Mich 280; 185 NW 798 (1921), this Court recognized that one aspect of the State's police power was the "power to protect the public health." *Id*. at 295. The Court ruled that this power could be delegated to public health boards to give them the power to quarantine and control for contagious diseases. *Id*. Likewise, in *Kinnie v Bare*, 68 Mich 625; 36 NW 672 (1888), this Court reasoned that certain drain laws "can be upheld solely upon the ground that such drains are necessary for the public health." *Id*. at 628. The Court explained that the State's interest in protecting "public health" was a subset of the State's general police powers: "[T]he legislature ha[s] the right, under the police power inherent in every government, to protect the people from plague and pestilence, and to preserve the public health." *Id*.

By contrast, in *Naudzius v Lahr*, 253 Mich 216; 234 NW 581 (1931), this Court ruled that "[p]ublic safety has to do not only with the safety and protection of persons, but also of their property," and that public safety laws were comprised of those laws that were "enacted to promote the public peace, preserve order, and provide that security to the individual which comes from an observance of law." *Id*. at 228 (citation omitted). In *Naudzius*, the Court ruled that a statute

intended to discourage fraud was intended to promote "public safety." *Id*. The Court in *Naudzius* did not deploy the term "public safety" in a way that was synonymous with the term "public health."

Many cases reflect the same distinction between the various legitimate objects of the state's police power. For example, in *Carolene Prod Co v Thomson*, 276 Mich 172; 267 NW 608 (1936), the Court struck down a regulation prohibiting the sale of a product containing mixed milk and nut fats, rejecting both the argument that the regulation was "justified under the police power to preserve public health" and the argument that the regulation was satisfactory "under the police power to prevent fraud." *Id*. at 180. The Court's analysis recognized that public health and public safety are two separate potential objects of the state's police power, not a unitary concept. Likewise, the decision in *Grocers Dairy Co v McIntyre*, 377 Mich 71; 138 NW2d 767 (1966), invalidated a prohibition on the selling of milk in one-gallon containers, rejecting both the argument that one-gallon containers presented a "health hazard" and the argument that their use might "defraud the public." *Id*. at 78-79. Again, the Court's analysis demonstrates that public health and public safety are not synonymous.

Similarly, the decision in *People v Snowburger*, 113 Mich 86; 71 NW 497 (1897), explained that "the police power of the state extends to the protection of the health, as well as to the lives and property, of the citizens," and that the Court could review whether a statute "relates to and is appropriate to promote such public health." *Id*. at 91. In *Eanes v City of Detroit*, 279 Mich 531; 272 NW 896 (1937), the Court upheld a regulation requiring barbershops to close at specified hours, reasoning that the regulation preserved the "public health." *Id*. at 556-57. In *Rogowski v City of Detroit*, 374 Mich 408; 132 NW2d 16 (1965), the Court upheld the ability of municipalities to fluoridate water, reasoning that the relevant regulations were "designed to protect or improve

public health." *Id*. at 423. And in *People v Murphy*, 364 Mich 363; 110 NW2d 805 (1961), this Court reiterated the long-standing assumption that public health was a different concept than even "public physical safety": "The police power relates not merely to the public health and public physical safety but, also, to public financial safety. Laws may be passed within the police power to protect the public from financial loss." *Id*. at 368. See also *City of Olivette, Missouri v St Louis Cty, Missouri*, 507 SW3d 637, 644 (Mo Ct App, 2017) (distinguishing between "matters relating to law enforcement" and the enhancement of "public health"); *City of Pepper Pike v Landskroner*, 371 NE2d 579, 583 (Ohio Ct App, 1977) ("General welfare is a separate and distinct purpose from health and safety and is a legitimate objective of zoning.").

There is no basis for reading *Jacobson v Massachusetts*, 197 US 11, 25 (1905), as establishing that public health is a subset of public safety. *Jacobson* is not controlling on matters of Michigan law. Both the quarantine power and Michigan's public health statutes predated *Jacobson*. See *Rock*, 216 Mich at 296–97 (tracing history of quarantine power); see also MCL § 329.1 (1948); 1883 PA 137; 1885 PA 230. And in any event, Michigan authority is clear that public health and public safety are separate, non-coterminous objects of the State's general police power. For example, *Todd v Hull*, 288 Mich 521; 285 NW 46 (1939), described "the public health, the public morals, or the public safety" as valid "objects"—plural—of the police power, not as a unitary concept. *Id*. at 529. Just as "public safety" and "public morals" are neither synonyms nor coterminous, neither are public safety and public health. See also *Chicago, B & Q Ry Co v Illinois*, 200 US 561, 592 (1906) (holding that "the public convenience or the general prosperity" is a separate category of the state's overall police power, in addition to "the public health, the public morals, or the public safety"), cited in *People v Litvin*, 312 Mich 57; 19 NW2d 485 (1945); *Nashville, C & St L Ry v Walters*, 294 US 405, 429 (1935) (identifying "the general welfare" as an

object of the general police power that is distinct from "public health, safety, and morals"); *Nebbia v People of New York*, 291 US 502, 526 (1934) (identifying legislation enacted under the police power for distinct purposes, including "for the suppression of immorality, in the interest of health, to secure fair trade practices, and to safeguard the interests of depositors in banks").[3]

4. Michigan's 1908 and 1963 Constitutions treat "public safety" differently than "public health."

Finally, it would be anomalous to interpret the term "public safety" as used in the EPGA in a manner that is different than the way that the same term is used in Michigan's Constitution. The term "public safety" as used in both the 1908 Constitution and the 1963 Constitution does not encompass the "public health."

For example, both constitutions provide that "[t]he privilege of the writ of habeas corpus shall not be suspended unless in case of rebellion or invasion the public safety may require it." Mich. Const. 1908, art. II, § 11; Mich. Const. 1963, art. I, § 12. The phrase "public safety" as used in the Constitution does not encompass public health and does not contemplate that habeas may be suspended in the event of an epidemic. Instead, the term refers to the protection of the people from physical violence, particularly in the case of a civil uprising.

On the other hand, the 1963 Constitution specifies "public health" as an area of legislation that is distinct from the Legislature's power to promote public safety: "The public health and general welfare of the people of the state are hereby declared to be matters of primary public concern. The legislature shall pass suitable laws for the protection and promotion of the public health." Mich. Const. 1963, art. IV, § 51. This provision contemplates that "public health"

[3] Thomas Cooley similarly identified public health and public safety as distinct concepts, quoting Jeremy Bentham's observation that the police power of the state "may be distributed into eight distinct branches: 1. Police for the prevention of offences; 2. Police for the prevention of calamities; 3. Police for the prevention of endemic diseases; . . ." Cooley, *Constitutional Limitations* (6th ed.), p. 704 n.1.

is an area of legislative concern that is distinct from the legislature's interest in promoting "public safety."[4]

The same general principles of interpretation apply to statutes and to Michigan's Constitution. See *Charles Reinhart Co v Winiemko*, 444 Mich 579, 606; 513 NW2d 773 (1994). The term "public safety" as used in the Constitution is nonsensical if interpreted to encompass public health crises. The same term as used in the EPGA is no different.

5. The term "public safety" limits the EPGA to non-public-health emergencies.

The takeaway from these authorities is that there is a real distinction between a statute that is geared toward promoting the public safety and one that is intended to further public health. The former does not subsume the latter. The fact that public health and public safety are often listed next to each other as aspects of the state's police power does not mean that they are coextensive. For example, when Michigan's Constitution provides due process protections for deprivations of "life, liberty or property," it is not listing synonyms; it is enumerating multiple, distinct concepts. See Mich. Const. 1963, art. I, § 17; *In re Wentworth*, 251 Mich App 560, 565; 651 NW2d 773 (2002) (discussing liberty interests); *Barr v Pontiac City Comm'n*, 90 Mich App 446, 451; 282 NW2d 348 (1979) (discussing property interests).

When the Legislature enacted the EPGA in 1945, it was well aware of the distinction between public safety and public health, and it was cognizant of how to enact a statute that promoted only one and not the other. See, e.g., MCL § 329.1 (1948). Just like Article II, § 11 of the 1908 Constitution, the EPGA refers only to "public safety," not to "public health." The Legislature deliberately decided to leave "public health" out of the EPGA. The EPGA reflects an

[4] The notes from the 1963 Constitutional Convention confirm this understanding. See, e.g., 1 Official Record, Constitutional Convention 1961, p. 2955 (discussion regarding "public safety" and "public health" as being separate "categories" under the general police power).

intentional decision to empower the executive only in emergency situations that "imperil[] public safety," not those that imperil "public health."

The Governor and Attorney General have claimed that the phrase "when public safety is imperiled" functions as a meaningful limitation on the scope of the EPGA. But if "public safety" is imperiled whenever anything bad happens—including a public health emergency—then it is no limitation at all. If "public safety" includes public-health concerns, then the executive could invoke emergency powers under the EPGA to combat the HIV/AIDS epidemic or cardiovascular disease or cancer, even though the EPGA plainly states that it is limited to scenarios that imperil "public safety." That interpretation of the statute would mean that the EPGA has no limitation at all. It is squarely foreclosed by the text of the EPGA.

C. The state's power to respond to epidemics does not fall within the State's power to promote "public safety."

The distinction between public safety and public health is dispositive in this case. The ability of the state to respond to epidemics is not an aspect of the State's power to promote public safety; it is an aspect of the State's power to promote public health. That is why MCL § 333.2253(1) invokes the "public health" when outlining the director of public health's emergency authority in event of an epidemic, and it is why former MCL § 329.1 also invoked the "public health" in delegating powers to the Governor during an epidemic. The Legislature understood this specialized meaning of the phrase "public health" when the EPGA was enacted in 1945. See 1883 PA 137; 1885 PA 230. See also *Rock*, 216 Mich at 296–97 (discussing governmental powers available to respond to infectious diseases).

Because the EPGA is limited to emergencies that pose a threat to public safety and does not pertain to emergencies that pose a threat to the public health, the EPGA does not give the executive the power to declare an emergency in the context of an epidemic.

II. The EPGA does not apply to public health issues generally or to an epidemic like COVID-19.

In addition to the EPGA's use of the specialized term "public safety," the rest of the EPGA's text, as well as its historical context, establish beyond doubt that the Legislature did not intend the EPGA to apply to epidemics like COVID-19.

A. The EPGA's statutory text establishes that it does not apply to epidemics.

Even if the use of the term "public safety" were not dispositive, the statutory text is unmistakable. The EPGA contains no reference to health, disease, or epidemics whatsoever. Unlike the EMA, it does not permit "disaster" declarations and does not define "disaster" as including an epidemic. MCL § 30.402(e). Instead, the EPGA confines itself to emergencies that are "similar" to those that are enumerated in the statute: "great public crisis, disaster, rioting, catastrophe," and circumstances causing "immediate danger." MCL § 10.31(1). Nothing in this list of relatively short-term incidents suggests that the EPGA reaches a years-long public health challenge like an epidemic. Epidemics are therefore outside the scope of the statute. *People v Jacques*, 456 Mich 352, 355; 572 NW2d 195 (1998) (noting doctrine of *ejusdem generis*). If the Legislature had wanted to include epidemics within the scope of the EPGA, it certainly could have done so. Epidemics were not unknown before 1945, and the Legislature had long before legislated in furtherance of the public health, including its enactment of legislation specifically addressing dangerous communicable diseases and giving local public health officers quarantine power. See, e.g., MCL § 329.1 (1948); 1883 PA 137; 1885 PA 230.

The remainder of the EPGA confirms that its drafters did not intend it to empower a public-health response. For example, law enforcement officers like a county sheriff and the commissioner of the Michigan State Police may request the declaration of an emergency under the EPGA, but no similar provision is made for any public health official. MCL § 10.31 (1). Nor is the

public-health context a good match for the EPGA's provision that the Governor may issue orders "to protect life and property or to bring the emergency situation within the affected area under control." *Id.* An epidemic ordinarily does not threaten "property" and is generally brought under control by appropriate application of medicine or science, not executive orders that are enforceable only as criminal misdemeanors. Section 10.31(1) was drafted under the assumption that it would be invoked only with respect to situations where a law enforcement response was necessary, not in the context of an epidemic.

This interpretation of the EPGA is further supported by the statute's illustrative list of the types of orders that the Governor may issue during the emergency. The list indicates the nature of the regulations that the drafters of the EPGA believed would be consistent with the authority granted by the statute: (1) traffic control; (2) designation of "specific" no-travel zones within the affected area; (3) closure of places of public amusement and of public assembly; (4) establishment of a curfew; (5) prohibition of alcohol use and sales; and (6) prohibition of explosives use and sales. MCL § 10.31(1). Taken together, all of the items on the list are the types of regulations that could be expected of a law-enforcement response to a civil disturbance, not a public-health response to an epidemic. No mention is made of any quarantine power, for example, even though the power to quarantine was well-defined long before the EPGA was enacted in 1945. See *Rock*, 216 Mich at 296–97.

That the EPGA was limited to the riot-control context was also what this Court assumed in *Walsh v City of River Rouge*, 385 Mich 623, 628; 189 NW2d 318 (1971). There, the City of River Rouge adopted an ordinance that allowed the mayor to declare an emergency in the event of a "civil disturbance, riot or civil commotion." *Id.* at 643 (Appendix # 2 to the Court's opinion in *Walsh*). Concluding that the ordinance was preempted by the EPGA, the Court observed

that "[a] point-by-point comparison of the powers . . . granted to the Governor [in the EPGA], with the powers granted to the Mayor of River Rouge by Ordinance #228, will reveal that every power granted to the Mayor by the ordinance is also granted to the Governor by [the EPGA]." *Id*. at 628. The Court summarized the EPGA as permitting the Governor to "invo[ke] a curfew or restrict[ ] the right to assemble or prohibit[ ] the right to carry on businesses licensed by the State of Michigan" in a manner tantamount to "martial law." *Id*. at 639.

As *Walsh* underscores, the EPGA is nothing like the public-health statutes that were enacted before 1945. Those statutes gave state and local public health officials the power, among other things, to quarantine individuals with communicable diseases in the event of epidemics. See, e.g., MCL § 329.1 (1948); 1883 PA 137; 1885 PA 230. The EPGA, by contrast, conspicuously omits from its text any reference to any sort of public-health powers for combating infectious diseases.

The Governor and the Attorney General are attempting to fit a square peg into a round hole. The EPGA does not neatly fit the context of an epidemic because it was never intended to be deployed in one.

B. The historical context establishes that the EPGA was not intended to apply to epidemics.

The historical setting and application of the EPGA confirm the interpretation that is evident from the statutory text. There is little dispute that the EPGA was enacted in 1945 in response to localized riots in Detroit in 1943. (App. 51a). Contemporary records indicate that the EPGA was prompted by a request from the Michigan State Police, which believed that it lacked

sufficient authority to contain the riots.[5] This context strongly suggests that the EPGA was conceived by its drafters as a riot-control act, not a public-health tool.

Before the COVID-19 epidemic, emergency declarations were issued under the EPGA only 11 times during the 75 years after the statute's enactment. Ten of those occasions involved localized riots or similar civil disturbances.[6] The EPGA has never been invoked in the context of an epidemic before COVID-19.

Since *Walsh*, the EPGA seems to have been viewed exclusively as a curfew statute. For example, a pandemic influenza preparedness report prepared by the Michigan Department of Community Health in 2007 focuses solely on the EMA, mentioning the EPGA only twice as a statute that allows the Governor to impose a curfew.[7] Likewise, the 2019 version of Michigan's Emergency Preparedness Plan focuses almost exclusively on the EMA; the EPGA is mentioned only twice in the 338-page document—again, primarily as permitting the Governor to impose a curfew.[8]

In short, no one thought when the EPGA was enacted that it enabled a Governor to declare an emergency in connection with a pandemic, much less to continue a six-month-long "emergency" over the Legislature's objection. Over the next 75 years, no one thought that the EPGA authorized an emergency declaration in these circumstances, either. Only now has the Governor tried to expand the EPGA well beyond the limits imposed by its text, in a manner that

[5] Michael Van Beek, "A History of Michigan's Controversial 1945 Emergency Powers Law," available at https://www.mackinac.org/s2020-06 (last visited September 16, 2020).
[6] *Id*. at 5. On the eleventh time, Governor Milliken used the EPGA to ban fishing on Lake St. Clair due to elevated mercury levels, but it appears that several lower courts ruled that the ban was improper. *Id*. at 3-4.
[7] MDCH Social Distancing Law Project, "Assessment of Legal Authorities," p. 16-17, available at https://www.cdc.gov/phlp/docs/Final-MI-legal-assessment-Final.doc (last visited September 16, 2020).
[8] Michigan Emergency Preparedness Plan (August 27, 2019), p. 63, available at https://www.michigan.gov/documents/msp/MEMP_portfolio_for_web_383520_7.pdf (last visited September 16, 2020).

presents one of the most significant separation-of-powers challenges that has ever confronted this Court.[9]

The canon of constitutional avoidance is clearly appropriate here. *Nyx*, 479 Mich at 124. A conclusion that the EPGA does not reach epidemics is not only a reasonable reading of the statute; it is the correct one.

Conclusion

The EPGA does not apply to the challenges posed by an epidemic. The EPGA's limitation to situations "when the public safety is imperiled" is dispositive, especially because a pre-1900 statute, MCL § 329.1, already delegated substantial powers to the Governor when "the public health is imperiled" by the spread of a dangerous communicable disease. The statutory language and context further clarify that the EPGA was never intended for—and has never been used in—the context of an epidemic like COVID-19, which is likely to continue for months or years on end. The only constitutional interpretation of the EPGA is one which limits it to the non-pandemic context. The EPGA cannot support the Governor's continued emergency rule over matters related to the COVID-19 pandemic.

Respectfully submitted,

Dated: September 16, 2020

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[9] Governor Whitmer agreed in early April 2020 that "acting under a state law that requires legislative approval 'provides important protections to the people of Michigan.'" Jonathan Oosting, "Michigan Gov. Whitmer asks Legislature to extend emergency powers 70 days," *Bridge* (April 1, 2020), available at https://www.bridgemi.com/michigan-government/michigan-gov-whitmer-asks-legislature-extend-emergency-powers-70-days (last visited September 16, 2020).

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EXHIBIT 1

Michigan · Laws, statutes, etc ...

THE

COMPILED LAWS

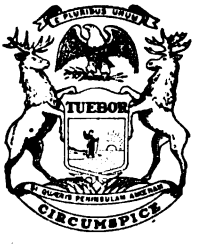
of the

STATE OF MICHIGAN

1948

COMPILED, ARRANGED AND ANNOTATED UNDER ACT 242 OF 1943
AS AMENDED BY ACT 209 OF 1945 AND ACT 155 OF 1947.

EUGENE F. SHARKOFF, Chairman
HIRAM C. BOND, Vice-Chairman
FRED I. CHASE, Secretary
NORMAN E. PHILLEO,
WILLIAM B. CUDLIP,
Commissioners.



VOLUME II

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CHAPTER 329. HEALTH—COMMUNICABLE DISEASES

Act 230, 1885, p. 335; Eff. Sept. 19.

AN ACT to provide for the prevention of the introduction and spread of cholera and other dangerous communicable diseases.

The People of the State of Michigan enact:

329.1 Communicable diseases, quarantine provisions; martial law.

Sec. 1. Whenever it shall be shown to the satisfaction of the state board of health, that cholera, diphtheria, or other dangerous communicable disease exists in any foreign country, neighboring state, or locality within this state whereby the public health is imperiled, and it shall be further shown that immigrants, passengers or other persons

seeking to enter this state, or to travel from place to place within this state, are coming from any locality where such dangerous communicable disease exists, the state board of health shall be authorized to establish a system of quarantine for the state of Michigan and the governor shall have authority to order the state militia to any section of the state on request of the state board of health to enforce such quarantine.

HISTORY: How. 1632a;—Am. 1893, p. 49, Act 47, Imd. Eff. April 26;—C L 1897, 4477;—Am. 1911, p. 59, Act 49, Eff. Aug. 1;—C L 1915, 5011;—C L 1929, 6600.

STATE BOARD OF HEALTH: Abolished; powers and duties transferred to the state health commissioner, see Compilers' § 325.4.

INSTRUCTION IN SCHOOLS: See Compilers' § 352.17.

ANTITOXINS: Manufacture and distribution by state health commissioner, see Compilers' § 325.41 et seq.

329.2 Same; purpose.

Sec. 2. Such quarantine shall be for the purpose of preventing all immigrants, passengers or other persons, under the circumstances mentioned in section 1 of this act, from entering the state or from going from place to place within the state, who, in the opinion of the state board of health, or in the opinion of an inspector duly appointed by said board, are likely to carry infection of cholera, small-pox, diphtheria or other dangerous communicable disease, and for the detention of all such persons outside the borders of the state, or if already within the state, at the places where they may be, or at the place they have been exposed to or have contracted such dangerous communicable disease, or at such suitable place as such board may provide, during the period of the incubation of such disease, or of its existence if already developed, and until in the opinion of the state board of health such persons are free from all danger of infection.

HISTORY: How. 1632b;—Am. 1893, p. 49, Act 47, Imd. Eff. April 26;—C L 1897, 4478;—C L 1915, 5012;—C L 1929, 6601.

329.3 Same; rules; detention of persons and conveyances; hearing.

Sec. 3. The state board of health is authorized to establish general rules, and, by an inspector acting by virtue thereof, to detain railroad cars or other public or private conveyances whenever it shall be shown to the satisfaction of such board, or to the inspector as provided in such rules, that such cars or other conveyances contain any passenger, person or property which has been exposed to cholera, diphtheria, or other dangerous communicable disease, or when it shall be shown to the satisfaction of such board or inspector as aforesaid, any passenger, person or property, are being transported on such railroad cars or other public or private conveyance from any locality within or without this state where any such dangerous communicable disease exists and where under the circumstances shown to such board, such persons or property are likely to carry infection of such dangerous communicable disease. In such case said board may, by its duly constituted inspectors, remove, isolate, place under the care of local boards of health, order to be returned to the places whence they came, or dispose of in any other manner it may consider proper, all railroad cars, or other conveyances, all passengers in such railroad cars or other conveyances, when there is reason, as aforesaid, to believe such may have contracted or become infected with any dangerous communicable disease, or have been exposed or infected by any such disease in a manner likely to render them bearers of infection. In case any person or property is detained by an inspector, for any of the purposes mentioned in this act, the party or parties interested shall have a right to a hearing before the said board, and the decision of such board shall be final.

HISTORY: How. 1632c;—Am. 1893, p. 49, Act 47, Imd. Eff. April 26;—C L 1897, 4479;—C L 1915, 5013;—C L 1929, 6602.

329.4 Disinfection; persons and property.

Sec. 4. All such persons, their baggage and other personal effects, and all such conveyances shall be disinfected under such rules and regulations as the state board of health may establish for the purpose of carrying into effect the provisions of this act, before such persons or baggage or conveyances shall be permitted to enter the state, or to proceed to their or its destination if already in the state.

HISTORY: Add. 1893, p. 50, Act 47, Imd. Eff. April 26;—C L 1897, 4480;—C L 1915, 5014;—C L 1929, 6603.

329.5 Same; property and conveyance; prohibition of entry.

Sec. 5. The state board of health is hereby authorized to cause the disinfection of goods, merchandise, conveyance or other property which they have reason to believe may carry the germs of cholera or other dangerous communicable disease, and under the circumstances mentioned in sections 2 and 3 of this act, to prohibit the entry of such goods, merchandise or other property into the state, or their being moved if within the state, until such disinfection shall be accomplished.

HISTORY: Add. 1893, p. 50, Act 47, Imd. Eff. April 26;—C L 1897, 4481;—C L 1915, 5015;—C L 1929, 6604.

329.6 Rules, publication; penalty.

Sec. 6. It shall be the duty of the state board of health to frame and publish rules for the inspection, isolation, detention and disinfection contemplated in this act. Whoever shall willfully violate the rules of the state board of health, made in pursuance of this act, or the order, by its duly appointed inspector, made in obedience to such rules, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be liable to payment of a fine of 100 dollars and costs of prosecution, or imprisonment in the county jail for a period not to exceed 90 days, or both such fine and imprisonment, in the discretion of the court.

HISTORY: Add. 1893, p. 50, Act 47, Imd. Eff. April 26;—C L 1897, 4482;—C L 1915, 5016;—C L 1929, 6605.

329.7 Expenses, payment.

Sec. 7. Upon the written request of the state board of health and the governor, the auditor general is hereby directed to draw his warrant on the state treasurer from time to time for such sums of money as may be necessary to be used by the state board of health to carry into full effect all the provisions of this act, said warrant to be paid from any money in the state treasury to the credit of the general fund not otherwise appropriated.

HISTORY: Add. 1893, p. 51, Act 47, Imd. Eff. April 26;—C L 1897, 4483;—C L 1915, 5017;—C L 1929, 6606.

Act 293, 1909, p. 691; Imd. Eff. June 2.

AN ACT in relation to the public health in this state.

The People of the State of Michigan enact:

329.51 Medical inspector; powers; communicable diseases, designation; local health authorities, duties.

Sec. 1. The state board of health is hereby authorized and empowered, whenever it becomes necessary to promote the work of the state board of health, to appoint any 1 of its members a state medical inspector, to the end that the rules and regulations adopted by said board for the preservation of public health may be strictly enforced in the various parts of the state. Any member of the board selected or appointed as a medical inspector, or any other person the board may so designate to act as a medical inspector, shall have the same right of inspection and the same authority in regard to all matters affecting the public health as has been or may be conferred upon the state or local boards of health. The said state board of health is hereby expressly authorized to designate what diseases are dangerous communicable diseases and what diseases are contagious diseases, and it shall be the duty of every local board of health and health officer to observe such rules in relation to dangerous communicable diseases and contagious diseases as may be prescribed by the said state board of health.

HISTORY: C L 1915, 5018;—C L 1929, 6607.

STATE BOARD OF HEALTH: Abolished; powers and duties transferred to the state health commissioner, see Compilers' § 325.4.

329.52 Same; duties.

Sec. 2. Every person selected to act as medical inspector shall act under the direction of the state board of health and shall make a thorough and complete investigation of all nuisances, sources of sickness, epidemics of infectious or dangerous communicable diseases or contagious diseases, water supplies, the sewerage disposal systems, the sanitary conditions of public vaults, jails, school houses and school grounds, and such other work as is found necessary to improve the general sanitary and hygienic condition of the state.

HISTORY: C L 1915, 5019;—C L 1929, 6608.

329.53 Same; reports.

Sec. 3. It shall be the duty of any person acting as such medical inspector after the completion of any investigation to immediately report in writing to the state board of health, upon such forms and in such manner as may be prescribed, a complete account of the essential facts disclosed by the investigation, together with the recommendations made and the work done to better safe-guard the public health.

HISTORY: C L 1915, 5020;—C L 1929, 6609.

329.54 Same; compensation and expenses.

Sec. 4. The compensation of any person selected to act as medical inspector, and the members of the state board of health when acting as medical inspectors, shall be determined by the state board of health. All actual expenses incurred by the medical inspector in the discharge of his official duties, together with his compensation, not to exceed 10 dollars per diem, shall be paid from the general fund in the state treasury upon vouchers audited by the board of state auditors and approved by the state board of health.

HISTORY: C L 1915, 5021;—C L 1929, 6610.

329.55 Appropriation; tax clause.

Sec. 5. There is hereby annually appropriated out of the general fund in the state treasury such amount as may be necessary to enable the state board of health to carry out the provisions of this act. The auditor general shall add to and incorporate in the state tax for the year 1909 and every year thereafter, a sufficient amount to reimburse the general fund in the state treasury when collected for the amounts appropriated by the provisions of this act.

HISTORY: C L 1915, 5022;—C L 1929, 6611.

Sec. 6. (This was a repeal section.)

HISTORY: C L 1915, 5023;—C L 1929, 6612;—Rep. 1945, p. 404, Act 267, Imd. Eff. May 25.

Act 146, 1879, p. 144; Eff. Aug. 30.

AN ACT to authorize boards of health of cities, villages and townships, to furnish vaccination to the inhabitants thereof.

The People of the State of Michigan enact:

329.81 Vaccination; public expense.

Sec. 1. That the board of health of each city, village and township, may at any time direct its health officer or health physician to offer vaccination or inoculation, with bovine vaccine virus, anti-toxine and anti-typhoid-vaccine to every child and to all other persons, without cost to the person vaccinated or inoculated, but at the expense of such city, village or township, as the case may be.

HISTORY: How. 1685;—C L 1897, 4465;—Am. 1915, p. 197, Act 118, Eff. Aug. 24;—C L 1915, 5096;—C L 1929, 6617.

Act 306, 1909, p. 751; Eff. Sept. 1.

AN ACT in relation to the disease of rabies among dogs, to provide for the treatment of persons infected with the virus of rabies, and for the payment of certain damages for domestic animals infected with rabies by dogs and to provide penalties for the violation of this act.

The People of the State of Michigan enact:

329.101 Rabid dog, quarantine; complaint by township board.

Sec. 1. It is hereby made the duty of all township boards of health to whom cases of rabies among dogs are reported to immediately investigate the same by some member or members of the board; and should such investigation show a reasonable probability that a dog is affected with the disease known as rabies, the said board of health shall immediately establish such temporary quarantine as may be necessary to prevent the spread of the disease and to make immediate complaint thereof in the manner provided in section 4 hereof.

HISTORY: C L 1915, 5114.
Title Am. 1925, p. 485, Act 321, Eff. Aug. 27;—C L 1929, 6622.
QUARANTINE: By department of agriculture, see Compilers' § 287.6.
DOG LAW: See Compilers' § 287.261 et seq.

329.102 Muzzling or confinement of dogs; order.

Sec. 2. The said board of health, when in its judgment such action is necessary to prevent the spread of the disease, shall have power to order all dogs in the township or any part thereof, restrained, confined or muzzled.

HISTORY: C L 1915, 5115;—C L 1929, 6623.

329.103 Same; notice of order.

Sec. 3. The order of the board of health to restrain, confine or muzzle dogs shall be operative when a copy of such order shall have been left at the usual place of residence of the owner or owners of dogs that are believed to have been exposed to the said disease, or when a copy of said order has been posted in 3 of the most public places in the township or part thereof to which said order applies.

HISTORY: C L 1915, 5116;—C L 1929, 6624.

329.104 Complaint to justice; hearing, notice; order.

Sec. 4. Any member of the board of health or any resident of the township may make complaint to any justice of the peace of said township when any dog within the township is rabid, or has been bitten by or been fighting with a dog that is rabid, or has been running at large in violation of the order of the board of health. Upon such complaint it shall be the duty of the said justice of the peace to give notice to the owner of such dog or dogs to appear forthwith for the hearing of said complaint. Upon such hearing, if the said justice shall be satisfied that the said dog is rabid, has been bitten by or been fighting with a dog that is rabid, or has been running at large in violation of the said order of the board of health, he shall be authorized to make an order that such dog or dogs be killed: Provided, That the said justice, in his discretion, in all cases in which it does not appear at the hearing that the dog or dogs in question are rabid, may order the said dog or dogs restrained for a period of at least 90 days: Provided further, That in all cases in which the owner of the dog complained against cannot be ascertained, the justice may immediately order the said dog to be killed.

HISTORY: C L 1915, 5117;—C L 1929, 6625.

329.105 Order to kill; fee.

Sec. 5. In all cases in which a dog is ordered killed the justice shall issue an order to any constable of the township directing him to forthwith kill and bury the said dog, for which service the constable shall receive a fee of 1 dollar to be paid by the township out of its general fund in the manner that other constable fees are paid.

HISTORY: C L 1915, 5118;—C L 1929, 6626.

329.106 Pasteur treatment; county chargeable; domestic animal loss.

Sec. 6. Whenever it shall satisfactorily appear to the local board of health that any person within its jurisdiction has been bitten by a rabid dog; or in any other manner has been infected with the virus of rabies, said local board of health shall make the necessary arrangements for Pasteur treatment. The necessary expense thus incurred, not to exceed in any 1 case the sum of 200 dollars, shall be a charge upon the county in which the expense was authorized and all bills for such expense shall be audited and allowed by the board of supervisors of the county and payable out of the general fund of the county to the person or persons or institution incurring the said expense. Whenever any rabid dog shall infect any domestic animal with rabies, and said animal shall die therefrom or be ordered killed on account thereof, the owner of said animal shall be reimbursed for the said loss in the manner and out of the fund provided by Act No. 339 of the Public Acts of 1919 and the amendments thereto: Provided, That when any domestic animal shall be infected with rabies by a dog belonging to the owner of said domestic animal, and said animal shall die from said infection or be ordered killed on account thereof, then the owner of said domestic animal shall in no case be reimbursed for said loss, as herein provided.

HISTORY: C L 1915, 5119;—Am. 1925, p. 485, Act 321, Eff. Aug. 27;—C L 1929, 6627.
NOTE: Act 339 of 1919, above referred to, is Compilers' § 287.261 et seq.

329.107 Penalty; officers.

Sec. 7. Any officer refusing or neglecting to perform any of the duties imposed upon him by any of the provisions of this act shall be deemed guilty of a misdemeanor and subject to the penalties prescribed by law in such cases.

HISTORY: C L 1915, 5120;—C L 1929, 6628.
MISDEMEANOR: Penalty, see Compilers' § 750.504.

329.108 Same; other persons.

Sec. 8. Any person violating any of the provisions of this act, or of a quarantine or regulation or order to restrain, confine or muzzle dogs, duly established or issued by the board of health as provided in this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not less than 10 dollars nor more than 100 dollars, or to imprisonment in the county jail for a period of not less than 10 days nor more than 30 days, or both such fine and imprisonment in the discretion of the court.

HISTORY: C L 1915, 5121;—C L 1929, 6629.

Act 116, 1903, p. 137; Imd. Eff. May 14.

AN ACT to provide for the prevention of rabies in indigent persons.

The People of the State of Michigan enact:

329.121 Poor persons; treatment, expenses.

Sec. 1. Whenever it shall be proved to the satisfaction of the local board of health that any indigent person or persons within its jurisdiction has been bitten by a rabid dog or other rabid animal, or in any other manner has been infected with the virus of rabies, said local board of health shall make the necessary arrangements and send said person or persons supposed to be infected with rabies, to the Pasteur Institute at the University of Michigan. The necessary expenses thus incurred shall be a charge upon the township, city or incorporated village in which the expense was authorized. Before their payment or allowance all bills for such expenses shall be audited by the local board of health.

HISTORY: C L 1915, 5122;—C L 1929, 6630.

Act 272, 1919, p. 474; Imd. Eff. May 13.

AN ACT to protect the public health; to prevent the spreading of venereal diseases, to prescribe the duties and powers of the state department of health and of local health officers and health boards, and physicians, with reference thereto.

The People of the State of Michigan enact:

329.151 Venereal diseases; control.

Sec. 1. The diseases commonly known as syphilis, gonorrhea and chancroid are hereby declared to be dangerous, communicable and infectious diseases and are declared to be subject to all the laws of the state pertaining to such diseases, except as in this act modified or otherwise provided.

HISTORY: C L 1929, 6631.
Title Am. 1939, p. 190, Act 106, Imd. Eff. May 16.

329.152 Same; rules to prevent spread; reports, not public record.

Sec. 2. The state department of health is hereby authorized and directed to adopt rules and regulations to prevent the spreading of said diseases to facilitate the proper treatment thereof and to regulate the quarantining and isolation of infected persons. Proper steps should also be taken for the dissemination to the public of such information as is deemed proper and expedient to prevent infection from said diseases. A system of reports for the use of physicians and health officers shall be prescribed, and suitable blanks shall be prepared and furnished to physicians and health officers. A physician or health officer having knowledge of a case of syphilis, gonorrhea or chancroid shall immediately report the same in accordance with the rules and regulations of the state department of health and shall give such detailed information as may be required by said board. All such reports

and all records and data of the state board of health or any local health officer pertaining to the care and treatment of such diseases are hereby declared not to be public records.

HISTORY: C L 1929, 6632.
STATE BOARD OF HEALTH: Abolished; powers and duties transferred to the state health commissioner, see Compilers' § 325.4.

329.153 Pregnant women; test for syphilis; statement on birth certificate.

Sec. 3. Every physician attending a pregnant woman in the state of Michigan shall, in the case of each woman so attended, take or cause to be taken a sample of blood of such woman at the time of first examination, and submit such sample to an approved laboratory for a standard serological test for syphilis. Every other person permitted by law to attend upon pregnant women in the state, but not permitted by law to take blood tests, shall cause a sample of the blood of such pregnant woman to be taken and submitted to an approved laboratory for a standard serological test for syphilis. The term "approved laboratory" shall mean a laboratory approved for this purpose by the state department of health. A standard serological test for syphilis shall be one recognized as such by the state department of health. Such laboratory tests as are required by this act may be made on request without charge by the state department of health.

In reporting every birth and stillbirth, physicians and others permitted to attend pregnancy cases and required to report births and stillbirths, shall state on the birth certificate or stillbirth certificate, as the case may be, whether a blood test for syphilis has been made during such pregnancy upon a specimen of blood taken from the woman who bore the child for which a birth or stillbirth certificate is filed and, if made, the date when such test was made, and if not made, the reason why such test was not made. In no event shall the birth certificate state the result of the test.

Such tests and reports shall not be made a matter of public record but shall be available to local health officers and to the physicians treating the patient.

HISTORY: Add. 1939, p. 190, Act 106, Imd. Eff. May 16.
NOTE: The original section 3 was repealed 1927, p. 370, Act 180, Eff. Sept. 5. This section provided for care of venereal disease patients through state department of health.

329.154 Venereal disease; failure to report; misdemeanors; penalty.

Sec. 4. Any physician or local health officer who fails to report any case of syphilis, gonorrhea or chancroid in accordance with the rules and regulations of the state department of health, or any person who while receiving treatment for any such diseases under the direction, supervision and control of the said board as herein contemplated, shall without leave break quarantine and leave the place of treatment or any persons who shall violate any of the provisions of this act or the rules and regulations of the state department of health adopted hereunder shall be guilty of a misdemeanor and upon conviction shall be liable to a fine of not more than 1,000 dollars or to imprisonment in the county jail for not more than 1 year, or to both such fine and imprisonment in the discretion of the court.

HISTORY: C L 1929, 6633.

Sec. 5.

HISTORY: Am. 1921, p. 61, Act 42, Eff. Aug. 18;—Rep. 1927, p. 370, Act 180, Eff. Sept. 5.
This section regulated the giving of prescriptions for diseases mentioned in Sec. 1 of this act.

Secs. 6-7. (These were appropriation sections.)

HISTORY: Rep. 1945, p. 411, Act 267, Imd. Eff. May 25.

329.158 Disposition of fees.

Sec. 8. All fees or other moneys received by said institution shall be forwarded to the state treasurer each month and shall be by said treasurer deposited in the state treasury to be disbursed in such manner and for such purposes as may be provided by law.

HISTORY: C L 1929, 6634.
ADMINISTRATIVE BOARD: This section to be construed in light of Compilers' §§ 17.5 and 17.6.

Sec. 9. (This was a tax clause section.)

HISTORY: Rep. 1945, p. 411, Act 267, Imd. Eff. May 25.

Act 6, 1942 (2nd Ex. Ses.), p. 42; Imd. Eff. Feb. 25.

AN ACT to protect the people from venereal disease, to provide for the care, treatment, isolation and hospitalization of persons afflicted therewith, to provide for the commitment of certain persons afflicted with venereal disease, to provide for their care, custody and discharge, and to prescribe penalties for the violation of this act.

The People of the State of Michigan enact:

329.201 Venereal disease, definition of term.

Sec. 1. "Venereal disease" as used herein shall mean syphilis, gonorrhea, chancroid, lymphogranuloma venereum and granuloma inguinale. Such venereal diseases are recognized and hereby declared to be communicable and infectious diseases, and are hereby declared to be dangerous to the public health.

329.202 Physicians to report cases to state health department.

Sec. 2. Every licensed physician is required to give notice in writing as required by law for reporting of venereal diseases under Act No. 272, Public Acts of 1919, and regulations issued thereunder, of every case of any form of venereal disease which comes under his professional observation. The notice shall be made upon blanks to be furnished by the state commissioner of health and shall include such information as may be required by the said state commissioner of health. The notice herein provided for shall be given within 24 hours from the time the physician determines that the patient is afflicted with venereal disease.

329.203 Examination of arrested persons; detention.

Sec. 3. Every person arrested and charged with committing an act of prostitution in violation of sections 448, 449, 450, 452 and 455 of Act No. 328 of the Public Acts of 1931, or any city or village ordinance prohibiting prostitution, shall be examined by the local health officer or his authorized deputy to determine whether such person is afflicted with venereal disease. Any such person so taken into custody may be detained in the detention room of any county jail or in any city or village police station in this state, or in such other appropriate place as shall be designated by the peace officer having custody of such person, until such examination shall be made by the local health officer, and diagnosis established, but not for a period of more than 5 days.

NOTE: Secs. 448, 449, 450, 452 and 455, Act 328, 1931, above referred to, are Compilers' §§ 750.448, 750.449, 750.450, 750.452 and 750.455.

329.204 Rules and regulations for discovery and control of disease.

Sec. 4. The state health commissioner is hereby authorized to make such rules and regulations in the manner prescribed in section 7 of Act No. 146, Public Acts of 1919, as he shall deem proper for the discovery and control of persons afflicted with venereal disease, and to establish rules of procedure for the guidance of health officers and other officials charged with the administration and enforcement of the laws of this state relating to the care, treatment and hospitalization and isolation of persons afflicted with venereal disease. Nothing in this act shall be construed or operate to empower or authorize the state commissioner of health, or any health officer, or their representatives, to restrict in any manner the individual's right to select the physician or mode of treatment of his choice: Provided, That sanitary laws and the laws, rules and regulations relating to infectious and contagious diseases are satisfactorily followed.

NOTE: Sec. 7, Act 146, 1919, above referred to, is Compilers' § 325.7.

329.205 Same; failure of afflicted person to comply; procedure for hospitalization; discharge.

Sec. 5. When knowledge comes to a health officer or to the state commissioner of health that any person who is afflicted with venereal disease has failed or refused to comply with orders, rules and regulations made under section 4 of this act, or is unable or unwilling to conduct himself and to live in such a manner as not to expose members of his family or household or other persons with whom he may be associated or come in contact to danger of infection, the health officer or state commissioner of health shall forthwith investigate or have investigated the circumstances alleged. If he shall find that any such person is a menace to others he shall petition the probate court of the county in which such person resides or is found for an order directing the admission of such person to any approved hospital or institution. Upon receiving said petition the court shall fix a date for hearing thereof, and notice of such petition and the time and place of hearing thereof shall be served personally, at least 24 hours before the hearing, upon the person afflicted

with such venereal disease and alleged to be dangerous to others, and upon the health officer or state commissioner of health who made the petition. The person so afflicted and the local health officer or state commissioner of health may waive notice of hearing, and upon the filing of such waiver in writing the court may proceed to hear such petition forthwith. Upon such hearing, if it shall appear that the complaint of the health officer or state commissioner of health is well founded and that the said person is a source of danger to others, such court shall commit the person afflicted to any approved hospital or institution. Such person shall be deemed to be committed until discharged in the manner authorized in this section. In making such commitment the judge of probate shall make an order for payment for the transportation of such persons, and for the maintenance of such persons as required by such hospital, which order may be a charge against the county from which the person is committed. If the person afflicted is found to have sufficient means to pay the cost of transportation and hospitalization, in whole or in part, the court may order such afflicted person to pay a part or all of such cost. The chief administrative officer of the hospital or other institution to which any such person has been committed, upon signing and placing among the permanent records of such hospital or institution a statement to the effect that such person has obeyed the rules and regulations of such hospital or institution, and that said person has received sufficient treatment to render said person no longer infectious, and that in the judgment of the attending physician such person may be discharged without danger to the health or life of others, or for any other reason stated in full which he may deem adequate and sufficient, may discharge the person so committed. He shall report each such discharge as required by law under Act No. 272, Public Acts of 1919, and regulations issued thereunder.

NOTE: Act 272, 1919, above referred to, is Compilers' § 329.151 et seq.

329.206 Patients to comply with rules of hospital; violation.

Sec. 6. Every person committed under the provisions of this section shall observe all the rules and regulations of such hospital or institution. Any patient so committed who neglects or refuses to obey the rules or regulations of the institution may, by direction of the chief administrative officer of the institution, be placed apart from the others and restrained from leaving the institution. Any such patient who wilfully violates the rules and regulations of the institution or who repeatedly conducts himself in a disorderly manner may be taken before a justice of the peace by order of the chief administrative officer of the institution. The chief administrative officer may enter a complaint against such person for disorderly conduct and the justice of the peace, after a hearing and upon due evidence of such disorderly conduct, may commit such person for a period not to exceed 6 months to any institution to which persons convicted of disorderly conduct or vagrancy may be committed and such institution shall keep such person separate and apart from the other inmates, provided that nothing in this section shall be construed to prohibit any person committed to any institution under the provisions hereof from appealing to any court of competent jurisdiction for a review of the evidence on which such commitment was made.

329.207 Treatment, local health officer to furnish; expense; removal.

Sec. 7. If it shall be determined by the health officer of the city, village, township, county or district, that there is any person afflicted with venereal disease found within such city, village, township, or district who requires care, treatment, isolation or hospitalization, it shall be the duty of such health officer to provide such care, treatment, isolation or hospitalization as such person requires or may be necessary for the protection of the public in accordance with the rules and regulations made by the state commissioner of health as authorized in section 4 of this act. In making such provisions the health officer shall issue such order or orders as may be necessary authorizing the care, treatment, isolation or hospitalization of such persons. Notice of the action taken, under this section or section 5 hereof, shall be reported promptly by such officer to the county department of social welfare, of the probable place of settlement of such afflicted person. Nothing herein contained shall be construed to abridge the authority of the health officer in furnishing care, treatment, isolation or hospitalization to such afflicted person, pending the determina-

The People of the State of Michigan enact:

329.201 Venereal disease, definition of term.

Sec. 1. "Venereal disease" as used herein shall mean syphilis, gonorrhea, chancroid, lymphogranuloma venereum and granuloma inguinale. Such venereal diseases are recognized and hereby declared to be communicable and infectious diseases, and are hereby declared to be dangerous to the public health.

329.202 Physicians to report cases to state health department.

Sec. 2. Every licensed physician is required to give notice in writing as required by law for reporting of venereal diseases under Act No. 272, Public Acts of 1919, and regulations issued thereunder, of every case of any form of venereal disease which comes under his professional observation. The notice shall be made upon blanks to be furnished by the state commissioner of health and shall include such information as may be required by the said state commissioner of health. The notice herein provided for shall be given within 24 hours from the time the physician determines that the patient is afflicted with venereal disease.

329.203 Examination of arrested persons; detention.

Sec. 3. Every person arrested and charged with committing an act of prostitution in violation of sections 448, 449, 450, 452 and 455 of Act No. 328 of the Public Acts of 1931, or any city or village ordinance prohibiting prostitution, shall be examined by the local health officer or his authorized deputy to determine whether such person is afflicted with venereal disease. Any such person so taken into custody may be detained in the detention room of any county jail or in any city or village police station in this state, or in such other appropriate place as shall be designated by the peace officer having custody of such person, until such examination shall be made by the local health officer, and diagnosis established, but not for a period of more than 5 days.

NOTE: Secs. 448, 449, 450, 452 and 455, Act 328, 1931, above referred to, are Compilers' §§ 750.448, 750.449, 750.450, 750.452 and 750.455.

329.204 Rules and regulations for discovery and control of disease.

Sec. 4. The state health commissioner is hereby authorized to make such rules and regulations in the manner prescribed in section 7 of Act No. 146, Public Acts of 1919, as he shall deem proper for the discovery and control of persons afflicted with venereal disease, and to establish rules of procedure for the guidance of health officers and other officials charged with the administration and enforcement of the laws of this state relating to the care, treatment and hospitalization and isolation of persons afflicted with venereal disease. Nothing in this act shall be construed or operate to empower or authorize the state commissioner of health, or any health officer, or their representatives, to restrict in any manner the individual's right to select the physician or mode of treatment of his choice: Provided, That sanitary laws and the laws, rules and regulations relating to infectious and contagious diseases are satisfactorily followed.

NOTE: Sec. 7, Act 146, 1919, above referred to, is Compilers' § 325.7.

329.205 Same; failure of afflicted person to comply; procedure for hospitalization; discharge.

Sec. 5. When knowledge comes to a health officer or to the state commissioner of health that any person who is afflicted with venereal disease has failed or refused to comply with orders, rules and regulations made under section 4 of this act, or is unable or unwilling to conduct himself and to live in such a manner as not to expose members of his family or household or other persons with whom he may be associated or come in contact to danger of infection, the health officer or state commissioner of health shall forthwith investigate or have investigated the circumstances alleged. If he shall find that any such person is a menace to others he shall petition the probate court of the county in which such person resides or is found for an order directing the admission of such person to any approved hospital or institution. Upon receiving said petition the court shall fix a date for hearing thereof, and notice of such petition and the time and place of hearing thereof shall be served personally, at least 24 hours before the hearing, upon the person afflicted

329.251 Venereal prophylactic; definition of term.

Sec. 1. Definition. The following term as used in this act is hereby defined as follows: Venereal prophylactic: any article, device, appliance, drug, or other medicinal preparation designed or intended for the purpose of preventing syphilis, gonorrhea, chancroid, or such other diseases as may be defined as genito-infectious or venereal diseases by regulations of the Michigan department of health.

329.252 Same; sale prohibited; exceptions; identification of manufacturer.

Sec. 2. It shall be unlawful for any person, firm, corporation, or association to sell, to offer for sale or to give away any such prophylactic article or drug either individually or through the medium of vending machines or by any other means: Provided, however, That the foregoing provisions shall not apply to (1) those licensed under Act No. 237 of the Public Acts of 1899, as amended, or (2) those licensed under Act No. 162 of the Public Acts of 1903, as amended, or (3) registered pharmacists while employed on the premises of a licensed drug store, or to wholesalers of such articles, devices, appliances, or medicinal preparations who sell to retail stores for resale. It is further provided that all and any such articles, devices, appliances, drugs or medicinal preparations herein described shall, when sold, offered for sale, given away or distributed whether at wholesale or retail in accordance with the provisions of this act, conspicuously bear the identification of the manufacturer thereon or on the retail container thereof. Such articles, devices, appliances, drugs or medicinal preparations shall comply with standards with respect to grade and quality as designated by the pure food and drug administration of the United States department of agriculture.

NOTE: Act 237, 1899, above referred to, is Compilers' § 338.51 et seq. Act 162, 1903, above referred to, is Compilers' § 338.101 et seq.

329.253 Same; display or advertising prohibited; exceptions.

Sec. 3. It shall be unlawful to exhibit or display prophylactics in any show window, upon the streets, or in any public place, or to advertise such in any magazine, newspaper or other form of publication originating in, or published within the state of Michigan, to publish, or distribute from house to house or upon the streets, any circular, booklet or other form of advertising, or by other visual means, or by auditory method, or by the use of outside signs on stores, billboards, window displays or other advertising visible to persons upon the streets or public highways: Provided, however, That nothing in this act shall prevent the advertising of prophylactics in those magazines whose principal circulation is to the medical and pharmaceutical professions. It is further provided that nothing in this act shall prevent the display or exhibit of such articles, devices, appliances, or other medicinal preparations by federal, state, county, district or municipal departments of health, or incorporated medical, pharmaceutical or scientific organizations.

329.254 Arrest of violators of act; seizure of merchandise.

Sec. 4. Any officer of the law shall be required to arrest any person violating any of the provisions of this act, to seize stocks so illegally held, and to make seizure of any mechanical device or vending machine containing any merchandise coming within the provisions of this act; holding the owner of such machine, the proprietor and the owner of the premises where seizure is made to be in violation of this act.

329.255 Penalty for violation of act; confiscation of merchandise.

Sec. 5. Any person, firm, corporation, or association or the officers or members of such firm, corporation, or association who or which knowingly violate any of the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof said person or persons shall be fined not to exceed $100.00, or imprisoned not to exceed 30 days in the county jail, or both such fine and imprisonment at the discretion of the court, and all property seized under the provisions of this act shall be destroyed.

Sec. 6. (This was a severing clause section.)

HISTORY: Rep. 1945, p. 416, Act 267, Imd. Eff. May 25.

Sec. 7. (This was a repeal section.)

HISTORY: Rep. 1945, p. 409, Act 267, Imd. Eff. May 25.

Act 353, 1919, p. 626; Eff. Aug. 14.

AN ACT to prohibit the employment of persons affected with infectious or venereal disease in places where cigars are manufactured.

The People of the State of Michigan enact:

329.271 Infected persons; prohibited employment as cigar makers, examination.

Sec. 1. No person who is affected with any infectious disease, or with any venereal disease in a communicable form, shall work, or be permitted to work, in any place where cigars are manufactured. Whenever required by any local health officer, any person employed in such place shall submit to a physical examination by such officer, or by some physician designated by such person so employed. If as a result of such examination, such person shall be found to be affected with any infectious disease, or with any venereal disease in a communicable form, such employment shall immediately cease and such person shall not be permitted to work in any such place.

HISTORY: C L 1929, 6637.

329.272 Penalty.

Sec. 2. Any person knowingly affected with any infectious disease, or with any venereal disease in a communicable form, who shall work in any place defined in section 1, and any person knowingly employing or permitting such person to work in such place, shall be deemed guilty of a misdemeanor, and upon conviction, shall be punished by a fine not exceeding 250 dollars or by imprisonment not exceeding 1 year, or by both such fine and imprisonment in the discretion of the court.

HISTORY: C L 1929, 6638.

Act 314, 1927, p. 577; Eff. Sept. 5.

AN ACT to protect the people from tuberculosis, to provide for the care, treatment, isolation and hospitalization of persons afflicted therewith, to provide for the commitment of certain persons afflicted with tuberculosis, to provide for their care, custody and discharge, and to prescribe penalties for the violation of this act.

The People of the State of Michigan enact:

329.401 Tuberculosis a communicable disease; notices, form, time.

Sec. 1. Tuberculosis is hereby declared to be a communicable disease dangerous to the public health. Every practicing physician is required to notify in writing the health officer of the city, village, township, county or district in which the case resides, of every case of any form of tuberculosis which comes under his professional observation, except that superintendents of hospitals or sanatoriums shall send such notice direct to the Michigan department of health when a case of tuberculosis is hospitalized from a jurisdiction other than that in which the hospital or sanatorium is located. The notice shall be made upon blanks to be furnished by the state commissioner of health and shall include such information as may be required by the said state commissioner of health. The notice herein provided for shall be given within 24 hours from the time the physician determines that the patient is afflicted with tuberculosis.

HISTORY: C L 1929, 6639;—Title and Sec. 1 Am. 1937, p. 127, Act 93, Eff. Oct. 29.
FORMER ACT: Act 27 of 1909, being C L 1915, 5099-5113, as amended by Act 216 of 1925.
SANATORIUMS: See Compilers' § 332.1 et seq.

329.402 Same; rules and regulations, what to include; court review.

Sec. 2. The state health commissioner with the concurrence of the state council of health is hereby authorized to make such rules and regulations as he shall deem proper for the discovery and control of tuberculosis and of persons afflicted with tuberculosis, and to establish rules of procedure for the guidance of health officers and other officials charged with the administration and enforcement of the laws of this state relating to the care, treatment and hospitalization of persons afflicted with tuberculosis. Such rules and regulations shall have a reasonable relationship to the control and elimination of tuberculosis, and shall include provision for the confinement of recalcitrant or uncooperative patients who refuse to conduct themselves in accordance with the reasonable regulations of the

sanatorium or hospital in which they are being treated, in any state or other public institution equipped to provide treatment and means of control. The reasonableness of any such rule or regulation or of any order of confinement made thereunder shall be subject to review in the circuit court in chancery of the county from which the patient was hospitalized or of the county in which he is under treatment, on his petition. Nothing in this act shall be construed or operate to empower or authorize the state commissioner of health, or any health officer, or their representatives, to restrict in any manner the individual's right to select the physician or mode of treatment of his choice: Provided, That sanitary laws and the laws, rules and regulations relating to infectious and contagious diseases are complied with.

HISTORY: C L 1929, 6640;—Am. 1937, p. 127, Act 93, Eff. Oct. 29;—Am. 1945, p. 348, Act 249, Eff. Sept. 6.

329.402a Order for admission of tuberculous patient to hospital; petition, notice, service; hearing; commitment; discharge.

Sec. 2a. When knowledge comes to a health officer or to the state commissioner of health that any person is afflicted with tuberculosis and is unable or unwilling to conduct himself and to live in such a manner as not to expose members of his family or household or other persons with whom he may be associated to danger of infection, the health officer or state commissioner of health shall forthwith investigate or have investigated the circumstances alleged. If he shall find that any such person is a menace to others he shall petition the probate court of the county in which such person resides or is found for an order directing the admission of such person to any approved hospital or institution established for the care of persons suffering from tuberculosis. Notice of such petition and the time and place for hearing thereof shall be served personally, at least 24 hours before the hearing, upon the person who is afflicted with tuberculosis and alleged to be dangerous to others, and upon the health officer, or state commissioner of health, who made the petition. Upon receiving said petition the court shall fix a date for hearing thereof and if, upon such hearing, it shall appear that the complaint of the health officer or state commissioner of health is well founded and that the said person is a source of danger to others, such court shall commit him to any approved hospital or institution maintained for the care and treatment of persons afflicted with tuberculosis. Such order shall include a provision that the place of treatment shall be subject to change by the state commissioner of health for reasonable cause, subject to review in the court making the order, on application made within 30 days after the patient is informed of such modification. Such person shall be deemed to be committed until discharged in the manner authorized in this section. The chief medical officer of the hospital or other institution to which any such person has been committed, upon signing and placing among the permanent records of such hospital or institution a statement to the effect that such person has obeyed the rules and regulations of such hospital or institution for a period of not less than 60 days and that in his judgment such person may be discharged without danger to the health or life of others, or for any other reason stated in full which he may deem adequate and sufficient, may discharge the person so committed. He shall report each such discharge together with a full statement of the reasons therefor at once to the health officer of the city, village, township, county or district from which the patient came and at the next meeting of the board of managers or other controlling authority of such hospital or institution. Every person hospitalized under the provisions of this section shall observe all the rules and regulations of such hospital or institution. Any patient so committed who neglects or refuses to obey the rules or regulations of the institution may, by direction of the chief medical officer of the institution, be placed apart from the others and restrained from leaving the institution.

HISTORY: Add. 1937, p. 127, Act 93, Eff. Oct. 29;—Am. 1945, p. 349, Act 249, Eff. Sept. 6.

329.403 Health officer to provide treatment; notice to social welfare department; expense of treatment, payment; place of settlement.

Sec. 3. If it shall be determined by the health officer of the city, village, township, county or district, that there is any person afflicted with tuberculosis found within such city, village, township or district who requires care, treatment, isolation or hospitalization,

it shall be the duty of such health officer to provide such care, treatment, isolation or hospitalization as such person requires or may be necessary for the protection of the public in accordance with the rules and regulations made by the state commissioner of health as authorized in section 2 of this act. In making such provisions the health officer shall issue such order or orders as may be necessary authorizing the care, treatment, isolation or hospitalization of such persons. Notice of the action taken, under this section or section 2a hereof, shall be reported promptly by such officer to the county department of social welfare, of his probable place of settlement. Nothing herein contained shall be construed to abridge the authority of the health officer in furnishing care, treatment, isolation or hospitalization to such person, pending the determination by such health officer or upon his request, by the county department of social welfare of the probable place of settlement of such person so afflicted, but it shall be the duty of such health officer, immediately upon being appraised of any case reported to him, to extend aid and assistance to such afflicted person, and to promptly furnish such care, treatment, isolation or hospitalization as such person may require.

In the case of any person hospitalized under this act, the county in which he has legal settlement in accordance with Act No. 280 of the Public Acts of 1939 shall be chargeable with the expense of such treatment, hospitalization or isolation, being reimbursed for a portion of such expense by the state in such amounts as the legislature may appropriate therefor. Patients who have not so resided within any county in this state for such period, and persons honorably discharged from the military services of the United States not otherwise hospitalized, shall for purpose of this act be deemed residents of the state at large, and the expense of their treatment and hospitalization under this act while the same continues with the approval of the state commissioner of health shall be paid by the state, on certification of said state commissioner of health. The reasonableness and propriety of all claims and accounts under this act shall be passed upon and determined by the said state commissioner of health, subject to appeal to the circuit court for the county of Ingham as to questions of law.

If such place of settlement is determined by said department of social welfare to be in another state or country, said department of social welfare may proceed to remove such person to his place of settlement in the manner authorized by section 8275 of the Compiled Laws of 1929 and amendments thereto: Provided, however, That the medical superintendent of the hospital where such person is being cared for, shall first certify in writing that such patient is able to be removed without endangering his life. If such place of settlement is determined by said department of social welfare to be in another county within this state, care shall be provided where such person is found at the expense of the county where such person has settlement. The department of social welfare shall, within 30 days after the commencement of care, give notice in writing by mail to the department of social welfare of the county of settlement of such person that such care is being given. The health officer of the county of settlement may make such arrangements as he deems necessary to provide for the return of such person to and care in said county. If the settlement of such person is not acknowledged by the alleged county of settlement within 30 days after mailing of such notice, the question of settlement of such person may be submitted for decision to the state social welfare commission, as provided herein. When disputed or contested claims arise between 2 or more counties on account of the settlement of a person or family for the purposes of this act, it shall be the duty of the director of the state social welfare commission to determine and declare the county of settlement in any instance, when so requested or on the department's own volition: Provided, however, That pending determination by the director of the state social welfare commission of the county of settlement of any person afflicted with tuberculosis, the county in which such person is found shall provide necessary care, treatment, isolation or hospitalization: And provided further, That upon determination by the director of the state social welfare commission that the county wherein such person is found is not the county of his or her settlement, the county of settlement, as determined by such commission, shall reimburse the county

where such person is found for all expenses incurred less any reimbursements from the state or other source for such care, treatment, isolation or hospitalization.

HISTORY: C L 1929, 6641;—Am. 1937, p. 128, Act 93, Eff. Oct. 29;—Am. 1941, p. 393, Act 240, Eff. Jan. 10, 1942;—Am. 1945, p. 350, Act 249, Eff. Sept. 6.

NOTE: Act 280, 1939, above referred to, is Compilers' § 400.1 et seq. C L 1929, 8275, above referred to, is Compilers' § 403.2.

TUBERCULAR POOR PERSONS: Admission into tuberculosis hospitals, see Compilers' § 332.159.

329.403a Expenditures of public funds considered expenditures for protection of public health; reimbursement.

Sec. 3a. Expenditures of public funds for the treatment or control of tuberculosis or for the treatment, isolation or control of persons afflicted with tuberculosis, shall be considered expenditures for the protection of the public health, and not as moneys advanced in the nature of welfare or relief. No person shall be under legal obligation to make reimbursement for such expense so incurred, unless the state commissioner of health and the county of settlement, after reasonable notice and upon fair hearing under rules of procedure to be determined by the state commissioner of health, shall have found that the person so hospitalized or treated, or the person or persons legally liable for his support, are possessed of sufficient income or estate to enable them to make such reimbursement in whole or in part without materially affecting their reasonable economic security or support, in the light of their respective resources, obligations, and responsibilities to dependents. No such order shall be made retroactive unless said state commissioner of health and the county of settlement shall find that the person to be charged has been guilty of misrepresenting or withholding knowledge of facts material to the issue. Receipts under any such order, and moneys voluntarily paid as reimbursement, shall be distributed pro rata to the funds out of which the expenditures were made.

HISTORY: Add. 1945, p. 351, Act 249, Eff. Sept. 6.

329.404 Printed matter, payment of cost.

Sec. 4. The cost of all printed matter required by this act to be furnished by the state commissioner of health shall be paid by the auditor general out of the general fund of the state treasury, on presentation of vouchers approved by the state commissioner of health.

HISTORY: C L 1929, 6642.

329.405 Penalty.

Sec. 5. Any person who violates any of the provisions of this act or the rules and regulations of the state commissioner of health shall be deemed guilty of a misdemeanor and upon conviction shall pay a fine not exceeding 100 dollars.

HISTORY: C L 1929, 6643.

Sec. 6. (This was a repeal section.)

HISTORY: C L 1929, 6644;—Am. 1945, p. 351, Act 249, Eff. Sept. 6;—Rep. 1945, p. 406, Act 267, Imd. Eff. May 25.

ACT REPEALED: Act 27, 1909, C L 1915, 5099-5113, amended by Act 216, 1925, repealed by Act 309, 1929, C L 1929, 121.