STATE OF MICHIGAN
IN THE SUPREME COURT
Appeal from the Michigan Court of Appeals
Fitzgerald, P.J. and O'Connell and Shapiro, JJ.

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

FREDRICK L. CUNNINGHAM,

Defendant-Appellant.

Supreme Court No. 147437

Court of Appeals No. 309277

Allegan Circuit Court No. 11-17200-FH

BRIEF ON APPEAL OF APPELLEE
PEOPLE OF THE STATE OF MICHIGAN

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STATEMENT OF JURISDICTION

This Court has jurisdiction under MCR 7.301(A)(2) and the Court's November 20, 2013 order granting defendant-appellant Frederick Cunningham's application for leave to appeal.

COUNTER-STATEMENT OF QUESTION PRESENTED

The Court's order granting leave to appeal in this case identifies four issues to be addressed by the parties. The brief addresses each of those issues in the process of answering the following overall question presented:

> Does MCL 769.1k(1)(b)(*ii*)'s grant of authority to courts to impose "[a]ny costs" preclude a court from taxing overhead costs or maintenance costs or require a court to impose case-specific costs instead of average costs?
>
> Appellant's answer: Yes.
>
> Appellee's answer: No.
>
> Trial court's answer: No.
>
> Court of Appeals' answer: No.

STATUTES INVOLVED

MCL 769.1k provides in relevant part:

> (1) If a defendant enters a plea of guilty or nolo contendere or if the court determines after a hearing or trial that the defendant is guilty, both of the following apply at the time of the sentencing or at the time entry of judgment of guilt is deferred pursuant to statute or sentencing is delayed pursuant to statute:
>
> (a) The court shall impose the minimum state costs as set forth in section 1j of this chapter.
>
> (b) The court may impose any or all of the following:
>
> (*i*) Any fine.
>
> (*ii*) Any cost in addition to the minimum state cost set forth in subdivision (a).
>
> (*iii*) The expenses of providing legal assistance to the defendant.
>
> (*iv*) Any assessment authorized by law.
>
> (*v*) Reimbursement under section 1f of this chapter.

MCL 771.3 provides in relevant part:

> (2) As a condition of probation, the court may require the probationer to do 1 or more of the following:
>
> * * *
>
> (c) Pay costs pursuant to subsection (5).
>
> * * *
>
> (5) If the court requires the probationer to pay costs under subsection (2), the costs shall be limited to expenses specifically incurred in prosecuting the defendant or providing legal assistance to the defendant and supervision of the probationer.

INTRODUCTION

Court costs have been available in Michigan since the 1800s. They have always been, as Cunningham concedes, a matter of statutory law, not a part of the common law. Accordingly, Michigan courts have examined the relevant statutory language when determining what costs applied to a given case.

Cunningham argues that MCL 769.1k's language authorizing a circuit court to impose "[a]ny cost" as part of a sentence should be read to include a limitation: that only costs specifically incurred in his case can be imposed. But while the Legislature has included *exactly* that limitation in other statutes—MCL 771.3(5) provides that "the costs shall be limited to expenses specifically incurred in prosecuting the defendant"—the Legislature chose not to include that limitation in MCL 769.1k. This Court should not insert that limitation into the statute.

Cunningham shifts the focus away from the statutory text by relying on cases that limited costs to those specifically incurred in the defendant's case, but those cases share a common feature: the statutes they address do require a specific connection with the defendant. For example, this Court in *People v Teasdale*, 335 Mich 1; 55 NW2d 149 (1952), examined statutory language that limited costs to "expenses incurred in connection with the 'apprehension, examination, trial and probationary oversight of the probationer" and thus concluded "that the expenses in question must have been incurred *in connection with the particular case* in which the order of probation is made." *Id.* at 6 (emphasis added).

Because MCL 769.1k does not include the limitation Cunningham seeks, this Court should affirm the assessment $1,000 for court and attorney costs against him.

COUNTER-STATEMENT OF FACTS

Frederick Cunningham pleaded guilty to obtaining a controlled substance (a narcotic called Norco) by fraud in violation of MCL 333.7407(1)(c). (App, p 9a, 20a.) The Allegan County Circuit Court sentenced him to 12 to 48 months in prison—because of "36 year criminal history" that included "16 felonies and a couple of misdemeanors"—and imposed $1,000 in court costs. (App, p 9a, 39a.)

Cunningham moved for resentencing, contending that the amount of court costs was excessive because the costs were not specific to this case. (App, p 47a.) Relying primarily on *People v Dilworth*, 291 Mich App 399; 804 NW2d 788 (2011), he argued that court costs may include "only costs outside the normal prosecution and court functions" and may not include a "standard amount to cover the cost of normal governmental functions." (App, p 50a.) The circuit court denied his motion, noting that the statute justifying costs in his case, MCL 769.1k(1)(b)(*ii*), was significantly different from the statute at issue in *Dilworth*. (App, p 107a.) Specifically, the probation statue in *Dilworth* provided that "costs shall be limited to expenses specifically incurred in prosecuting the defendant," while the sentencing statute applicable to Cunningham allowed the imposition of "[a]ny cost in addition to the minimum state cost." (App, p 107a–108a.) The circuit court also observed that case-specific costs could also be imposed under other statutes (such as costs of prosecution allowed incident to probation under MCL 771.3), so giving MCL 769.1k effect must mean that it allows imposing costs in addition to those case-specific costs. (App, p 109a.)

After Cunningham appealed, the Court of Appeals remanded so the circuit court could "factually establish the reasonable costs figure for felony cases in Allegan County Circuit Court." (App, p 113a.) On remand, the prosecutor established, through testimony from the Allegan County Circuit Court Administrator, that the average cost per criminal case was $1,238.48 (consisting of $462.84 for average court costs, $563.15 for average attorney costs, and $212.48 for clerk and deputy time). The circuit court accordingly affirmed that the $1,000 of costs assessed against Cunningham were reasonably related to the (higher) average costs of $1,238.48. (App, p 145a.)

When the case returned to the Court of Appeals, the majority affirmed, following its prior decision in *People v Sanders*, 296 Mich App 710; 825 NW2d 87 (2012), which held that MCL 769.1k allows the imposition of overhead costs. (App, p 147a.) Judge Shapiro dissented, relying on *Dilworth* and on *People v Teasdale*, 335 Mich 1; 55 NW2d 149 (1952), each of which imposed costs under a different statute, and arguing that maintenance and overhead costs cannot be assessed because they are not specific to the individual defendant. (App, p 150a–151a.)

STANDARD OF REVIEW

This Court reviews questions of statutory interpretation de novo. *Dep't of Envtl Quality v Worth Twp*, 491 Mich. 227, 236; 814 NW2d 646 (2012).

ARGUMENT

I. The term "[a]ny costs" encompasses "maintenance costs" and "overhead costs."

Court costs are governed by statute, not the inherent authority of the Court. *People v Wallace*, 245 Mich. 310, 313; 222 NW 698 (1929) ("The right of the court to impose costs in a criminal case is statutory."). Cunningham agrees on this point. (Cunningham Appeal Br, p 15 ("the right to recover costs is conferred by statute and did not exist at common law").) Accordingly, this case is a question of statutory interpretation.

And as this Court has repeatedly made clear, "[t]he words used in the statute are the most reliable indicator of the Legislature's intent and should be interpreted on the basis of their ordinary meaning and the context within which they are used in the statute." *Dep't of Envtl Quality v Worth Twp*, 491 Mich. at 237–238. Part of this contextual analysis means avoiding any "a construction that would render any part of the statute surplusage or nugatory." *Id.* at 238.

Here, the question is whether the words "[a]ny cost in addition to the minimum state costs" in MCL 769.1k(1)(b)(*ii*) are limited, as Cunningham contends, to only those costs proven to be specific expenses for prosecuting the defendant. (Cunningham Appeal Br, p 6.) The text of this provision makes clear that the Legislature did not intend to impose that limitation. This is especially clear given that the Legislature knew how to impose that limitation, having in fact imposed it on other statues.

A. The plain language of the term "[a]ny costs" does not contain any inherent limitation excluding overhead costs.

The word "cost" is not inherently limited to case-specific costs. To the contrary, the definition of "cost" is broad, meaning "[t]he price paid to acquire, produce, accomplish, or maintain anything." E.g., The American College Dictionary 274 (1951); see also Random House College Dictionary 304 (rev. ed. 1984) (same). As these definitions demonstrate, maintenance is a common type of cost. The meaning is equally broad in the legal context. Black's Law Dictionary defines "cost" as "[t]he charges or fees taxed by the court, such as filing fees, jury fees, courthouse fees, and reporter fees—[a]lso termed *court costs*." Black's Law Dictionary 372 (8th ed). In short, there is nothing about the word "cost" itself that imposes the sort of limitation that Cunningham urges.

Any doubt about the Legislature's intent to give an expansive definition to "cost" in MCL 769.1k(1)(b)(*ii*) is removed by the Legislature's use of the word "any." As this Court has explained, "[t]he word 'any' means just what it says. It includes 'each' and 'every.'" *Sifers v Horen*, 385 Mich 195, 199; 188 NW2d 623 (1971); accord *United States v Gonzales*, 520 US 1, 5 (1997) ("Read naturally, the word 'any' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind.'"). Thus, MCL 769.1k(1)(b)(*ii*) naturally refers to any kind of cost, including not just case-specific costs, but also any other type of costs that courts might incur. Indeed, the fact that the dissent below and Cunningham here both use phrases like "maintenance costs" and "overhead costs" shows that the ordinary meaning of costs can include maintenance and overhead. (App 150a; Cunningham Appeal Br, p 6.)

Other language in MCL 769.1k confirms that "any cost" also does not exclude average or standardized costs. The rest of the phrase—"[a]ny cost in addition to the minimum state cost set forth in subdivision (a)"—allows the imposition of costs that are not specific to the individual defendant's case. Minimum state costs are set forth in MCL 769.1j, which provides that "the court shall order that the person pay costs of not less than . . . $68.00, if the defendant is convicted of a felony." MCL 769.1j(1)(a). The "minimum state cost" imposed in addition to "[a]ny cost," then, is an example of a standardized cost—a flat fee to cover state expenses—that is not tailored to the defendant's specific costs in a given case; no matter how quick or how involved it was to obtain the felony conviction, the minimum state cost is always the same. So, given that the word "cost" in the term "minimum state cost" specifically refers to a flat fee, not to actual expenses, it would make little sense to interpret the broader term "[a]ny cost" to prohibit flat fees or standardized costs.

Cunningham nonetheless asserts that "[n]othing in MCL 769.1k refers to a flat fee approach." (Cunningham Appeal Br, p 31.) But MCL 769.1k(1)(a) directs the reader to "the minimum state costs as set forth in [MCL 769.1j], and that cross-reference to a type of cost *does* refer to a flat fee approach. Indeed, Cunningham admits that "[t]he state costs statute, MCL 769.1j, sets a flat fee." (*Id.* at 21.) And he also admits that "many statutes [ ] set standard fees for certain court-related expenses." (*Id.* at 32.) Given that many statutes set flat fees for court costs and that this very statute mentions a flat fee provision just five words after allowing "[a]ny costs," it would be unreasonable to construe the statute to exclude flat fees.

E.g., *Dep't of Revenue of Oregon v ACF Indus, Inc*, 510 US 332, 342 (1994) ("[It is] the normal rule of statutory construction that identical words used in different parts of the same act are intended to have the same meaning.") (quotation marks omitted).

One last point about MCL 769.1k's plain text: MCL 769.1k is an affirmative grant of authority to impose costs. It provides that "[t]he court may impose . . . [a]ny cost in addition to the minimum state costs." MCL 769.1k(1)(b)(*ii*). This is a basic point, but an important one, for it completely undermines one of Cunningham's primary arguments. He attempts to limit the plain meaning of "costs" by arguing that "any cost" applies only to costs "authorized by a statute already in existence," and that "any cost" "merely recognizes this universe of costs." (Cunningham Appeal Br, p 24.) But this argument ignores the fact that MCL 169.1k(1)(b)(*ii*) is *itself* an express statutory authorization for costs: "[t]he court may impose . . . [a]ny cost."

This existing-statute argument suffers from two other flaws. First, it attempts to read into the statute words that are not there—the statute does not say that a court may impose "[a]ny cost *authorized by another existing statute* in addition to the minimum state cost." Reading the italicized words into the statute would be drafting the statute, not interpreting it. *Ford Motor Co v Appeal Bd of Mich Unemployment Comp Comm*, 316 Mich 468, 473; 25 NW2d 586 (1947) ("The court is not at liberty to read into the statute provisions which the legislature did not see fit to incorporate.").

Second, this argument would transform MCL 769.1k(1)(b)(*ii*) into a nullity. If Cunningham were correct that MCL 169.1k(1)(b)(*ii*) provides authorization only to impose costs that are already authorized by some other statute, then it is doing no work at all; the other statute would already justify imposing the costs. This too is not the proper way to interpret a statute. *Dep't of Envtl Quality*, 491 Mich. at 238 ("this Court avoids a construction that would render any part of the statute surplusage or nugatory"). Instead, a plain reading of MCL 769.1k(1)(b)(*ii*) confirms that it grants courts broad, discretionary authority to impose "[a]ny costs," not merely any costs already authorized in some other statute.

B. Other statutes confirm both that the Legislature uses the word "costs" broadly and that it knows how to limit costs to those incurred in a specific case when it wants to.

Other statutes further confirm both that the Legislature has in fact used the word "costs" to cover overhead costs and that it knows how to limit the scope of costs when it wants to.

The statutes highlighted on pages 18 through 20 of Cunningham's brief demonstrate that the Legislature does extend "costs" to overhead costs. For example, the statutes he quotes expressly include items that are part of the overhead of the justice system—costs such as salaries, wages, overtime pay, and other compensation. E.g., MCL 780.23a (authorizing as costs "[t]he salaries or wages of law enforcement and prosecution personnel, including overtime pay, for processing the extradition and returning the individual to this state"); MCL 769.1f(1) (authorizing imposing emergency-response expenses including "salaries, wages, or other compensation"). These are the very types of costs that he argues cannot be considered a taxable cost because doing so would extend costs so far that a defendant "'could be required to pay the pro rata salaries of the judge, his staff, the U.S. attorney and marshals," (Cunningham Appeal Br, p 9, quoting *United States v Ross*, 535 F2d 346, 351 (CA 6, 1976).) But the Legislature has the authority to consider these types of expenses to be costs—a point he never disputes—and these statutes show that the Legislature has in fact exercised that authority to define costs to include prosecutor and law-enforcement-officer salaries. MCL 780.23a.

Comparing the broad language of MCL 769.1k(1)(b)(*ii*) with other statutes addressing costs also proves that the Legislature knew how to impose the sort of limitation Cunningham seeks. In MCL 771.3, for example, the Legislature authorized courts to impose costs on probationers, but limited those costs to "expenses *specifically incurred in prosecuting the defendant*." MCL 771.3(5) (emphasis added). The fact that the Legislature has specifically spelled out in other statutes the precise limitation that Cunningham seeks, but chose to leave that limitation out of MCL 769.1k(1)(b)(*ii*), proves that his interpretation cannot be correct. See *People v Peltola*, 489 Mich 174, 185; 803 NW2d 140 (2011) ("'[C]ourts cannot assume that the Legislature inadvertently omitted from one statute the language that it placed in another statute, and then, on the basis of that assumption, apply what is not there.'"). Comparing the plain text of MCL 769.1k and MCL 771.3 is fatal to Cunningham's proposed interpretation.

C. The cases on which Cunningham relies interpreted different statutory language, so they are not controlling here.

Finding no support in the text of the statute, Cunningham relies on case law to argue that years of precedent have created common-law rules about what expenses qualify as costs and that the Legislature can alter these rules only "by speaking in 'no uncertain terms.'" (Cunningham Appeal Br, p 14.) But this argument fails at the outset because, as Cunningham elsewhere correctly observes, "the right to recover costs is conferred by statute and did not exist at common law." (*Id.* at 15, citing *Kuberski v Panfil*, 275 Mich 495, 497; 267 NW2d 730 (1936).) Since costs have never been a part of the common law and instead are governed exclusively by legislation, the clear-statement requirement for altering the common law simply does not apply.

This argument also fails when one examines the statutes being interpreted in the cases on which Cunningham relies. In fact, Cunningham's principal cases confirm that statutory language matters and that courts have limited the extent of costs because of specific statutory language, not because of some general common-law principle.

In *People v Teasdale*, 335 Mich 1; 55 NW2d 149 (1952), this Court considered a statute that authorized courts to impose costs as a condition of probation, and the statute specifically included within costs "all such expenses, direct and indirect, as the public has been or may be put to *in connection with the apprehension, examination, trial and probationary oversight of the probationer.*" 335 Mich at 4–5. While this statutory language starts with very broad language—"all such expenses, direct and indirect"—that is similar to the broad "[a]ny cost" language at issue here, it then imposes a limitation that is not found in MCL 769.1k: the costs must be incurred "in connection with the apprehension, examination, trial and probationary oversight of the probationer."

It was this last language that this Court in *Teasdale* recognized imposed a limitation: "*The language of the statute* necessarily implies that the expenses in question must have been *incurred in connection with the particular case* in which the order of probation is made." *Teasdale*, 335 Mich at 6 (emphasis added). Because of this requirement that the costs be incurred in connection with the particular probationer's case, the Court concluded the costs it authorized "excludes expenditures in connection with the maintenance and functioning of governmental agencies that must be borne by the public irrespective of specific violations of the law." *Id.* In other words, *Teasdale* turned not on some general principle that maintenance and overhead cannot be costs, but on the fact that the statute it interpreted did not allow such costs.

The Court of Appeals' decision in *People v Dilworth*, 291 Mich App 399; 804 NW2d 788, 790 (2011), also flows directly from this same sort of language in the probation-costs statute, not from some common-law principle. See 291 Mich App at 400 (reviewing costs imposed "as a term of [Dilworth's] probation"). The *Dilworth* court specifically emphasized that MCL 771.3 "authorizes the assessment of costs '*incurred in prosecuting the defendant* or providing legal assistance to the defendant and supervision of the probationer.'" 291 Mich App at 401 (emphasis in original).

The same pattern occurs in *Saginaw Public Libraries v Judges of 70th District Court*, 118 Mich App 379; 325 NW2d 777, 780 (1982), another case Cunningham relies on. In that case, the plaintiffs alleged, just as Cunningham does here, "that court costs assessed by the district court judges bore no relationship to the actual costs of prosecuting the offenses charged." *Id.* at 383. The Court of Appeals agreed with them because the statute at issue extended costs only to costs incurred in connection with the specific civil infraction: "The statute does not allow the assessment of costs unrelated to the actual costs but only those expenses, 'direct and indirect, to which the plaintiff has been put in connection with the civil infraction.'" *Id.* at 387, quoting MCL 257.907(3). This limiting statutory language "does not authorize assessment of costs to support the day to day operations of the district court." *Id.* at 387–388.

And the same pattern explains *People v Robinson*, 253 Mich 507; 235 NW 236 (1931). The probation statute at issue in *Robinson* authorized (like the probation statute at issue in *Teasdale* and *Dilworth*) as costs "all expenses incurred in connection with the 'apprehension, examination, trial and probationary oversight of the probationer.'" *Id.* at 511. Applying that language, this Court properly upheld the imposition of costs of probation.

The last set of cases Cunningham relies on also involve different language—"costs of prosecution." In *People v Kennedy*, 58 Mich 372; 25 NW 318 (1885), for example, a statute forbidding the sale of intoxicating liquor authorized the court to impose, upon conviction, a fine "costs of prosecution." *Id.* at 373; see also 1881 PA

259, § 6 (attached). Similarly, *People v Wallace*, 245 Mich 310; 222 NW 698 (1929), also involved a statute that authorized as part of the sentence "the 'costs of prosecution.'" *Id.* at 314. This statutory language is also different from MCL 769.1k(1)(b)(*ii*) and thus has different consequences.

"Costs of prosecution" are not interchangeable with "court costs." Instead, the cost of prosecution is a subset of court costs. For example, MCL 771.3 allows a court to require a probationer to pay court costs, and lists costs of prosecution as one of three types of costs: "the costs shall be limited to expenses specifically incurred in [1] prosecuting the defendant or [2] providing legal assistance to the defendant and [3] supervision of the probationer." MCL 771.3(5) (emphasis added); see also MCL 750.159j(2) (listing separately "court costs" and "cost of the investigation and prosecution"); (Cunningham Appeal Br, p 29 (noting that MCL 771.3 authorizes three types of costs)). Cases applying this phrase ("costs of prosecution") that limits costs to those incurred prosecuting a particular defendant are simply following the statutory language before them—language that is not found in "[a]ny cost."

In short, Cunningham is correct that "[f]or more than a century, Michigan cases and statutes have formed a remarkably consistent body of law with respect to the assessment of costs in criminal cases." (Cunningham Appeal Br, p 7.) But what those cases consistently reveal is that statutory language matters: When a statute imposed a limitation that costs must be tied to the defendant's specific case, then that limitation prevents the imposition of overhead or maintenance costs. E.g., *Teasdale*, 335 Mich at 6; *Dilworth*, 291 Mich App at 401; *Saginaw Public Libraries*, 118 Mich App at 387; *Robinson*, 253 Mich at 511; *Kennedy*, 58 Mich at 373; *Wallace*, 245 Mich at 314. But when a statute does not limit costs to the defendant's specific case, that statutory language too must be respected. That is why the Court of Appeals in both *People v Sanders*, 296 Mich App 710; 825 NW2d 87 (2012), and in this case (see App, p 146a–147a), allowed $1,000 in standardized costs MCL 769.1k(1)(b)(*ii*)). In *Sanders*, the Court of Appeals recognized both that "*Dilworth* considered imposing the costs of prosecution and not court costs under the statutory provision at issue here" and that "the cases relied on by *Dilworth* not only did not consider the statutory provision at issue here, but predate that statute by decades." 296 Mich App at 714.

The limiting language found in other statutes is not present in MCL 769.1k(1)(b)(*ii*), and differences in language matter—"[w]hen the Legislature uses different words, the words are generally intended to connote different meanings." *US Fid Ins & Guar Co v Mich Catastrophic Claims Ass'n*, 484 Mich 1, 14; 795 NW2d 101 (2009).

D. The Court of Appeals properly applied *Sanders (After Remand).*

Finally, to answer the Court's fourth question, the Court of Appeals here properly applied *People v Sanders (After Remand)*, 298 Mich App 105; 825 NW2d 376 (2012), by affirming the assessment of $1,000 in court costs. In *Sanders (After Remand)*, the Court of Appeals concluded that there was a reasonable relationship between what it called a conservative estimate of the actual costs of handling a felony case ($2,237.55) and the costs assessed against Sanders ($1,000). The Court correctly recognized that MCL 769.1k does not require that "the costs imposed . . . be particularized to the case before the court." *Id.* at 107. Indeed, the *Sanders* panel explained that it "would be hesitant to uphold an approach that would take into account whether the case was resolved by a plea or by trial." *Id.* at 108. That approach would create "a realistic concern that we would be penalizing a defendant for going to trial rather than pleading guilty," which would "create a financial incentive for a defendant to plead rather than face the possibility of even greater court costs being imposed for exercising his or her constitutional right to a trial." *Id.*

In the end, Cunningham asserts that a flat fee approach, like the one taken in *Sanders*, is not "appropriate." (Cunningham Appeal Br, p 31.) But what costs to impose as part of a sentence is a policy question left to the Legislature, not to the courts. The Legislature is free to limit costs to those imposed in a particular case or to impose a flat fee, so long as it does not violate some constitutional limitation (such as the prohibition on excess fines or punitive damages). Because allowing a standardized cost assessment in sentencing does not come close to violating any constitutional limitation—neither Cunningham nor the dissent below even advance an argument on this front—this Court must respect the Legislature's decision to allow such costs to be imposed.

CONCLUSION AND RELIEF REQUESTED

Unlike other statutes on the books, MCL 769.1k does not limit costs to expenses specifically incurred in prosecuting the defendant. Accordingly, the circuit court acted within the authority expressly granted to it when it imposed $1,000 in court costs.

Michigan therefore respectfully urges this Court to affirm the Court of Appeals decision and uphold the imposition of costs.

Respectfully submitted,

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Dated: February 19, 2014

Attachment 1

1881 P.A. 259, § 6

[No. 258.]

AN ACT to amend sections one and two of an act entitled "An act to promote immigration in Michigan," being compiler's sections two hundred and six and two hundred and seven of the compiled laws of eighteen hundred and seventy-one.

Sections amended.

SECTION 1. *The People of the State of Michigan enact,* That sections one and two of an act entitled "An act to promote immigration in the State of Michigan," being compiler's sections two hundred and six and two hundred and seven of the compiled laws of eighteen hundred and seventy-one, be and the same are hereby amended so as to read as follows:

Appointment of commissioner of emigration.

(206.) SEC. 1. The governor is hereby authorized and empowered to appoint a citizen of the State, at a salary not to exceed two thousand dollars per annum, to act as a commissioner of emigration for the purpose of encouraging immigration to Michigan from the other States and from the countries of Europe, said commissioner to act under the advice and direction of the governor, to carry out the object of this act.

Expenses of commissioner, etc., how paid.

(207.) SEC. 2. The governor is authorized to draw upon the general fund for such an amount, not exceeding five thousand dollars in any one year, as he may consider necessary to defray the expense of said commissioner and his assistant, exclusive of salaries:

Proviso.

Provided, however, That in addition to the above provision for expenses, all printing, binding, or map work that can be done under any contract the State has for such work shall be done thereunder, and the expense thereof be audited and paid for as other State printing is audited and paid. The governor is also authorized hereby to appoint an assistant to said commissioner, at an annual salary not to exceed fifteen hundred dollars and actual expenses, who shall be subject to the direction of the said commissioner, with the approval of the governor, as to the place where and the kind of labor to be performed.

Appointment of assistant, etc.

Ordered to take immediate effect.

Approved June 10, 1881.

[No. 259.]

AN ACT to regulate the sale of spirituous, malt, brewed, fermented, and vinous liquors, to prohibit the sale of such liquors to minors, to intoxicated persons, and to persons in the habit of getting intoxicated, to provide a remedy against persons selling liquor to husbands or children in certain cases, and to repeal all acts or parts of acts inconsistent herewith.

Selling liquor without bond prohibited.

SECTION 1. *The People of the State of Michigan enact,* That it shall not be lawful for any person except druggists to sell, furnish to, or give any spirituous, malt, brewed, fermented, or vinous liquors, or any beverage, liquor or liquids, containing any spirituous, malt, brewed, fermented, or vinous liquors, without first having executed and delivered to the county treasurer of the county in which such business is proposed to be prosecuted or carried on, the bond required by section nine of this act.

Selling liquor to minors or intoxicated persons, etc., prohibited.

SEC. 2. It shall not be lawful for any person (except druggists, who shall be governed by section thirteen of this act) to sell, furnish to, or give any spirituous, malt, brewed, fermented, or vinous liquors, or any beverage, liquor, or liquids containing any spirituous, malt, brewed, fermented, or vinous liquor to any minor, to any intoxicated person, nor to any person in the habit of getting intoxicated, nor to any person whose husband, wife, parent, child, guardian, or employer shall forbid such selling, furnishing, or giving. The fact of selling, giving, or furnishing any of said liquors to any minor, or to any intoxicated person, or to any person in the habit of getting intoxicated, shall be a *prima facie* presumption of an intent, on the part of the person so selling, giving, or furnishing such liquor, to violate the law.

Liquor not to be sold in same room with billiard tables, etc.

SEC. 3. It shall not be lawful for any person to keep any billiard, pool, or card table, or to allow the same to be kept, in any room where any of the liquors mentioned in sections one and two of this act are or may be sold or kept for sale, nor in any adjoining room in the same building; and it shall not be lawful for any person to engage in any game of billiards, pool, cards, dice, or any other game of chance in any room where any of the liquors aforesaid are or may be sold or kept for sale, nor in any adjoining room.

Liquor selling in places of amusement prohibited.

SEC. 4. It shall not be lawful for any person to sell, offer to sell, furnish, give, or have in his possession any of the liquors mentioned in sections one and two of this act, in any concert hall, variety show, theater, or other place of amusement, nor in any rooms in any building opening into where any such concert hall, variety show, theater, or other place of amusement may be.

When saloons, etc., to be closed.

SEC. 5. All saloons, restaurants, bars, in taverns or elsewhere, and all other places where any of the liquors mentioned in sections one and two of this act are or may be sold, or kept for sale, either at wholesale or retail, shall be closed on the first day of the week, commonly called Sunday, on all election days, on all legal holidays, and until seven o'clock of the following morning, and on each week day night from and after the hour of nine o'clock until seven o'clock of the morning of the succeeding day. The word "closed," in this section shall be construed to apply to the back door as well as to the front door. And in prosecutions under this section it shall not be necessary to prove that any liquor was sold: *Provided*, That in all cities and incorporated villages the common council may, by ordinance, allow the saloons and other places where said liquors shall be sold to remain open not later than ten o'clock on any such week day night.

Penalty for violation of act

SEC. 6. Any person who shall violate any of the provisions of the preceding sections shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars and costs of prosecution, and imprisonment in the county jail not less than ten days nor more than ninety days, in the discretion of the court. And in case such fine and costs shall not have been paid at the time such imprisonment expires, he, the person serving out such sentence, shall be further detained in jail until such fine and costs shall have been fully paid: *Provided,* That in no case shall the whole term of imprisonment exceed ninety days. Each violation of any of the provisions of this act shall be construed to constitute a separate and complete offense, and for each violation on the same day, or on different days, the person or persons offending shall be liable to the forfeitures and penalties herein provided.

Penalty for obtaining liquor under false pretense, or getting drunk.

SEC. 7. Any person who by false pretense shall obtain any spirituous, malt, brewed, fermented or vinous liquors, or who shall be drunk or intoxicated in any hotel, tavern, inn, or place of public business, or in any assemblage of people collected together in any place for any purpose, or in any street, alley, lane, highway, railway or street car, or in any other public place, shall, on conviction thereof, be punished by a fine of ten dollars, and the costs of prosecution, or imprisonment in the common jail of the county not less than ten days, and not exceeding twenty days, or by both such fine and imprisonment in the discretion of the court.

Trial of person intoxicated.

SEC. 8. Whenever complaint shall be made by any person on oath before any justice of the peace in any county, or any municipal or police court, of any village or city, that any person is found intoxicated or has been intoxicated in any hotel, store, public building, street, alley, highway, or other place, it shall be the duty of such justice, municipal or police court to issue a subpœna to compel the attendance of such person so found intoxicated or who has been intoxicated, as aforesaid, to appear before the justice or court issuing the same, to testify in regard to the person or persons of whom, and the time when, and the place where, and the manner in which the liquor producing his intoxication was procured; and if such person, when subpœnaed, shall neglect or refuse to obey such writ, the said justice or court who issued the same shall have the same power and authority to compel the attendance of the person so subpœnaed and to enforce obedience to such writ as in other civil cases. Whenever the person so subpœnaed shall appear before the justice, municipal or police court, to testify as aforesaid, he shall be required to answer on oath the following questions, to wit: When, where, and of whom did you procure, obtain, or receive the liquor or beverage, the drinking or using of which has been the cause of the intoxication mentioned in the complaint? And if such person shall refuse to answer fully and fairly such questions on oath, he shall be punished and dealt with in the same manner as for a contempt of court as in other cases.

Record of trial.

If it shall appear from the testimony of such person that any of the offenses specified in this act have been committed in this State, such justice or court, before whom such testimony is given, shall make a true record of the same and cause it to be subscribed by such witness; and the said testimony or answers, when subscribed as aforesaid, shall be deemed and taken to be sufficient complaint to authorize the issuing of a warrant to arrest any person or persons who may appear from said complaint to be guilty of having violated any of the provisions of this act.