

MICHIGAN  
LAW REVISION COMMISSION

EIGHTH ANNUAL REPORT  
1973

## MICHIGAN LAW REVISION COMMISSION

### Term Members:

Jason L. Honigman, Chairman  
Tom Downs, Vice Chairman  
David Lebenbom  
Harold S. Sawyer

### Ex-Officio Members:

#### Senators:

Robert L. Richardson  
Basil W. Brown

#### Representatives:

J. Robert Traxler  
Frederick L. Stackable

Director, Legislative Service Bureau  
A. E. Reyhons, Secretary  
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Lansing, Michigan 48902

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MICHIGAN LAW REVISION COMMISSION  
Eighth Annual Report to the Legislature

To the Members of the Michigan Legislature:

The Law Revision Commission hereby presents its eighth annual report pursuant to Section 14 (e) of Act No. 412 of the Public Acts of 1965.

The Commission, created by Section 12 of that Act, consists of the chairmen and ranking minority members of the Committees on Judiciary of the Senate and House of Representatives, the Director of the Legislative Service Bureau, being the five ex-officio members, and four members appointed by the Legislative Council. Terms of appointed Commissioners are staggered. The Legislative Council designates the Chairman of the Commission.

The members of the Commission during 1973 were Senator Robert L. Richardson of Saginaw, Senator Basil W. Brown of Highland Park, Representative J. Robert Traxler of Bay City, Representative Fred L. Stackable of Lansing, A. E. Reyhons, Director of the Legislative Service Bureau, as ex-officio members; Tom Downs, Jason L. Honigman, David Lebenbom, and Harold S. Sawyer, as appointed members. The Legislative Council appointed Jason L. Honigman Chairman and Tom Downs Vice Chairman of the Commission. Professor Stanley Siegel of the University of Michigan Law School served as Executive Secretary from January 1, 1973 until September 30, 1973. Professor Siegel left to teach at Stanford Law School. Professor Jerold Israel of the University of Michigan Law School has replaced him as Executive Secretary effective October 1, 1973.

The Commission is charged by statute with the following duties:

1. To examine the common law and statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reform.
2. To receive and consider proposed changes in law recommended by the American Law Institute, the National Conference of Commissioners on Uniform State Laws, any bar association or other learned bodies.
3. To receive and consider suggestions from justices, judges, legislators and other public officials, lawyers and the public generally as to defects and anachronisms in the law.

4. To recommend, from time to time, such changes in the law as it deems necessary in order to modify or eliminate antiquated and inequitable rules of law, and to bring the law of this state, civil and criminal, into harmony with modern conditions.

The problems to which the Commission directs its studies are largely identified by a study of statute and case law of Michigan and legal literature by the Commissioners and Executive Secretary. Other subjects are brought to the attention of the Commission by various organizations and individuals, including members of the Legislature.

The Commission feels that since its creation, it has made significant contributions to the Michigan legislative process in assisting legislators by presenting creative acts such as the Administrative Procedures Act, the Business Corporation Act and a No-Fault Divorce law that have placed Michigan in the forefront of leadership in these fields of law. In addition, many less significant laws have been recommended by the Commission and adopted by the Legislature.

However, other worthwhile recommendations of the Commission have lain dormant in committees while legislation more actively sponsored received prior consideration.

The Law Revision Commission, as an agency of the Legislative Council, wishes to strengthen its performance to meet the needs of the Legislature. Towards that end, the Commission recommends that the Legislative Council develop a procedure whereby proposals of the Law Revision Commission will be processed early in each session and a report be furnished to the Council by May 1 and October 1 of each year by each committee having such bills before it. In such report, the committee should inform the Council as to the status of such bills and the reasons for delay or rejection thereof. In this way, the Legislative Council will be able to adequately judge the effectiveness of the functioning of this Commission.

The Commission's primary action during the past year was in attending and following up committee hearings and conferences with legislators relating to some 23 bills which were before the Legislature upon recommendation of the Commission. In the face of the many Commission recommended bills which were still before the Legislature in the past year, it was felt inappropriate to add to that lengthy list any significant number of new recommendations. Instead, the Commission addressed itself primarily to the problems presented by the pending bills before the Legislature. The Commission was, however, called upon to make recommendations for technical amendments brought about

by the adoption of the new Business Corporation Act in the prior year. After enactment of the Business Corporation Act, it appeared that in a few relatively minor respects amendments were required to existing laws in order to resolve problems raised by the new Act. For this purpose, Professor Stanley Siegel, Executive Secretary, prepared under the auspices of the Commission a series of amendments which are herewith presented. These recommendations include the following:

(1) Recommendations relating to Technical Amendments to Business Corporation Act. H.B. 4610

(2) Recommendations relating to Technical Amendments to Michigan General Corporation Act. S.B. 759

(3) Recommendations relating to Technical Amendments Relating to Foreign Corporations. S.B. 746

(4) Recommendations relating to Amendments to Telephone and Messenger Service Company Act.


The first three of these recommendations were presented to the Legislature in the course of the current year and recommendation (1) above has already been enacted into law as Act No. 98 of Public Acts of 1973.

The Commission has also considered the draft of the National Conference of Commissioners on Uniform State Laws of the Uniform Disposition of Community Property Rights at Death Act and recommends its adoption in this state as herewith presented.

The Commission also recommends amendment to the Hit-Run Statute which is herewith presented.

In addition the Commission participated, through its Chairman, in the recommendations for creation of a Tax Tribunal which has been enacted by the Legislature as Act No. 186 of Public Acts of 1973. Through the procedures of the new Tax Tribunal which will be available to taxpayers for relief against unfair property assessments, the basic recommendations made in our 1972 Report in that area will no longer be required.

Of the bills which remain before the Legislature but have not yet been processed, the Commission recommends favorable consideration of the following of its prior recommendations:

 (1) Due Process in Seizure of a Debtor's Property - S.B. 313, H.B. 4470. These bills are respectively before the Senate and House Committee on Judiciary. See Recommendations of 1972 Annual Report, p. 7.

*Passed*

(2) Model Choice of Forum Act - S.B. 426, H.B. 4647.

The bills was passed in the House and is presently in the Senate Committee on Judiciary. See Recommendations of 1972 Annual Report, p. 60.

*open*

(3) Elimination of Appointment of Appraisers in Probate Court - S.B. 429, H.B. 4648, before Senate and House Committee on Judiciary. See Recommendations of 1972 Annual Report, p. 65.

*open*

(4) Amendment of "Dead Man's" Statute - S.B. 428, H.B. 4649. The bill was passed by the House and is presently before the Senate Committee on Judiciary. See Recommendations of 1972 Annual Report, p. 70.

*open*

(5) Technical Amendments to the Revised Judicature Act - H.B. 4645, in House Committee on Judiciary. See Recommendations of 1972 Annual Report, p. 7.

*open*

(6) Waiver of Medical Privilege - S.B. 326, H.B. 4433. In Senate and House Committees on Judiciary. See Recommendations of 1971 Annual Report, p. 59.

*passed*

(7) Venue in Civil Actions Against Non-Resident Corporations - S.B. 308, H.B. 4650. The Senate Bill was passed by the Senate and is pending in the House Committee on Judiciary. See Recommendations of 1971 Annual Report, p. 63.

*open*

(8) District Court Venue in Civil Actions - H.B. 4651 pending in House Committee on Judiciary. See Recommendations of 1970 Annual Report, p. 42.

*open*

(9) Condemnation Procedures Act - S.B. 317, H.B. 4646. After previous passage by Senate is pending in House Committee on Judiciary in form of a substitute bill with substantial revisions. The Commission cooperated with various objective groups in drafting the revised bill. See Recommendations of 1968 Annual Report, p. 11.

*open*

(10) Attachment Fees Act - S.B. 351, H.B. 4653. See Recommendations of 1968 Annual Report, p. 23.

*open*

(11) Contribution Among Joint Tortfeasors Act - S.B. 395, H.B. 4510. Passed by Senate, pending in House Committee on Judiciary. See Recommendations of 1967 Annual Report, p. 57.

*open*

(12) Qualifications of Fiduciaries Act - S.B. 427 in Senate Committee on Judiciary. Passed by House in previous session. See Recommendations of 1966 Annual Report, p. 32.

*open*

(13) Uniform Child Custody Jurisdiction Act - S.B. 318, H.B. 4592; predecessor H.B. 4294 passed by House in 1971. Present bill pending in House and Senate Committee on Judiciary. See Recommendations of 1969 Annual Report, p. 22.

*open*

(14) Insurance Policy in Lieu of Bond Act - S.B. 493, H.B. 4634. Passed in House, pending before Senate Commerce Committee. See Recommendations of 1969 Annual Report, p. 59.

*passed*

(15) Personal Jurisdiction in Domestic Relations Cases. S.B. 249, H.B. 4401, passed in both Senate and House, respectively. See Recommendations of 1972 Annual Report, p. 53.

Topics on the current study agenda of the Commission are:

- (1) Court Costs
- (2) Joint Estates in Real and Personal Property
- (3) Amendments to Uniform Commercial Code
- (4) Battered Child Legislation
- (5) Commercial Real Estate Leasing
- (6) Non-Profit Corporation Act
- (7) Mechanics Lien Laws
- (8) Administrative Hearing Examiners
- (9) Personal Property Leasing
- (10) Special Property Assessments
- (11) Disposition of Property by Law Enforcement Officers
- (12) Deferred Payment Judgments in Serious Injury Cases.

The Commission continues to operate with its sole staff member, the part time Executive Secretary whose offices are in the University of Michigan Law School, Ann Arbor, Michigan 48104. The use of consultants has made it possible to expedite a large volume of work and at the same time give the Commission the advantage of expert assistance at relatively low costs. Faculty members of the four law schools in Michigan continue to cooperate with the Commission in accepting specific research assignments.

The Legislative Service Bureau has generously assisted the Commission in the development of its legislative program. The Director of the Legislative Service Bureau, who acts as Secretary of the Commission, continues to handle the fiscal operations of the Commission under procedures established by the Legislative Council.

The Commission submits progress reports to the Legislative Council and members of the Commission have met with the Council and other legislative committees to discuss recommendations and subjects under study by the Commission.



The following Acts have been adopted to date pursuant to recommendations of the Commission and in some case amendments thereto by the Legislature:

#### 1967 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Powers of Appointment	1966, p. 11	224
Interstate and International Judicial Procedures	1966, p. 25	178
Dead Man's Statute	1966, p. 29	263
Corporation Use of Assumed Names	1966, p. 36	138
Stockholder Action Without Meeting	1966, p. 41	201
Original Jurisdiction of Court of Appeals	1966, p. 43	65

#### 1968 Legislative Session

Jury Selection	1967, p. 23	326
Emancipation of Minors	1967, p. 50	293
Guardian ad Litem	1967, p. 53	292
Possibilities of Reverter and Rights of Entry	1966, p. 22	13
Corporations as Partners	1966, p. 34	288
Stockholder Approval of Mortgaging Assets	1966, p. 39	287

#### 1969 Legislative Session

Administrative Procedures Act	1967, p. 11	306
Access to Adjoining Property	1968, p. 21	55
Antenuptial Agreements	1968, p. 27	139
Notice of Tax Assessment	1968, p. 30	115
Anatomical Gifts	1968, p. 39	189
Recognition of Acknowledgments	1968, p. 61	57
Dead Man's Statute Amendment	1966, p. 29	63
Venue Act	1968, p. 19	333

#### 1970 Legislative Session

Appeals from Probate Court Act	1968, p. 32	143
Land Contract Foreclosures	1967, p. 55	86
Artist-Art Dealer Relationships Act	1969, p. 44	90
Warranties in Sales of Art Act	1969, p. 47	121
Minor Students Capacity to Borrow Act	1969, p. 51	107
Circuit Court Commissioner Powers of Magistrates Act	1969, p. 62	238

#### 1971 Legislative Session

Revision of Grounds for Divorce	1970, p. 7	75
Civil Verdicts by 5 of 6 Jurors in Retained Municipal Courts	1970, p. 40	158
Amendment of Uniform Anatomical Gift Act	1970, p. 45	186

1972 Legislative Session

Business Corporation Act	1970, Supp.	284
Summary Proceedings for Possession of Premises	1970, p. 16	120
Interest on Judgments Act	1969, p. 64	135
Constitutional Amendment re Juries of 12	1969, p. 65	HJR 'M'

1973 Legislative Session

Technical Amendments to Business Corporation Act	1973	98
Execution and Levy in Proceedings Supplementary to Judgment	1970, p. 51	96

The Commission continues to welcome suggestions for improvement of its program and proposals.

Respectfully submitted,

Jason L. Honigman, Chairman  
Tom Downs, Vice Chairman  
David Lebenbom  
Harold S. Sawyer

Ex-Officio Members  
Sen. Robert Richardson  
Sen. Basil W. Brown  
Rep. J. Robert Traxler  
Rep. Frederick L. Stackable  
A. E. Reyhons, Secretary

Dated: December 18, 1973

RECOMMENDATIONS RELATING TO TECHNICAL  
AMENDMENTS TO BUSINESS CORPORATION ACT

After passage of the Business Corporation Act, being Act No. 284 of the Public Acts of 1972, a few technical deficiencies have surfaced which have warranted our recommendations for amendments to this Act. Specifically, explanation of the proposed amendments follows:

Sections 106 and 109 are expanded to cover members and trustees of nonprofit membership corporations.

Section 131 is amended to delete the unintended requirement that the approval is generally required for the issuance of convertible shares.

Section 332 is amended to require a notice concerning rights of classes only where more than one class is authorized.

Section 361 is amended to allow redemption provisions and sinking funds for the benefit, in whole or in part, of any class or series of a class.

Section 371 is amended to correct a grammatical error.

Section 463 is amended to provide that a control agreement may provide for the complete elimination of the board of directors. This eliminates the need for electing a "rump" board when all powers of the board have been delegated.

Section 815 is amended to provide the same change as sec. 642 with respect to renewal of corporate existence: term to be stated only if other than perpetual.

Section 841 is amended to provide that notice to creditors is optional, as provided in the New Jersey statute from which this sectional was derived. Giving of notice is the only method of assuring certainty of cutting off claims under Sec. 842. Where, however, a corporation has no creditors -- or where all creditors are known -- there is no need for this notice provision to be mandatory. The section is also amended to require simply notice in "a newspaper in the county in which the registered office of the corporation is located," consistent with prior Michigan law.

Section 851 is amended to clarify that application for supervision by the court must precede complete distribution of the corporation's assets.

Section 911 is amended to require filing of a report by all corporations that may be subject to fees under the act.

Section 921 is amended to preclude imposition of penalties either when an extension has been granted or when a dispute as to amount of payment -- as opposed to time of filing or payment -- exists.

Section 925 is amended to avoid the implication that contracts and other rights accruing during the period of avoidance of the corporate charter are void or unenforceable subsequent to reinstatement.

Section 1012 is amended to avoid the implication that all the activities listed may be carried on without their constituting the transacting of business. In addition, the section is clarified to avoid any implication that regulation may not take place under other state statutes.

Section 1014 is a rewriting of old MCLA §450.97, which is repealed by the technical amendments bill to the Michigan General Corporation Act. The section indicates applicability of the act to foreign nonprofit corporations and other forms of business enterprise.

Section 1015 is amended to delete information requirements no longer required by the Administrator.

Section 1021 is amended to add a requirement that a foreign corporation file a copy of a certificate of merger or similar corporate action after it has been consummated.

Section 1023 is amended to allow the Administrator to extend the filing time of a supplemental statement.

Section 1041 is amended to correct a technical error and to add the requirement for filing introduced by the amendment to section 1021.

Section 1060 is amended to add additional fees for filings.

Section 1062 is amended to change terminology, and to avoid the possible construction that the "privilege of franchise" tax in conjunction with a corporate income tax constitutes double taxation. The term "admission fee" is deemed more neutral.

Proposed Bill Follows:

TECHNICAL AMENDMENTS BILL

BUSINESS CORPORATION ACT

AN ACT to amend certain sections of Act No. 284 of the Public Acts of 1972, being the "Business Corporation Act".

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. Sections 106, 109, 131, 303, 332, 361, 371, 463, 815, 841, 851, 911, 921, 925, 1012, 1014, 1015, 1021, 1023, 1041, 1060 and 1062 of Act No. 284 of the Public Acts of 1972, being Sections 450.1106, 450.1109, 450.1131, 450.1303, 450.1332, 450.1361, 450.1371, 450.1463, 450.1815, 450.1841, 450.1851, 450.1911, 450.1921, 450.1925, 450.2012, 450.2014, 450.2015, 450.2021, 450.2023, 450.2041, 450.2060 and 450.2062 of the Compiled Laws of 1948, as amended, are amended to read as follows:

Sec. 106. (1) "Capital surplus" means the entire surplus of a corporation other than its earned surplus.

(2) "Corporation" or "domestic corporation" means a corporation for profit organized under this act, or existing on its effective date and theretofore formed under any other statute of this state for a purpose for which a corporation may be organized under this act.

(3) "Director" means a member of the board of a corporation, AND SHALL BE CONSTRUED TO BE SYNONYMOUS WITH "TRUSTEE" OF A NONPROFIT CORPORATION.

Sec. 109. (1) "SHAREHOLDER" SHALL BE CONSTRUED TO BE SYNONYMOUS WITH "MEMBER" IN NONSTOCK CORPORATIONS.

(2) "Shares" means the units into which proprietary interests in a corporation are divided, AND SHALL BE CONSTRUED TO BE SYNONYMOUS WITH MEMBERSHIP IN NONSTOCK CORPORATIONS.

(3) "Stated capital" means the sum of (a) the par value of all shares with par value that have been issued, (b) the amount of consideration received for all shares without par value that have been issued, except such part of the consideration therefor as has been allocated to surplus in a manner permitted by law, and (c) such amounts not included in classes (a) and (b) as have been transferred to stated capital, whether upon the issuance of shares or otherwise, less reductions from such sum as have been effected in a manner permitted by law.

(4) "Surplus" means the excess of the net assets of a corporation over its stated capital.

Sec. 131. (1) A document required or permitted to be filed under this act shall be filed by delivering the document to the administrator together with the fees and accompanying documents required by law. If the document substantially conforms to the requirements of this act, the administrator shall endorse upon it the word "filed" with his official title and the dates of receipt and of filing thereof, and shall file and index it in his office. If so requested at the time of the delivery of the document to his office, the administrator shall include the hour of filing in his endorsement thereon. The administrator shall prepare and return a true copy of the document OTHER THAN AN ANNUAL REPORT to the person who submitted it for filing showing the filing date thereof. The records and files of the administrator relating to corporations shall be open to reasonable inspection by the public.

(2) The document is effective at the time it is endorsed unless a subsequent effective time is set forth in the document which shall not be later than 90 days after the date of delivery.



Sec. 303. (1) When so provided in the articles of incorporation, and subject to restrictions in Section 304, a corporation may issue shares convertible, at the option of the holder or the corporation or upon the happening of a specified event, into shares of any class or into shares of any series of any class. Authorized shares, issued or unissued, may be made so convertible within such period and upon such terms and conditions as authorized in the articles.

(2) Unless otherwise provided in the articles of incorporation, and subject to the restrictions of section 304, a corporation may issue its bonds convertible at the option of the holder into other bonds or into shares of the corporation within such period and upon such terms and conditions as are fixed by the board.

(3) IF THERE IS shareholder approval for the issue of bonds or shares convertible into shares of the corporation, THE APPROVAL may provide that the board is authorized by amendment of the articles to increase the authorized shares of any class or series to such number as will be sufficient, when added to the previously authorized but unissued shares of such class or series, to satisfy the conversion privileges of any such bonds or shares convertible into shares of such class or series.

Sec. 332. (1) A certificate representing shares shall state upon its face:

(a) That the corporation is formed under the laws of this state.

(b) The name of the person to whom issued.

(c) The number and class of shares, and the designation of the series, if any, which the certificate represents.

(d) The par value of each share represented by the certificate, or a statement that the shares are without par value.

(2) A certificate representing shares ISSUED BY A CORPORATION WHICH IS AUTHORIZED TO ISSUE SHARES OF MORE THAN ONE CLASS shall set forth on its face or back, or state that the corporation will furnish to a shareholder upon request and without charge, a full statement of the designation, relative rights, preferences and limitations of the shares of each class authorized to be issued, and if the corporation is authorized to issue any class of shares in series, the designation, relative rights, preferences and limitations of each series so far as the same have been prescribed and the authority of the board to designate and prescribe the relative rights, preferences and limitations of other series.

Sec. 361. A corporation may provide in its articles of incorporation for 1 or more classes or series of shares which are redeemable, IN WHOLE OR IN PART, at the option of the corporation in cash, its bonds or other property, at such prices, within such periods, and under such conditions as are stated in the articles. If so provided in its articles, a corporation may create a sinking fund for redemption, IN WHOLE OR IN PART, of any class OR SERIES of redeemable shares.

Sec. 371. (1) Shares that have been issued and have been purchased, redeemed or otherwise reacquired by a corporation shall be canceled if they are reacquired out of stated capital, or if they are converted shares, or if the articles of incorporation require that the shares be canceled upon reacquisition.

(2) Shares reacquired by a corporation and not required to be canceled may be retained as treasury shares or canceled by the board at the time of reacquisition or at any time thereafter.

(3) Shares canceled under this section are restored to the status of authorized but unissued shares. However, if the articles of incorporation prohibit reissue of any shares required or permitted to be canceled under ~~these sections~~ THIS SECTION, the board by resolution shall adopt and file an amendment of the articles reducing the number of authorized shares accordingly.

Sec. 463 (1) A provision in the articles of incorporation may PROVIDE THAT THERE SHALL BE NO BOARD OF DIRECTORS, OR MAY restrict the board in its management of the business of the corporation, or MAY delegate to 1 or more shareholders or other persons, any part of such management otherwise within the authority of the board, if all the incorporators have authorized the provision in the articles or the holders of record of all outstanding shares have authorized the provision in an amendment to the articles.

(2) A provision authorized by subsection (1) becomes invalid in either of the following cases:

(a) Subsequent to the adoption of the provision, shares are transferred or issued to a person who takes delivery of the share certificate without notice thereof, unless such person consents in writing to the provision.

(b) Shares of the corporation are listed on a national securities exchange or regularly quoted in an over-the-counter market by 1 or more members of a national or affiliated securities association.

(3) The effect of a provision authorized by subsection (1) is to relieve the directors and impose upon the shareholders the liability for managerial acts and omissions that is imposed on directors by law to the extent that, and so long as, the discretion or powers of the directors in their management of corporate affairs is controlled by such a provision.

(4) If the articles contain a provision authorized by subsection (1), the existence of the provision shall be noted conspicuously on the face of every certificate for shares issued by the corporation, and a holder of such certificate is conclusively deemed to have taken delivery with notice of the provision.

Sec. 815. A corporation whose term has expired may renew its corporate existence, if a proceeding pursuant to section 851 is not pending, in the following manner:

(a) The board shall adopt a resolution that the corporate existence be renewed. The proposed renewal shall be submitted for approval at a meeting of shareholders. Notice shall be given to each shareholder of record entitled to vote at the meeting within the time and in the manner provided in this act for the giving of notice of meetings of shareholders, and shall state that a purpose of the meeting is to vote on the renewal of corporate existence.

(b) At the meeting a vote of shareholders entitled to vote thereat shall be taken on the proposed renewal which shall be adopted upon receiving the affirmative vote of holders of a majority of the outstanding shares of the corporation and if a class or series is entitled to vote thereon as a class, the affirmative vote of a majority of the outstanding shares of each such class or series.

(c) If renewal of the corporate existence is approved a certificate of renewal shall be executed and filed on behalf of the corporation, setting forth:

(i) The name of the corporation.

(ii) The date and place of the meeting of shareholders approving the renewal of existence.

(iii) A statement that renewal was approved by the requisite vote of directors and shareholders.

(iv) THE DURATION OF THE CORPORATION IF OTHER THAN PERPETUAL.

Sec. 841. (1) After a corporation has been dissolved, the corporation, or a receiver appointed for it pursuant to this chapter, ~~shall~~ MAY give notice requiring all creditors to present their claims in writing. The notice shall be published once in each of 3 consecutive weeks in a newspaper ~~of-general-circulation~~ in the county in which the registered office of the corporation is located. The notice shall state that all persons who are creditors of the corporation shall file their claims in writing with the corporation or the receiver at a place and on or before a date named in the notice, which date shall be not less than 6 months after the date of the first publication.

(2) As used in this section and sections 842 and 843, "creditor" means a person to whom the corporation is indebted, and any other person who has a claim or right against the corporation, liquidated or unliquidated, matured or unmatured, direct or indirect, absolute or contingent, secured or unsecured.

Sec. 851. (1) After a corporation has been dissolved in any manner, the corporation, a creditor, or a shareholder may apply at any time PRIOR TO COMPLETE DISTRIBUTION OF THE CORPORATION'S ASSETS to the circuit court of the county in which the registered office of the corporation is located for a judgment that the affairs of the corporation and the liquidation of its assets continue under supervision of the court. The court shall make such orders and judgments as may be required, including, but not limited to, continuance of the liquidation of the corporation's assets by its officers and directors under supervision of the court, or the appointment of a receiver of the corporation to be vested with powers as the court designates to liquidate the affairs of the corporation.

(2) For good cause shown, and so long as a corporation has not made complete distribution of its assets, the court, in an action pending under this section or otherwise, may permit a creditor who has not filed his claim within the time limited by section 841, or who has not commenced an action on a rejected claim within the time limited by section 842, to file such claim or to commence such action within such time as the court directs.



Sec. 911. Each domestic or foreign corporation subject to this act AND EACH FOREIGN CORPORATION TRANSACTING BUSINESS, EMPLOYING CAPITAL OR PERSONS, OWNING OR MANAGING PROPERTY OR MAINTAINING AN OFFICE IN THIS STATE shall file a report with the administrator on or before May 15 of each year. The report, on a form approved by the administrator, shall contain the following:

- (a) Name of the corporation.
- (b) Address of its registered office in this state.
- (c) State and date of incorporation, term of corporate existence, if other than perpetual; and, if a foreign corporation, the date when authorized to transact business in this state.
- (d) Names and residence addresses of its president, secretary, treasurer, directors and resident agent.
- (e) General nature and kind of business in which the corporation is engaged.
- (f) Amount of authorized capital stock and number and par value of shares of each class authorized, and the number of shares of stock without par value authorized.
- (g) Amount of capital stock subscribed.
- (h) Amount of capital stock paid in.
- (i) Nature and book value of the property owned and used by the corporation listed separately as to property within and without this state.
- (j) Complete and detailed statement of the assets and liabilities of the corporation as shown by the books of the corporation, at the close of business on December 31 or upon the date of the close of its latest fiscal year, which, in the case of a domestic corporation, shall be the

same balance sheet as furnished to shareholders as required by section 901. Each corporation organized on or after January 1 and before May 15 of any year, and each foreign corporation authorized to transact business after January 1 and before May 15 of any year, except a domestic or foreign corporation which continues an existing business through a merger, consolidation, or an equivalent corporate combination, reorganization, or purchase of assets, shall file a report showing the condition of its business on the date of its incorporation or admittance, with a filing fee of \$5.00 and a privilege fee of \$10.00. The report of a continuing corporation shall contain a complete and detailed statement of its assets and outstanding liabilities as shown on the books of the corporation on the effective date of merger, consolidation, combination, reorganization, or purchase if that date is after the preceding December 31 or the close of its latest fiscal year.

(k) Other information as the administrator reasonably requires for the purpose of computing the annual privilege fee provided by law, or for other purposes under this act.

Sec. 921. (1) If a domestic or foreign corporation neglects or refuses to file a report or pay any fee required by law within the time specified, the corporation, in addition to its liability for any such fees, is subject to a penalty of 10% of the amount of the fees and a penalty of 1% for each month or part of a month that the corporation is delinquent.

(2) THE PENALTIES PRESCRIBED IN THIS SECTION SHALL NOT APPLY:

(A) TO A CORPORATION THAT MAKES TIMELY FILING OF ITS ANNUAL REPORT ACCOMPANIED BY PAYMENT OF THE FEE CLAIMED THEREIN TO BE PAYABLE; OR

(B) DURING ANY EXTENSION GRANTED PURSUANT TO SECTION 923, BUT THE CORPORATION SHALL BE LIABLE FOR STATUTORY INTEREST ON ANY UNPAID AMOUNTS FROM THE STATUTORY DUE DATE TO THE DATE OF PAYMENT THEREOF.

Sec. 925. (1) A domestic corporation which has been dissolved pursuant to subsection (1) of section 922, or a foreign corporation whose certificate of authority has been revoked pursuant to subsection (2) of section 922 or section 1042, may renew its corporate existence or its certificate of authority by filing the reports and paying the fees for the years for which they were not filed and paid, and for every subsequent intervening year, together with the penalties provided by section 921. Upon filing the reports and payment of the fees and penalties, the corporate existence or the certificate of authority is renewed. If during the intervening period the corporate name or a confusingly similar name has been assigned to another corporation, the administrator may require that the corporation adopt or use within this state a different name.

(2) UPON COMPLIANCE WITH THE PROVISIONS OF THIS SECTION, THE RIGHTS OF THE CORPORATION SHALL BE THE SAME AS THOUGH NO DISSOLUTION OR REVOCATION HAD TAKEN PLACE, AND ALL CONTRACTS ENTERED INTO AND OTHER RIGHTS ACQUIRED DURING THE INTERVAL SHALL BE VALID AND ENFORCEABLE.

Sec. 1012. (1) Without excluding other activities which may not constitute transacting business in this state, a foreign corporation is not considered to be transacting business in this state, for the purposes of this act, SOLELY because it is carrying on in this state 1 or more of the following activities:

(a) Maintaining or defending an action or suit or an administrative or arbitrate proceeding, or effecting the settlement thereof or the settlement of a claim or dispute.

(b) Holding meetings of its directors or shareholders or carrying on any other activities concerning its internal affairs.

(c) Maintaining a bank account.

(d) Maintaining an office or agency for the transfer, exchange and registration of its securities, or appointing and maintaining a trustee or depository with relation to its securities.

(e) Effecting sales through an independent contractor.

(f) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders require acceptance without this state before becoming binding contracts.

(g) Borrowing money, with or without security.

(h) Securing or collecting debts or enforcing any right in property securing the same.

(i) Transacting any business in interstate commerce.

(j) Conducting an isolated transaction not in the course of a number of repeated transactions of like nature.

(2) This section does not apply in determining the contacts or activities which may subject a foreign corporation to service of process or taxation in this state OR TO REGULATION UNDER ANY OTHER STATUTE OF THIS STATE.

SEC. 1014.(1) THE PROVISIONS OF SECTIONS 1001 THROUGH 1055 OF THIS ACT SHALL BE APPLICABLE TO:

(A) FOREIGN CORPORATIONS ORGANIZED NOT FOR PECUNIARY PROFIT.

(B) FOREIGN OR DOMESTIC PARTNERSHIP ASSOCIATIONS LIMITED.

(C) FOREIGN OR DOMESTIC JOINT STOCK COMPANIES.

(D) FOREIGN OR DOMESTIC COMMON LAW OR STATUTORY TRUSTS, BY WHATEVER NAME KNOWN, HAVING ANY OF THE POWERS OR PRIVILEGES OF CORPORATIONS NOT POSSESSED BY INDIVIDUALS OR PARTNERSHIPS.

(2) FOREIGN CORPORATIONS OR OTHER FOREIGN ENTITIES ORGANIZED NOT FOR PECUNIARY PROFIT MAY BE ADMITTED TO CARRY ON THEIR LAWFUL BUSINESS WITHIN THIS STATE UPON THE SAME TERMS AND UNDER THE SAME RESTRICTIONS AS APPLY TO SIMILAR NONPROFIT CORPORATIONS ORGANIZED UNDER THE LAWS OF THIS STATE, AND UPON PAYING THE SAME FILING, PRIVILEGE AND OTHER FEES AS ARE PRESCRIBED BY LAW FOR SIMILAR DOMESTIC CORPORATIONS.

(3) THE PROVISIONS OF SECTIONS 1001 THROUGH 1055 OF THIS ACT SHALL NOT BE APPLICABLE TO:

(A) FOREIGN CORPORATIONS PERMITTED TO DO BUSINESS IN THIS STATE BY LICENSE ISSUED BY THE COMMISSIONER OF INSURANCE ACCORDING TO THE PROVISIONS OF LAW.

(B) THE GOVERNMENT OF ANY STATE OR POLITICAL SUBDIVISION THEREOF OR OF THE UNITED STATES OR OF ANY FOREIGN NATION OR ANY POLITICAL SUBDIVISION THEREOF, OR ANY CORPORATION ORGANIZED AS AN INSTRUMENTALITY OF THE GOVERNMENT OF ANY OF THE FOREGOING.

Sec. 1015. To procure a certificate of authority to transact business in this state, a foreign corporation shall file with the administrator an application setting forth:

(a) The name of the corporation and the jurisdiction of its incorporation.

(b) The date of incorporation and the period of duration of the corporation.

(c) The street address, and the mailing address if different from the street address, of its main business or headquarters office.

(d) The address of its registered office in this state, and the name of its resident agent in this state at such address, together with a statement that the resident agent is an agent of the corporation upon whom process against the corporation may be served.

(e) The character of the business it is to transact in this state, together with a statement that it is authorized to transact such business in the jurisdiction of its incorporation.

~~(f) -- The nature and value of the property owned and used by the corporation listed separately for that within and without this state. --~~

~~(g) -- The total amount of business transacted during the preceding fiscal year and the amount of business, if any, transacted in this state. --~~

(h) (F) Such additional information as the administrator may require in order to determine whether the corporation is entitled to a certificate of authority to transact business in this state and to determine the fees and taxes prescribed by law.

Sec. 1021. (1) When the articles of incorporation of a foreign corporation authorized to transact business in this state are amended, the foreign corporation, within 60 days after the amendment is effective, shall file with the administrator a copy of the amendment certified by the proper officers of the jurisdiction of its incorporation.

(2) WHEN A FOREIGN CORPORATION AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE IS A PARTY TO A MERGER, CONSOLIDATION, OR SIMILAR CORPORATE ACTION TAKEN IN ACCORDANCE WITH THE LAWS OF THE JURISDICTION OF ITS INCORPORATION, THE FOREIGN CORPORATION, WITHIN 60 DAYS AFTER THE EFFECTIVE DATE THEREOF, SHALL FILE WITH THE ADMINISTRATOR A COPY OF THE CERTIFICATE OF MERGER, CONSOLIDATION, OR SIMILAR CORPORATE ACTION, CERTIFIED BY THE PROPER OFFICERS OF THE JURISDICTION OF ITS INCORPORATION.



Sec. 1023. A foreign corporation which has been authorized to transact business in this state, which thereafter increases its authorized capital stock represented by property owned or used or business transacted in this state, shall file a supplemental statement giving a detailed account of the amount of the increase, and shall pay such additional franchise fee on account thereof as may be prescribed by law. The supplemental statement shall be filed on or before May 15 of each year. THE ADMINISTRATOR FOR GOOD CAUSE SHOWN MAY EXTEND THE TIME FOR FILING OF A SUPPLEMENTAL STATEMENT FOR NOT MORE THAN 1 YEAR FROM THE DUE DATE THEREOF. The portion of authorized capital stock of the corporation represented by property owned or used and business transacted in this state shall be determined by multiplying the entire amount of its authorized capital stock by the most recent allocation factor, if any, used in the computation of its annual franchise fee.

Sec. 1041. In addition to any other ground for revocation provided by law, the administrator may revoke the certificate of authority of a foreign corporation to transact business in this state upon the conditions prescribed in section 1042 upon any of the following grounds:

(a) The corporation fails to maintain a resident agent in this state as required by this act.

(b) The corporation, after change of its registered office or resident agent, fails to file a statement of such change as required by this act.

(c) The corporation, after amending its articles of incorporation, fails to file a copy of the amendment as required by this act.

(D) THE CORPORATION, AFTER BECOMING A PARTY TO A MERGER, CONSOLIDATION, OR SIMILAR CORPORATE ACTION, FAILS TO FILE A COPY OF THE CERTIFICATE OF MERGER, CONSOLIDATION, OR SIMILAR CORPORATE ACTION AS REQUIRED BY THIS ACT.

{d} (E) The corporation fails to file a supplemental statement as required by this act.

{e} (F) The corporation fails to file its annual report within the time required by this act, or fails to pay an annual privilege fee required by law.

{f} (G) The corporation fails to comply with ~~subsection-(1)-of~~ section 732 735.

Sec. 1060. (1) The fees to be paid to the administrator by or in behalf of corporations, for the purposes herein specified, shall be as follows:

(a) Examining, filing and copying articles of domestic corporations, \$10.00.

(b) Examining and filing articles or certificates of incorporation, and other papers connected with the application of a foreign corporation for admission to do business in Michigan, \$10.00.

(c) Examining, filing and copying any amendments to the articles of a domestic corporation, \$10.00.

(d) Examining and filing any amendments to the articles of a foreign corporation, \$10.00.

(e) Examining and filing any supplemental statement, \$10.00.

(f) Examining, filing and copying any certificate of merger or consolidation AS PROVIDED IN CHAPTER 7 OF THIS ACT, \$50.00.

(g) EXAMINING AND FILING ANY CERTIFICATE OF MERGER OR CONSOLIDATION OF A FOREIGN CORPORATION, AS PROVIDED IN SECTION 1021, \$10.00.

~~(g)~~ (H) Examining, filing and copying any certificate of dissolution, \$10.00.

~~(h)~~ (I) Examining and filing application for withdrawal and issuance of a certificate of withdrawal of a foreign corporation, \$10.00.

~~(i)~~ (J) Examining, filing and copying application for reservation of corporate name, \$10.00.

~~(j)~~ (K) Examining, filing and copying certificate of assumed name or certificate of termination of assumed name, \$10.00.

~~(k)~~ (L) Examining, filing and copying statement of change of registered office and/or resident agent, \$5.00.

~~(l)~~ (M) Examining, filing and copying restated articles of domestic corporations, \$10.00.

~~(m)~~ (N) Examining, filing and copying any certificate of abandonment, \$10.00.

~~(n)~~ (O) Filing certificate by surviving foreign corporation that merger or consolidation has become effective under the laws of the jurisdiction of the foreign corporation which was a party to a merger or consolidation with a Michigan corporation, \$10.00.

~~(o)~~ (P) Examining, filing and copying certificate of revocation of dissolution proceedings, \$10.00.

~~(p)~~ (Q) Examining, filing and copying certificate of renewal of corporate existence, \$10.00.

~~(q)~~ (R) Filing and examination of any special report required by law, \$2.00.

~~(r)~~ (S) Certifying any part of the files or records pertaining to a corporation for which no other provision is herein made, a minimum charge of \$1.00 for each certificate, and 50¢ per folio for the matter so certified to.

(2) These fees shall be paid to the administrator at the time of filing or when the service is rendered by the administrator. The fees shall be in addition to the franchise fees prescribed in this act, and shall, when collected, be paid into the treasury of the state and credited to the general fund.

(3) Fees paid by or on behalf of domestic and foreign regulated investment companies as defined in section 1064 of this act shall be the same as are charged foreign and domestic corporations for the purposes hereinbefore specified.

Sec. 1062. Every domestic corporation or cooperative association, hereafter organized for profit, and every domestic regulated investment company, except corporations organized under Act No. 50 of the Public Acts of 1887, as amended, being sections 489.1 to 489.40 of the Compiled Laws of 1948, and Act No. 14 of the Public Acts of 1901, being sections 489.201 to 489.210 of the Compiled Laws of 1948, at the time of filing its articles, shall pay to the administrator, as an organization fee and for ~~the-privilege-of-exercising-its-franchises-within-this-state~~ AS AN ADMISSION FEE, a sum equal to 1/2-mill upon the dollar for each dollar of the authorized capital stock of such corporation. In no case shall the organization fee be less than \$25.00. In case of any regulated investment company the fee shall not exceed \$40.00. The initial admission franchise fee of a foreign corporation for profit and foreign regulated investment company hereafter applying for admission to do business in this state shall be \$25.00, and authorized capital stock in the amount of \$50,000.00 shall be deemed initially attributable to this state at the time of admission. Every corporation heretofore or hereafter incorporated under the laws of the state of Michigan which shall thereafter increase its authorized capital stock shall pay a sum equal to 1/2-mill upon each dollar for each and any increase in its authorized capital stock. A foreign corporation which is hereafter authorized to transact business in this state, which thereafter increases the amount of its authorized capital stock attributable to this state over the previous highest amount of authorized capital stock attributable to this state, shall file a supplemental statement on or before the next May 15 giving a detailed account of the amount of the increase, and shall pay

such additional franchise fee on account thereof as hereinafter provided. The amount of authorized capital stock attributable to this state shall be determined by multiplying the entire amount of authorized capital stock by the allocation factor, if any, used in the computation of the annual privilege fee. If the annual privilege fee is computed upon the entire paid-up capital and surplus, the entire amount of authorized capital stock shall be deemed attributable to this state. Every foreign corporation required to file a supplemental statement shall pay therewith an additional admission franchise fee of 1/2-mill upon each dollar of increase, if any, in the amount of authorized capital stock attributable to this state. This increase shall be the excess of the then current amount of authorized capital stock attributable to this state over the previous highest amount of authorized capital stock attributable to this state. A supplemental statement shall be filed on or before May 15, 1973 by every foreign corporation authorized to transact business in this state on December 31, 1972. Every such foreign corporation shall be deemed to have that amount of its authorized capital stock initially attributable to this state which shall be determined by applying its entire amount of authorized capital stock by the allocation factor, if any, used in the computation of its annual privilege fee. If the annual privilege fee is computed upon the entire paid-up capital and surplus, the entire amount of authorized capital stock shall be deemed to be initially attributable to this state. A minimum authorized capital stock of \$50,000.00 shall be deemed to be initially attributable to this state. The supplemental statement setting forth this initial determination shall be without fee other than the filing fee and shall be used as a base in connection

with ascertaining future supplemental statement filing requirements.

The administrator shall, in all such cases, be authorized to require the corporation to furnish detailed and exact information touching such several matters before making a final determination of the organization fee to be paid by such corporation. The term "corporation" as used in this section shall be deemed to include partnership associations, limited, cooperative associations, all joint associations having any of the powers of corporations, and such common law trust or trusts created by statute of this or any state or country exercising common law powers in the nature of corporations, whether domestic or foreign, in addition to such other corporations as are referred to in this act.

RECOMMENDATIONS RELATING TO  
TECHNICAL AMENDMENTS TO  
MICHIGAN GENERAL CORPORATION ACT

As a result of the new Business Corporation Act, enacted in 1972, being Act No. 284 of the Public Acts of 1972, certain deficiencies appeared in those portions of the General Corporation Act which require some technical amendments. These changes are as follows:

Section 62, which deals with the renewal of corporate term of a non-profit corporation has been amended to cross-reference Section 815 of the Business Corporation Act, so that the procedures will be identical.

Section 81, which deals with the annual report of non-profit corporations, has been amended to provide filing with the Administrator, and to change provisions in (b) and (c) to provide consistency with the forms filed by profit corporations under the Business Corporation Act.

Section 92, which deals with neglect or refusal to file annual reports by non-profit corporations, has been amended to provide cross-references to the provisions of the Business Corporation Act.

Section 122 was amended to reintroduce language relative to amendment of the Articles of Incorporation of non-profit membership corporations which was deleted by the repeal of Section 43 of Act 327. Filing is in accordance with Sections 131 and 132 of the Business Corporation Act.

Sections 93, 93a, 94, 95, 96 and 97 are repealed, since they contain material inconsistent with provisions in the Business Corporation Act, or redundant material. The applicable provisions of Section 97 have been redrafted and included in an amendment to the Business Corporation Act.

Proposed Bill follows:



TECHNICAL AMENDMENTS BILL

MICHIGAN GENERAL CORPORATION ACT

AN ACT to amend and repeal certain sections of Act No. 327 of the Public Acts of 1931, being the "Michigan General Corporation Act".

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. Sections 62, 81, 92 and 122 of Act 327 of the Public Acts of 1931, being sections 450.62, 450.81, 450.92 and 450.122 of the Compiled Laws of 1948 are amended to read as follows:

Sec. 62. Any corporation without capital stock, whose term of existence has expired ~~or-is-about-to-expire,~~ may renew such corporate existence at any meeting of the members of such corporation duly called and held IN ACCORDANCE WITH THE PROCEDURE SET FORTH IN SECTION 815 OF ACT 284 OF THE PUBLIC ACTS OF 1972. ~~In-case-the-corporate-existence-has-not-yet-expired,-such-meeting-may-be-held-at-any-time-within-2-years-next-preceding-such-date-of-expiration,-and-in-case-such-existence-has-expired,-such-meeting-shall-be-held-within-2-years-next-following-such-date-of-expiration.--No-such-corporate-life-shall-be-extended-or-renewed,as-the-case-may-be,-excepting-by-the-affirmative-vote-of-such-number-of-the-members-of-such-corporation-as-expressed-in-sections-60-and-61respectively-of-this-act.--The-artieles-shall-thereupon-be-extended-or-renewed,-as-the-case-may-be,-and-a-certificate-of-extension-or-renewal,as-the-ease-may-be,-shall-be-filed-as-provided-in-said-sections-60-and61-respeetively.~~

Sec. 81. An annual report accompanied by a filing fee of \$10.00 shall be filed with the ~~Michigan-treasury-department~~ ADMINISTRATOR by all non-profit corporations, domestic or foreign, except medical care corporations and hospital service corporations. The fee shall be in lieu of all other annual fees to be paid by such corporations, anything in any other statute to the contrary notwithstanding. The report shall be filed on or before October 1 every year. It shall contain the following:

- (a) The name of the corporation.
- (b) The location of its registered office AND THE NAME OF ITS RESIDENT AGENT in this state.
- (c) The date of incorporation, term of corporate existence, IF OTHER THAN PERPETUAL, and, if a foreign corporation, date when admitted to do business in this state.
- (d) The act under which incorporated or reincorporated.
- (e) The names and residences of officers and trustees or directors.
- (f) The purposes of the corporation.
- (g) The authorized capital stock, if any.
- (h) The value of property owned at time of filing report.
- (i) The nature and kind of business in which such corporation has engaged during the year covered by the report.
- (j) What, if any, distribution of funds has been made to any members during the year covered by the report.
- (k) A statement of the aggregate amount of any loans, advances, overdrafts or withdrawals and repayments thereof made to or by officers, directors or shareholders of the corporation

otherwise than in the ordinary and usual course of business of the corporation and on the ordinary and usual terms of payment and security.

- (1) Such other information and facts as the ~~Michigan corporation~~ ~~and securities commission~~ ADMINISTRATOR may demand.

Sec. 92. ~~Same; non-profit corporation; extension of time.~~

~~If any non-profit corporation, which has heretofore been, is now or may hereafter be required to file its annual report with and pay the filing fee to the Michigan corporation and securities commission, shall for 1 year neglect or refuse to file such report and/or pay such fee, the charter of such corporation shall be absolutely void, without any judicial proceeding whatsoever, unless the Michigan corporation and securities commission shall for good cause shown extend the time for the filing of such report or the payment of such fee or tax as the case may be. In case of extension of time as provided in this section the Michigan corporation and securities commission shall file in its office a certificate showing the length of time granted by such extension. Provided, That in no case shall the total extension of time granted be more than 1 year. The provisions of this section are hereby declared to be self-executing.~~ THE PROVISIONS OF SECTIONS 922 AND 923 OF ACT NO. 284 OF THE PUBLIC ACTS OF 1972 SHALL APPLY IN THE CASE OF ANY NON-PROFIT CORPORATION WHICH SHALL NEGLECT OR REFUSE TO FILE THE ANNUAL REPORTS WITH AND PAY THE FILING FEE TO THE ADMINISTRATOR.

Sec. 122. Same; privileges of members. Each member or shareholder of a non-profit corporation shall be equally privileged with all other members or shareholders in his voice and vote upon any proposition presented for discussion or decision at any meeting of the members or shareholders, excepting that in non-profit stock corporations formed hereunder each shareholder may, if so provided in the articles or by-laws, be entitled to a number of votes equal to the number of shares of stock held by him and that any non-profit corporation may in its articles or by-laws provide that only certain specified classes of its members or shareholders shall have the right to vote; and otherwise there shall be no preferences as between members or shareholders based upon obligations of the corporation to the members or shareholders therein. If the by-laws of any non-profit corporation shall fail to provide a method for calling a special meeting of its members or shareholders the same may be called by the president, any vice-president, the secretary, treasurer or by any 2 or more directors thereof by appropriate notice published in the manner provided in section ~~68-of-this-act~~ 841 OF ACT NO. 284 OF THE PUBLIC ACTS OF 1972. A NON-PROFIT CORPORATION FORMED OR EXISTING PURSUANT TO THIS ACT AND ORGANIZED UPON A NONSTOCK BASIS, AT A MEETING OF THE MEMBERS DULY CALLED AND HELD, MAY AMEND ITS ARTICLES WITHOUT LIMITATION AS LONG AS THE ARTICLES AS AMENDED WOULD HAVE BEEN AUTHORIZED BY THIS ACT AS ORIGINAL ARTICLES, BY THE AFFIRMATIVE VOTE OF A MAJORITY OF THE MEMBERS ENTITLED TO VOTE THEREON, OR BY THE AFFIRMATIVE VOTE OF A MAJORITY OF THE MEMBERS PRESENT AT SUCH MEETING IF DUE NOTICE OF THE TIME, PLACE AND OBJECT OF SUCH MEETING SHALL BE GIVEN BY MAIL, AT LAST KNOWN ADDRESS, TO EACH MEMBER ENTITLED TO VOTE AT LEAST

20 DAYS PRIOR TO THE DATE OF SUCH MEETING. AN AMENDMENT SHALL BE EFFECTIVE WHEN A CERTIFICATE CONTAINING THE AMENDMENT HAS BEEN FILED IN ACCORDANCE WITH SECTIONS 131 AND 132 OF ACT NO. 284 OF THE PUBLIC ACTS OF 1972.

Section 2. Sections 93, 93a, 94, 95, 96 and 97 of Act No. 327 of the Public Acts of 1931, as amended, being Sections 450.93, 450.93a, 450.94, 450.95, 450.96 and 450.97 of the Compiled Laws of 1948 are repealed.



RECOMMENDATIONS RELATING TO  
TECHNICAL AMENDMENTS RELATING  
TO FOREIGN CORPORATIONS

Compiled Laws of 1948, Sec. 612.19 is part of the Revised Judicature Act. It is proposed that this section be repealed. It has the effect of disabling a nonqualified foreign corporation from bringing suit under certain circumstances, and is inconsistent with Section 1051 of the Business Corporation Act.

Proposed Bill follows:

TECHNICAL AMENDMENTS BILL

ACT NO. 236 of PUBLIC ACTS OF 1961

AN ACT to repeal a section of Act No. 236 of the Public Acts of 1961, as amended.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. Section 2021 of Act No. 236 of the Public Acts of 1961, as amended, being section 612.19 of the Compiled Laws of 1948, is repealed.

RECOMMENDATIONS RELATING TO  
AMENDMENTS TO TELEPHONE AND  
MESSENGER SERVICE COMPANY ACT

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This Act was originally passed in 1883 and contains a number of provisions which are inconsistent with the new Business Corporation Act and impracticable in present application.

Amended Section 1 conforms to the Business Corporation Act.

Old Section 1 provides for Articles of Incorporation which are in different form from those utilized by other profit corporations. In addition, the form limits the term of corporate existence to 30 years and provides that there may not be less than three directors. Section 1 also stipulates that the Articles are to be recorded in the County Clerk's office whereas in fact, they are filed with the Corporation Division, as in the case of other corporations.

Proposed Repealed Sections provide as follows:

Section 2 of the Act requires that directors be stockholders.

Section 3 of the Act sets a minimum value of \$10.00 per share and a maximum par value of \$100.00 per share for telephone company stock.

Section 7 of the Act provides for stockholder liability for corporate debts.

Proposed Bill follows:

AN ACT to amend and repeal certain sections of Act No. 129 of the Public Acts of 1883 entitled "An Act for the organization of telephone and messenger service companies".

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. Section 1 of Act No. 129 of the Public Acts of 1883, being Section 484.1 of the Compiled Laws of 1948 is amended to read as follows:

Sec. 1. One or more persons may be the incorporators of a corporation under this act by signing in ink and filing articles of incorporation for the corporation which shall be in the form prescribed by section 202 of Act No. 284 of the Public Acts of 1972, except that such articles shall recite that they are signed for the purpose of forming a telephone corporation for profit under the provisions of this act and of Act No. 284 of the Public Acts of 1972, and shall specify that the purpose for which the corporation is organized is to engage in the telephone business. Any corporation heretofore or hereafter organized under this act shall, unless otherwise provided in this act or inconsistent with the provisions hereof, be governed by the provisions of Act No. 284 of the Public Acts of 1972.

Section 2. Sections 2, 3, and 7 of Act No. 129 of the Public Acts of 1883, as amended, being Sections 484.2, 484.3 and 484.7 of the Compiled Laws of 1948 are repealed.

RECOMMENDATIONS RELATING TO UNIFORM  
DISPOSITION OF COMMUNITY PROPERTY  
RIGHTS AT DEATH ACT (UDA)  

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The purpose of this proposed act is to assure that property acquired by a husband and wife while domiciled in a community property state is not treated as something other than community property upon the death of one of the spouses. With the mobility of people it is a common occurrence that domicile is changed from a community property state to a state such as Michigan where there are no community property laws. The presentation made by the National Commissioners on Uniform State Laws is presented herewith as Appendix A and contains specific comments on each of the provisions of the act.

The proposed Bill follows:

## UNIFORM DISPOSITION OF COMMUNITY PROPERTY RIGHTS AT DEATH ACT

SECTION 1. This Act applies to the disposition at death of the following property acquired by a married person:

(1) all personal property, wherever situated:

- (i) which was acquired as or became, and remained, community property under the laws of another jurisdiction; or,
- (ii) all or the proportionate part of that property acquired with the rents, issues, or income of, or the proceeds from, or in exchange for, that community property; or

(iii) traceable to that community property;

(2) all or the proportionate part of any real property situated in this state which was acquired with the rents, issues or income of, the proceeds from, or in exchange for, property acquired as or which became, and remained, community property under the laws of another jurisdiction, or property traceable to that community property.

SECTION 2. In determining whether this Act applies to specific property the following rebuttable presumptions apply:

(1) property acquired during marriage by a spouse of that marriage while domiciled in a jurisdiction under whose laws property could then be acquired as community property is presumed to have been acquired as or to have become, and remained, property to which this Act applies; and

(2) real property situated in this State and personal property wherever situated acquired by a married person while domiciled in a jurisdiction under whose laws property could not then be acquired as community property, title to which was taken in a form which created rights of survivorship, is presumed not to be property to which this Act applies.

SECTION 3. Upon death of a married person, one-half of the property to which this Act applies is the property of the surviving spouse and is not subject to testamentary disposition by the decedent or distribution under the laws of succession of this State. One-half of that property is the property of the decedent and is subject to testamentary disposition or distribution under the laws of succession of this State. With respect to property to which this Act applies, the one-half of the property which is the property of the decedent is not subject to the surviving spouse's right to elect against the will and no estate of dower exists in the property of the decedent.

**SECTION 4.** If the title to any property to which this Act applies was held by the decedent at the time of death, title of the surviving spouse may be perfected by an order of the [court] or by execution of an instrument by the personal representative or the heirs or devisees of the decedent with the approval of the [court]. Neither the personal representative nor the court in which the decedent's estate is being administered has a duty to discover or attempt to discover whether property held by the decedent is property to which this Act applies, unless a written demand is made by the surviving spouse or the spouse's successor in interest.

**SECTION 5.** If the title to any property to which this Act applies is held by the surviving spouse at the time of the decedent's death, the personal representative or an heir or devisee of the decedent may institute an action to perfect title to the property. The personal representative has no fiduciary duty to discover or attempt to discover whether any property held by the surviving spouse is property to which this Act applies, unless a written demand is made by an heir, devisee, or creditor of the decedent.

**SECTION 6.**  
(a) If a surviving spouse has apparent title to property to which this Act applies, a purchaser for value or a lender taking a security interest in the property takes his interest in the property free of any rights of the personal representative or an heir or devisee of the decedent.

(b) If a personal representative or an heir or devisee of the decedent has apparent title to property to which this Act applies, a purchaser for value or a lender taking a security interest in the property takes his interest in the property free of any rights of the surviving spouse.

(c) A purchaser for value or a lender need not inquire whether a vendor or borrower acted properly.

(d) The proceeds of a sale or creation of a security interest shall be treated in the same manner as the property transferred to the purchaser for value or a lender.

**SECTION 7.** This Act does not affect rights of creditors with respect to property to which this Act applies.

**SECTION 8.** This Act does not prevent married persons from severing or altering their interests in property to which this Act applies.

SECTION 9. This Act does not authorize a person to dispose of property by will if it is held under limitations imposed by law preventing testamentary disposition by that person.

SECTION 10. This Act shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this Act among those states which enact it.

SECTION 11. This Act may be cited as the Uniform Disposition of Community Property Rights at Death Act.



RECOMMENDATION RELATING TO  
HIT-RUN STATUTE  
(M.C.L. § 257.617)

The Commission recommends that the current penalty provision of M.C.L. §257.617 be amended so as to clearly designate the level of the offense and eliminate current inconsistencies in the treatment of the court's discretionary authority in imposing imprisonment. Such an amendment would bring the Michigan Code closer to the pattern followed by most states in their more recent legislative efforts in this area.

Section 617(a) of the Michigan Vehicle Code imposes a duty upon a driver of a vehicle to immediately stop at the scene of an accident where he knows or has reason to believe that he has been involved in an accident resulting in injury to (or the death of) any person. Subsection (b) of Section 617 provides:

"Any person failing to stop or to comply with said requirements under such circumstances shall upon conviction be punished by imprisonment in the county or municipal jail for not less than 30 days nor more than 1 year, or in the state prison for not less than 1 year nor more than 5 years, or by fine of not less than \$100.00 nor more than \$5,000.00 or by both such fine and imprisonment".

Section 617(b) was initially adopted as Section 56 of Public Act No. 318 of 1927. That Act was based generally upon the Uniform Motor Vehicle Act, and Section 15 of the Uniform Act contained a penalty provision identical to Section 56 of the 1927 Act. The Uniform Motor Vehicle Act subsequently was withdrawn as a Uniform Act in 1943. It was replaced by the Uniform Vehicle Code and Motor Traffic Ordinance which was drafted by the National Committee on Uniform Traffic Laws and Ordinances. That Code also contained a provision [§110-102(a)] imposing a duty upon a driver to stop and remain at the scene of an accident resulting in injury to (or the death of) any person, but it revised the penalty provision of the older Act to eliminate the alternative of imprisonment in jail for one year or in the state prison for five years. The Uniform Vehicle

Code now provides for imprisonment not exceeding one year.\* The Traffic Law Annotated Volume lists only four states (including Michigan) which retained the penalty provision in its original version. All the others have departed from that original draft, with the vast majority imposing a maximum penalty of no more than one year in jail.

The Uniform Motor Vehicle Act did not indicate the source of its rather unique alternative sentencing provision. A somewhat similar provision was contained in the Uniform Firearms Act, and that provision was subsequently held unconstitutional because it granted prosecuting officials the authority to treat a violation as either a misdemeanor or a felony. See Olsen v. Delmore, 295 P.2d 324 (Wash. 1956). While the wording of Section 617(b) is distinguishable, that provision presents similar difficulties with respect to the discretion vested in the court. Unless a penalty provision states otherwise, an offense punishable by imprisonment in state prison is considered a felony. See M.C.L. §761.1; M.S.A. §28.843; M.C.L. §750.7; M.S.A. §28.198. Similarly, offenses punishable by imprisonment only in a county jail are misdemeanors. Thus, Section 617(b) grants the court authority to impose either a traditional misdemeanor or a felony sanction. Moreover, it does so without specifically characterizing the offense involved as either a misdemeanor or a felony. Michigan does have other penal provisions that permit the court to impose imprisonment (usually two years), but such provisions clearly designate the offense involved as a misdemeanor (i.e., a "circuit court misdemeanor"). See M.C.L. §752.861; M.S.A. §28.436(21).

The absence of any specific statutory characterization of the §617 offense thus breeds unnecessary confusion with respect to a matter of great significance to the individual and to the various agencies that may draw distinctions between persons convicted of misdemeanors as opposed to felonies. M.C.L. §750.8 (M.S.A. §28.198) (dealing with offenses containing no designation of the level of an offense) does not satisfactorily handle this

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\* U.V.C. §10-102(b) provides: "Any person failing to stop or to comply with said requirements under such circumstances shall, upon conviction, be punished by imprisonment for not less than 30 days nor more than 1 year or by fine of not less than \$100 nor more than \$5,000, or by both such fine and imprisonment."

problem. That section provides only that "when any act or omission, not a felony, is punishable according to law \* \* \* such act or omission shall be deemed a misdemeanor". Surely, the Section 617 violation constitutes more than a misdemeanor when a 1-5 year sentence is imposed. People v. Buckley, 302 Mich. 12 (1942) indicates that the offense is properly characterized as a felony at least under such circumstances.

The current provision is also deficient in its inconsistent treatment of the minimum sentence of imprisonment. On the one hand, it does not require that the judge impose any sentence of imprisonment, since it permits a fine of \$100.00 as a permissible maximum sentence. On the other hand, it requires the court to impose a sentence of at least 30 days in jail if any sentence of imprisonment is imposed. No appropriate function of the criminal law appears to be served by limiting the judge's discretion in this regard. Jails can easily handle terms of less than 30 days, and many sentences, particularly in the driving area, are for less than 30 days.

The Commission proposal seeks first to clearly designate the level of a §617 violation in terms of the misdemeanor-felony distinction. Consistent with a substantial majority of the states, it treats the offense as a misdemeanor punishable by a maximum of one year in jail. The maximum fine is limited to \$1,000, which is more in line with the misdemeanor level. It should be emphasized that where the driver negligently causes death, prosecution for manslaughter or negligent homicide is still available.

The proposed bill does not attempt to restrict the court's flexibility in the imposition of sentence, except for the designation of maximums. This is the traditional approach applied to most traffic offenses, and no justification appeared for departure on this offense even with respect to the fine. It should be noted in this regard that provisions requiring a minimum fine, such as that found in the Uniform Vehicle Code, were adopted before recent Supreme Court decisions relating to the sentencing of indigents who were unable to pay fines. See, e.g., Tate v. Short, 401 U.S. 395 (1971).

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\* Even this is not entirely clear, however, because a jail sentence of less than 30 days is a proper condition of probation under M.C.L. §771.3 (M.S.A. §28.1133).

The proposed bill follows:

**PROPOSED BILL**

An Act to amend Section 617 of Act No. 300 of the Public Acts of 1949, entitled as amended "An act to provide for the registration, titling, sale and transfer, and regulation of vehicles operated upon the public highways of this state; to provide for the licensing of vehicle dealers and wreckers; to provide for the examination, licensing and control of operators and chauffeurs; to provide for the giving of proof of financial responsibility and security by owners and operators of vehicles to provide for the imposition, levy and collection of specific taxes on vehicles, and the levy and collection of sales and use taxes, license fees and permit fees; to provide for the regulation and use of streets and highways; to provide penalties for violation of any of the provisions of this act; to provide for civil liability of owners and operators of vehicles and service of process on nonresidents; and to repeal all other acts or parts of acts inconsistent herewith or contrary hereto", as last amended by Act No. 35 of the Public Acts of 1956, being §257.617 of the Compiled Laws of 1948.

The People of the State of Michigan enact:

Section 1. Section 617(b) of Act No. 300 of the Public Acts of 1949, as last amended by Act No. 35 of the Public Acts of 1956, being Section 257.617(b) of the Compiled Laws of 1948, is hereby amended to read as follows:

Penalty

(b) Any person failing to stop or to comply with said requirements under such circumstances SHALL BE GUILTY OF A MISDEMEANOR, PUNISHABLE BY IMPRISONMENT IN THE COUNTY JAIL FOR NOT MORE THAN ONE YEAR, OR BY A FINE OF NOT MORE THAN \$1,000.00, OR BOTH IMPRISONMENT AND FINE.

## APPENDIX A

### REPORT OF NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS APPROVED: AUGUST, 1971

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#### UNIFORM DISPOSITION OF COMMUNITY PROPERTY RIGHTS AT DEATH ACT

##### PREFATORY NOTE

Frequently spouses, who have been domiciled in a jurisdiction which has a type of community property regime, move to a jurisdiction which has no such system of marital rights. As a matter of policy, and probably as a matter of constitutional law, the move should not be deemed (in and of itself) to deprive the spouses of any preexisting property rights. A common law state may, of course, prescribe the *dispositive* rights of its domiciliaries both as to personal property and real property located in the state. California's development of its "quasi-community property" laws illustrates the distinction.

The common law states, as contrasted to California, have not developed a statutory pattern for disposition of estates consisting of *both separate* property of spouses and property which was community property (or derived from community property) in which both spouses have an interest. In these states there have been relatively few reported cases (although the number has been increasing in recent years); the decisions to date show no consistent pattern and the increasing importance of the questions posed suggests the desirability of uniform legislation to minimize potential litigation and to facilitate the planning of estates.

This Act has a very limited scope. If enacted by a common law state, it will only define the dispositive rights, at death, of a married person as to his interests at death in property "subject to the Act" and is limited to real property, located in the enacting state, and personal property of a person domiciled in the enacting state. The purpose of the Act is to preserve the rights of each spouse in property which was community property prior to change of domicile, as well as in property substituted therefor where the spouses have not indicated an intention to sever or alter their "community" rights. It thus follows the typical pattern of community property which permits the deceased spouse to dispose of "his half" of the community property, while confirming the title of the surviving spouse in "her half."

It is intended to have no effect on the rights of creditors who became such before the death of a spouse; neither does it affect the rights of spouses or other persons prior to the death of a spouse. While problems may arise prior to the death of a spouse they are believed to be of

relatively less importance than the delineation of dispositive rights (and the correlative effect on planning of estates). The prescription of uniform treatment in other contexts poses somewhat greater difficulties; thus this Act is designed solely to cover dispositive rights at death, as an initial step.

The key operative section of the Act is Section 3 which sets forth the dispositive rights in that property defined in Section 1, which is subject to the Act. Section 2 follows Section 1's definition of covered property and is designed to provide aid, through a limited number of rebuttable presumptions, in determining whether property is subject to the Act.

No negative implications were intended to be raised by lack of inclusion of other presumptions in Section 2; areas not covered were simply left to the normal process of ascertainment of rights in property.

The first three sections form the heart of the Act; the succeeding sections might almost be described as precatory and have been added to clarify situations which would probably follow from the first three sections but which might raise questions. Thus, Section 8 makes it clear that nothing in the Act prevents the spouses from severing any interest in community property or creating any other form of ownership of property during their joint lives; and, such action on their part will effectively remove any property from classification as property subject to this Act. Similarly, Section 9 makes it clear that the Act confers no rights upon a spouse where, by virtue of the property interests existing during the joint lives of the spouses, that spouse had no right to dispose of such property at death. By way of illustration, in at least one community property jurisdiction, the wife has no right to dispose of any part of the community property if she predeceases her husband. If the law of that jurisdiction is construed so as to treat this as a rule of property, then the move to the common law state should not alter the "property interest" of the spouses by conferring a right on the wife which she did not previously possess. On the other hand, if the provision is treated as simply establishing a pattern of dispositive rights on death of a wife who predeceases her husband, rather than a property right, the common law state of new domicile could prescribe an alternative pattern of dispositive rights. The Act does not resolve this question; rather it simply makes clear that it does not affect existing "property rights," leaving to the courts the interpretation of the effect of the community property state's law.

## UNIFORM DISPOSITION OF COMMUNITY PROPERTY RIGHTS AT DEATH ACT

1   SECTION 1. [*Application.*] This Act applies to the disposition  
2   at death of the following property acquired by a married person:  
3    (1) all personal property, wherever situated:  
4       (i) which was acquired as or became, and remained, com-  
5       munity property under the laws of another jurisdiction; or,  
6       (ii) all or the proportionate part of that property acquired  
7       with the rents, issues, or income of, or the proceeds from, or  
8       in exchange for, that community property; or  
9       (iii) traceable to that community property;  
10   (2) all or the proportionate part of any real property situated  
11   in this state which was acquired with the rents, issues or income  
12   of, the proceeds from, or in exchange for, property acquired as  
13   or which became, and remained, community property under the  
14   laws of another jurisdiction, or property traceable to that  
15   community property.

### COMMENT

This section defines property subject to the Act.

#### Subsection (1): Personal Property

Subsection (1) is designed to cover all personal property which was acquired while the spouses were domiciled in a community property state, to the extent that it would have been treated as community property by that state at the time of acquisition and that no further action terminated the community character of the property. It also includes any property which was not originally community property but became such by agreement and, further, brings within the Act any personal property which can be traced back to a community source. Again, the Act only applies if there was no severance of the community interests [Section 8]. [While Section 3 applies to the dispositive rights of persons domiciled in the enacting state, the Act, as a practical matter, may be effective as to property located outside the state only to the extent that the state of the situs of the property is willing to recognize the policy of the domiciliary state.]

*Example 1.* H and W, while domiciled in California, purchased 100 shares each of A Co., B Co. and C Co. stock with community property (earnings of H). H and W were transferred to a common law state which had not enacted this Act; while domiciled there H sold the 100 shares of A stock and with the proceeds purchased 100 shares of D stock. Subsequently H and W became domiciled in Michigan which had enacted this Act; H sold the B stock and 50 shares of D Co. stock and purchased 150 shares of E stock. H died domiciled in Michigan with 100 shares of C Co., 50 shares of D Co. and 150 shares of E Co. stock; all

of the stock had always been registered in H's name. All of the shares, traceable to community property or the proceeds therefrom, constitute property subject to this Act.

#### **Subsection (2): Real Property**

Subsection (2) deals with real property and is confined to real property located within the enacting state (since presumably the law of the situs of the property will govern dispositive rights). The policy and operation of this subsection are intended to be the same as those set forth in subsection (1).

*Example 2.* H and W, while domiciled in California, purchased a residence in California. They retained the residence in California when they were transferred to Wisconsin. After becoming domiciled in Wisconsin they used community funds, drawn from a bank account in California, to purchase a Wisconsin cottage. H and W subsequently became domiciled in Michigan; they then purchased a condominium in Michigan for \$20,000 using \$15,000 of community property funds drawn from their bank account in California and \$5,000 earned by H after the move to Michigan. H died domiciled in Michigan; title to all of the real property was in H's name. Assuming Michigan had enacted this Act, three-fourths of the Michigan condominium would be property subject to this Act; the Michigan statute would not, however, apply to either the Wisconsin or California real estate. If Wisconsin had enacted this Act, the Wisconsin statute would apply to the Wisconsin cottage.

#### **Subsections (1) and (2): Apportionment**

In both subsections (1) and (2) an apportionment is required by the phrase "all or the proportionate part" where personal property, or real property situated in the enacting state, has been acquired partly with property described as subject to the Act and partly with other (separate) property. To put it succinctly, the phrase represents a condensation of an area covered by many pages in a prior draft and is simply a statement of policy; it leaves to the courts the difficult task of working out the precise interest which will be treated as the "proportionate part" of the property subject to the dispositive formula of Section 3. Simply by way of illustration, assume that a single man (domiciled in a community property state) purchased a life insurance policy with a face amount of \$100,000 and an annual premium of \$1,000. Assume further that he paid three premiums and then entered into marriage. Further assume that the next seven premiums were paid with his earnings while domiciled in the community property state and that he and his wife then moved to a common law state where the next ten premiums were paid from his earnings in that common law state; he then died after the payment of the twenty premiums. Under one interpretation of the law of Texas the contract would remain the separate property of the insured; the community would have a claim for community funds advanced to pay premiums and, ignoring interest, it would appear that \$7,000 of the proceeds would be treated as community property and the remaining \$93,000 would be treated as the separate property of the deceased spouse. On the other hand, a state like California would probably treat the proceeds as being 65% separate and 35% community (basing the allocation of proceeds upon the percentage of separate and community funds contributed). Further variations could be mentioned. The illustration is one of the simpler problems. Much more difficult problems are encountered where benefits under a qualified pension and profit-sharing plan are involved and the employee has been domiciled in both community property and common law jurisdictions during the period in which benefits have accrued. Attempts at defining the various types of situations which could arise and the

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varying approaches which could be taken, depending upon the state, suggest that the matter simply be left to court decision as to what portion would, under applicable choice of law rules, be treated as community property. The principle suggested is that at least a portion should be treated as community, if the appropriate law so treated it. Ordinarily, such questions should not arise if the problem is foreseen and effective planning takes place prior to death of a spouse.

- 1     SECTION 2. [*Rebuttable Presumptions.*] In determining whether  
2     this Act applies to specific property the following rebuttable pre-  
3     sumptions apply:  
4         (1) property acquired during marriage by a spouse of that  
5         marriage while domiciled in a jurisdiction under whose laws  
6         property could then be acquired as community property is pre-  
7         sumed to have been acquired as or to have become, and re-  
8         mained, property to which this Act applies; and  
9         (2) real property situated in this State and personal property  
10        wherever situated acquired by a married person while domiciled  
11        in a jurisdiction under whose laws property could not then be  
12        acquired as community property, title to which was taken in a  
13        form which created rights of survivorship, is presumed not to be  
14        property to which this Act applies.

#### COMMENT

The purposes of the rebuttable presumptions are simply to assist a court in applying the definitions in Section 1, through a process of tracing the property to a community property origin.

#### Subsection (1)

Subsection (1) of Section 2 deals with property acquired by the spouses while domiciled in a community property state. It thus provides that if one of the spouses acquired property while so domiciled, such property is "presumed" (a rebuttable presumption) to have been and remained community. It may be shown, of course, that such property was the separate property of the spouse and the law of the state of domicile may furnish the rule. For example the law of community domicile may provide the rule that property acquired in the name of the wife shall be deemed to be her separate property or that a particular subsequent act effectively severed the community property interests.

*Example 1.* H, married to W and domiciled in California, acquired stock; later H and W became domiciled in Michigan. Such property, if retained, is presumed to be property subject to this Act. By operation of Section 1 the proceeds of sale or exchange of such stock, and property acquired with the proceeds or income of such stock, would be deemed subject to the Act. If, however, upon the death of H, H's personal representative rebutted the presumption by evidence that the stock was acquired by H with his separate property (or by inheritance) neither the stock nor property acquired with that property or the income therefrom (unless the income itself would be subject to the Act because, under the applicable law, income from separate property is deemed to be community property) would be subject to this Act. Similarly the presumption may be rebutted by showing that such property, though originally community property, was effectively severed by an act of the spouses. It should be emphasized that the

presumption is simply one of procedural convenience and neither changes the nature of the property interests nor prevents an interested person from showing the separate nature of the property.

#### Subsection (2)

Subsection (2) sets up a rebuttable presumption that where a domiciliary of a common law state acquired property in such form as to indicate that title was in joint tenancy, tenancy by the entireties, or some other form of joint ownership with right of survivorship, it will be presumed that the property is not subject to the Act. This presumption was deemed appropriate as expressing the normal expectations of the spouses and to facilitate ascertainment of title to real property located in the enacting state, as well as personal property wherever located.

*Example 2.* John and Mary Jones, formerly domiciled in California, became domiciled in Illinois and purchased a residence, taking title in the names of "John and Mary Jones as joint tenants, and not as tenants in common, with right of survivorship." Regardless of the source of the funds, the Illinois residence would be presumed to be held in joint tenancy and not subject to this Act.

1     SECTION 3. [*Disposition upon Death.*] Upon death of a mar-  
2     ried person, one-half of the property to which this Act applies is  
3     the property of the surviving spouse and is not subject to testa-  
4     mentary disposition by the decedent or distribution under the laws  
5     of succession of this State. One-half of that property is the prop-  
6     erty of the decedent and is subject to testamentary disposition  
7     or distribution under the laws of succession of this State. With  
8     respect to property to which this Act applies, the one-half of the  
9     property which is the property of the decedent is not subject to the  
10    surviving spouse's right to elect against the will [and no estate of  
11    dower or curtesy exists in the property of the decedent].

#### COMMENT

This section deals with the dispositive rights, at death, of (1) a married person domiciled in the enacting state as to personal property and (2) of any married person, including a nondomiciliary of the enacting state, as to real property located in the enacting state; it also sets forth rules for intestate succession to property subject to this Act.

#### Testate Disposition

The dispositive pattern is the usual one encountered in the community property states; the deceased spouse may dispose of his one-half of the community property, subject to the provisions of Section 9.

*Example.* H and W were formerly domiciled in California and are now domiciled in Michigan. All of their property was community property prior to the move from California to Michigan. At H's death he held title to a home in Michigan which had been purchased with the proceeds of the sale of a home in California which had been community property. Stock acquired as community property in California was held in his name in safety deposit boxes located in Illinois and Michigan. H and W had acquired a cottage in California as community property, held in H's name, and it was so held at the time of his death. H and W acquired a Michigan resort condominium, taking title as tenants by the

entireties. If acquired bonds issued by his employer with earnings in Michigan and held title in his own name.

The Michigan residence and the stock would be deemed property subject to this Act and H would have the right under Section 3 to dispose of half of that property by his will. The remaining property would not be deemed subject to this Act.

#### **Intestate Succession**

If the property subject to this Act passes by intestate succession, the law of the enacting state applies to the decedent's one-half, again subject to Section 9. If under the law of the enacting state, a surviving spouse is entitled to one-third of the decedent's property by intestate succession, the result of the Act is to give to her two-thirds of the property subject to the Act. For example, if the spouses had recently moved to a common law state and owned \$300,000 of property (all being personal property held in the husband's name and acquired as community property), the wife would be entitled to one-half of the property (\$150,000) and would receive a  $\frac{1}{2}$  share of the husband's half (\$50,000) for a total of \$200,000. It is clearly within the power of the enacting state to prescribe any pattern of intestate succession deemed appropriate, and views may differ. In some community property states, the surviving spouse receives all of the decedent's community property upon intestate succession; in another, she would receive none. Similarly, the common law state may alter the pattern to fit its own policy determination.

#### **Dower, Curtesy, Elective Share**

Dower and curtesy do not exist in community property and have been abolished in many common law states; policy considerations suggest that no such interest should exist in property subject to this Act, since the surviving spouse already has a one-half interest in such property. Similar reasons suggest a denial of any right in the surviving spouse to elect a statutory share in the one-half of the property over which the decedent had a power of disposition.

1    **SECTION 4. [Perfection of Title of Surviving Spouse.]** If the  
2 title to any property to which this Act applies was held by the  
3 decedent at the time of death, title of the surviving spouse may  
4 be perfected by an order of the [court] or by execution of an  
5 instrument by the personal representative or the heirs or devisees  
6 of the decedent with the approval of the [court]. Neither the  
7 personal representative nor the court in which the decedent's estate  
8 is being administered has a duty to discover or attempt to dis-  
9 cover whether property held by the decedent is property to which  
10 this Act applies, unless a written demand is made by the surviving  
11 spouse or the spouse's successor in interest.

#### **COMMENT**

This section simply provides for perfection of title interests of the surviving spouse (e.g. where title was in the name of the deceased spouse) by orders of the court of appropriate jurisdiction (e.g. the probate court) in the enacting state. This section is designed to eliminate any liability of the personal representative for a breach of his fiduciary duty by failing to search for or to discover whether property held by the decedent is property defined in Section 1, unless a written

demand is made by the surviving spouse or the spouse's successor in interest. In several states the Court administering a decedent's estate has a duty or undertakes to advise parties in interest of their legal and equitable rights, and this section is similarly designed to eliminate such Court's liability for failing to discover the community rights and to advise the interested party of his rights. Nothing contained in this section is to be construed to interfere with the Court's jurisdiction in a proper proceeding to perfect the title of the surviving spouse in and to property to which this Act applies.

1     SECTION 5. [*Perfection of Title of Personal Representative, Heir*  
2     *or Devisee.*] If the title to any property to which this Act applies  
3     is held by the surviving spouse at the time of the decedent's death,  
4     the personal representative or an heir or devisee of the decedent  
5     may institute an action to perfect title to the property. The per-  
6     sonal representative has no fiduciary duty to discover or attempt  
7     to discover whether any property held by the surviving spouse is  
8     property to which this Act applies, unless a written demand is  
9     made by an heir, devisee, or creditor of the decedent.

#### COMMENT

This section is a corollary to Section 4. Since title is apparently in the surviving spouse, the section simply provides for an action by the personal representative, heirs, or devisees and is again designed to eliminate any liability of the personal representative for a breach of his fiduciary duty by failing to discover or to attempt to discover whether property held by the surviving spouse is property subject to this Act, absent a written demand by an heir, devisee or creditor of the decedent.

1     SECTION 6. [*Purchaser for Value or Lender.*]  
2     (a) If a surviving spouse has apparent title to property to  
3     which this Act applies, a purchaser for value or a lender taking  
4     a security interest in the property takes his interest in the prop-  
5     erty free of any rights of the personal representative or an heir or  
6     devisee of the decedent.  
7     (b) If a personal representative or an heir or devisee of the  
8     decedent has apparent title to property to which this Act applies,  
9     a purchaser for value or a lender taking a security interest in the  
10    property takes his interest in the property free of any rights of the  
11    surviving spouse.  
12    (c) A purchaser for value or a lender need not inquire whether  
13    a vendor or borrower acted properly.  
14    (d) The proceeds of a sale or creation of a security interest shall  
15    be treated in the same manner as the property transferred to the  
16    purchaser for value or a lender.

#### COMMENT

This section is designed to protect purchasers and lenders taking a security interest, who acquire such interest for value, after the death of the decedent, from a person who appears to have title to property to which this Act applies. The

only requirement is that the purchaser or lender have acquired his interest for value; there is no requirement of good faith absence of notice. The purpose of the section is to permit reliance upon apparent title and facilitate both ascertainment of title and disposition of assets where adequate consideration is paid. Since, during the joint lives of the spouses, the spouse with apparent title would have been able to convey title (at least as to community property) though being held accountable to the other spouse for an appropriate allocation of the proceeds or any breach of fiduciary obligation, the Act simply extends this treatment to disposition of the assets after the death of a spouse.

1 SECTION 7. [*Creditor's Rights.*] This Act does not affect rights  
2 of creditors with respect to property to which this Act applies.

1 SECTION 8. [*Acts of Married Persons.*] This Act does not pre-  
2 vent married persons from severing or altering their interests in  
3 property to which this Act applies.

#### COMMENT

The rights, and procedures, with respect to severance of community property vary markedly among the community property states. The Act simply makes clear that nothing in the Act itself in any way limits the rights of the spouses to sever community property or to create a form of ownership not subject to this Act.

1 SECTION 9. [*Limitations on Testamentary Disposition.*] This  
2 Act does not authorize a person to dispose of property by will if  
3 it is held under limitations imposed by law preventing testamen-  
4 tary disposition by that person.

1 SECTION 10. [*Uniformity of Application and Construction.*]  
2 This Act shall be so applied and construed as to effectuate its  
3 general purpose to make uniform the law with respect to the  
4 subject of this Act among those states which enact it.

1 SECTION 11. [*Short Title.*] This Act may be cited as the  
2 Uniform Disposition of Community Property Rights at Death Act.

1 SECTION 12. [*Repeal and Effective Date.*] The following acts  
2 and laws are repealed as of the effective date of this Act:

3 (1)

4 (2)

1 SECTION 13. [*Time of Taking Effect.*] This Act shall take  
2 effect. . . .