

**Michigan
Law Revision Commission**

**FOURTEENTH ANNUAL REPORT
1979**

MICHIGAN
LAW REVISION COMMISSION

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TOM DOWNS, *Vice Chairman*
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RICHARD C. VAN DUSEN

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Representatives:

MARK CLODFELTER
DENNIS M. HERTEL
RICHARD D. FESSLER

Director, Legislative Service Bureau

ALLAN E. REYHONS, *Secretary*
125 West Allegan, 3rd Floor
Lansing, Michigan 48913

Executive Secretary

PROF. JEROLD H. ISRAEL
University of Michigan Law School
341 Hutchins Hall
Ann Arbor, Michigan 48109

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MICHIGAN LAW REVISION COMMISSION
Fourteenth Annual Report to the Legislature

To the Members of the Michigan Legislature:

The Law Revision Commission hereby presents its fourteenth 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 chairperson 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 ex-officio members of the Commission during 1979 were Senator Basil W. Brown of Highland Park, Senator Donald E. Bishop of Rochester, Representative Mark Clodfelter of Flint and Representative Dennis Hertel of Detroit (co-chairpersons of the House Judiciary Committee), Representative Richard D. Fessler of Pontiac, and A.E. Reyhons, Director of the Legislative Service Bureau. The appointed members were Tom Downs, Jason L. Honigman, David Lebenbom, and Richard C. Van Dusen. The Legislative Council appointed Jason L. Honigman Chairman and Tom Downs Vice Chairman of the Commission. Professor Jerold Israel of the University of Michigan Law School served as Executive Secretary.

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 Commission members 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's efforts during the past year have been devoted primarily to three areas. First, Commission members met with legislative committees to secure disposition of 11 proposals recommended by the Commission. Meetings with legislature members also have focused upon possible subjects for future study.

Second, the Commission examined suggested legislation proposed by various groups involved in law revision activity. These proposals included legislation advanced by the Council of State Governments, the National Conference of Commissioners on Uniform State Laws, and the Law Revision Commissions of various jurisdictions within and without the United States (e.g., California, New York, and British Columbia).

Finally, the Commission considered various problems relating to special aspects of current Michigan law suggested by its own review of Michigan decisions and the recommendations of others.

As in previous years, the Commission studied various proposals that did not lead to legislative recommendations. In the case of recently proposed Uniform Acts, we found many of the subjects treated in those proposals had been considered by the legislature in very recent legislation. Similarly, various aspects of Michigan law were examined, but were viewed as inappropriate for legislative recommendation at this time. Topics in this category included special assessment authorization statutes, the holding of title by joint ventures, the

responsibilities of finders of lost property, the relationship between asset sales and product liability, and special aspects of inheritance by adopted children (In re Adolphson Estate). Two of the topics studies did lead to recommendations for legislative action. These are:

- (1) The Elimination of Various Statutory References to Abolished Courts
- (2) The Uniform Federal Lien Registration Act

Recommendations and proposed statutes on the above topics accompany this report.

In addition to the new recommendations contained in this report, the Commission recommends favorable consideration of the following recommendations of past years upon which no final action was taken in 1979.

(1) Condemnation Procedures Act -- H.B. 4652, passed the House and now before the Senate Committee on Judiciary. During an earlier legislative session, an earlier version of this bill passed the Senate. After extensive hearing before the House and extensive consultation with various objecting groups, a substitute bill, with substantial revisions, was proposed. This year, further revisions were made. As a result, the Commission proposal is now incorporated in H.B. 4652. The original proposal is contained in the Recommendations of the 1968 Annual Report, page 11.

(2) Construction Debt -- Former S.B. 630, before Senate Committee on State Affairs during the 1978 session. See Recommendations of 1976 Annual Report, page 10.

(3) Unlawful Assessments -- H.B. 5319, before House Committee on Judiciary. See Recommendations of 1976 Annual Report, page 44.

(4) Marital Agreements/Divorce Amendment -- Former S.B. 632, before Senate Committee on Judiciary during the 1978 session. S.B. 632 passed the Senate in 1978 and was before the House Committee on Judiciary. See Recommendations of 1976 Annual Report, page 38.

(5) Elimination of Reference to the Justice of the Peace: Provision on the Sheriff's Service of Process -- H.B. 5329, before the House Committee on Judiciary. This proposal passed the House in 1978 and was before the Senate Committee on Municipalities and Elections. See Recommendations of 1976 Annual Report, page 74.

(6) Appeals to the Tax Tribunal -- H.B. 5318, before the House Committee on Judiciary. See Recommendations of 1978 Annual Report, page 9.

(7) Commercial Mortgage Foreclosure Act -- H.B. 5317, before the House Committee on Judiciary. See Recommendations of 1978 Annual Report, page 13.

(8) In Rem Jurisdiction by Attachment or Garnishment Before Judgment -- H.B. 5316, before the House Committee on Judiciary. See Recommendations of 1978 Annual Report, page 22.

(9) Disclosure of Treatment as an Element of the Psychologist/Psychiatrist-Patient Privilege -- H.B. 5297, before House Committee on Mental Health. See Recommendations of 1978 Annual Report, page 28.

(10) Technical Revision of the Code of Criminal Procedure -- H.B. 5315, before House Committee on Judiciary. See Recommendations of the 1978 Annual Report, page 37.

Topics on the current study agenda of the Commission are:

- (1) Amendments to Article 8 -- Uniform Commercial Code
- (2) Eliminating Statutory References to Justice of the Peace and Other Abolished Courts
- (3) Enforcement of Administrative Agency Subpoenas
- (4) Punitive Damages
- (5) Transfer of A Business Having Liquor Sales As A Minor Portion of Its Activities
- (6) Compensation For The Use of Items That Are The Subject Of A Claim and Delivery Action
- (7) Product Liability, Model Acts
- (8) Uniform Limited Partnership Act

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 48109. 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 cost. Faculty members of the several 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 to the Commission, continues to handle the fiscal operations of the Commission under procedures established by the Legislative Council.

The following Acts have been adopted to date pursuant to recommendations of the Commission and in some cases 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 Right 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 Assessments	1968, p. 30	115
Anatomical Gifts	1968, p. 39	189
Recognition of Acknowledgments	1968, p. 61	57
Dead Man's Statute Amendment	1969, p. 29	63
Venue Act	1968, p. 19	333

1970 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
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 Commission Power 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, p. 8	98
Execution and Levy in Proceedings Supplementary to Judgment	1970, p. 51	96

1974 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Venue in Civil Actions Against Non-Resident Corporations	1971, p. 63	52
Model Choice of Forum Act	1972, p. 60	88
Extension of Personal Jurisdiction in Domestic Relations Cases	1972, p. 53	90
Technical Amendments to the General Corporations Act	1973, p. 38	140
Technical Amendments to the Revised Judicature Act	1971, p. 7	297
1974 Technical Amendments to the Business Corporation Act	1974, p. 30	303
Attachment Fees Act	1968, p. 23	306
Amendment of "Dead Man's" Statute	1972, p. 70	305
Contribution Among Joint Tortfeasors Act	1968, p. 57	318
District Court Venue in Civil Actions	1970, p. 42	319
Elimination of Pre-judgment Garnishment	1972, p. 7	371

1975 Legislative Session

Amendment of Hit-Run Provisions to Provide Specific Penalty	1973, p. 54	170
Uniform Child Custody Jurisdiction Act	1969, p. 22	297
Insurance Policy in Lieu of Bond Act	1972, p. 59	290
Uniform Disposition of Community Property Rights At Death Act	1973, p. 50	289
Equalization of Income Rights of Husband and Wife in Entirety Property	1974, p. 30	288

1976 Legislative Session

Due Process in Replevin Actions	1972, p. 7	79
Qualifications of Fiduciaries	1966, p. 32	262
Revision of Revised Judicature Act Venue Provisions	1975, p. 20	375
Durable Family Power of Attorney	1975, p. 18	376

1978 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Elimination of References to Abolished Courts		
Preservation of Property Act	1976, p. 74	237
Bureau of Criminal Identification	1976, p. 74	538
Charter Townships	1976, p. 74	553
Fourth Class Cities	1976, p. 74	539
Election Law Amendments	1976, p. 74	540
Home Rule Cities	1976, p. 74	191
Home Rule Village Ordinances	1976, p. 74	190
Village Ordinances	1976, p. 74	189
Public Recreation Hall Licenses	1976, p. 74	138
Township By-laws	1976, p. 74	103
Study Report on Juvenile Obscenity Law	1975, p. 133	33
Multiple Party Deposits	1966, p. 18	53
Amendment of Telephone and Messenger Service Act Amendments	1973, p. 48	63
Amendments of the Plat Act	1976, p. 58	367
Amendments to Article 9 of the Uniform Commercial Code	1975, Special Supplement	369

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
Richard C. Van Dusen

Ex-Officio Members
Sen. Basil W. Brown
Sen. Donald E. Bishop
Rep. Mark Clodfelter
Rep. Richard D. Fessler
Rep. Dennis M. Hertel
A.E. Reyhons, Secretary

Date: December 28, 1979

ELIMINATING REFERENCES TO ABOLISHED COURTS

This is the fourth in a series of Commission proposals designed to remove references to abolished courts, particularly references to the justice of the peace, a position which was abolished in 1969 (M.C.L. §600.9921) pursuant to the constitutional mandate of Article VI, section 26. The Technical Amendments to the R.J.A. (P.A. 297 of 1974) deleted such references in the Revised Judicature Act. A series of amendments proposed in our 1976 Report deleted references to the abolished courts in various acts dealing with minor criminal offenses. (See Public Acts 103, 138, 189, 190, 191, 237, 538, 539, and 540 of 1978). The currently pending bill on Technical Amendments to the Code of Criminal Procedure will delete outdated references in that Code. Three of the four bills proposed in this series deal with provisions that should be repealed. The fourth treats a provision on vital statistics that should be amended to conform with the proposed amendments in the Criminal Procedure Code relating to inquests.

The proposed bills follow:

REPEAL OF PUBLIC ACT NO. 76 OF 1879 (GRAND RAPIDS POLICE COURT)

A bill to repeal Act No. 76 of the Public Acts of 1879, entitled "An Act to establish a municipal court in the city of Grand Rapids to be known and called 'The police court of Grand Rapids,'" being sections 729.201 to 729.217 of the Compiled Laws of 1970, as amended.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. Sections 1 to 23 of Act No. 76 of the Public Acts of 1879, being sections 729.1 to 729.23 of the Compiled Laws of 1970, are repealed.

Comment: There are no existing courts that derive their authority from this court, which has long been abolished. The provisions of the Act to be repealed are set forth below:

729.1 Police court of Grand Rapids, establishment; judge; election, oath, qualifications

Sec. 1. That there shall be established and organized a municipal court in and for the city of Grand Rapids, to be known as and called "The police court of Grand Rapids," and there shall be elected a judge and a clerk of said court, as hereinafter provided. The police justice of the city of Grand Rapids, now officiating, shall continue and hold his office, and exercise the powers and duties herein conferred, under the title of "police judge," until the expiration of the time for which he was elected. At the annual charter election of said city to be held in 1882, and at every fourth annual charter election thereafter, a police judge shall be elected in and for said city, by the electors thereof, in the manner provided by law for the election of mayor of said city, and the person so elected shall hold said office for the term of 4 years from and after the first Monday in May next after his election, and until his successor shall be elected and qualified. Before entering upon the duties of his office, he shall take, subscribe, and file in duplicate, with the clerk of said city, and with the clerk of the county of Kent, respectively, the constitutional oath of office. He shall be an attorney and counsellor at law, entitled to practice in all the courts of this state, and a resident in, and qualified elector of said city.

729.2 Clerk of court; election, term, qualifications

Sec. 2. At the first annual charter election, to be held in said city next after the passage and approval of this act, and at every second annual charter election thereafter, there shall be elected a clerk of the police court, in the manner provided by law for the election of the judge of the said court. He shall enter upon the discharge of the duties of his office on the first Monday in May next after his election, and hold the same for the term of 2 years thereafter, and until his successor shall be elected and qualified. He shall be a resident of and a qualified elector of said city. Immediately after the passage of this act, and before said first election of such clerk, the common council shall appoint a suitable and qualified person to exercise the duties of said office until a clerk shall be elected and qualified under this act.

729.3 Same; oath of office, bond; vacancy in office of judge or clerk

Sec. 3. Before entering upon the duties of his office, the clerk of police court shall take, subscribe and file with the clerk of said city, the constitutional oath of office, and give a bond to the city of Grand Rapids, and a bond to the treasurer of the county of Kent, each in the sum of 2,000 dollars, with 2 sufficient sureties, to be approved by the mayor of said city, and by the treasurer of said county, respectively, conditioned for the faithful discharge of the duties of his office, and to account for and pay over to the proper treasurers, in the manner and at the times hereinafter provided, all moneys which shall come into his hands by virtue of his said office. The bond to the city shall be filed with the city clerk, and the bond to the treasurer of said county shall be filed with said treasurer; and if from any cause a vacancy shall occur in the office of judge or clerk of said police court, either or both, the common council of said city may order a special election to be held for the election of a judge or clerk of said court, as the case may be, for the remainder of the term of said judge or clerk, as the case may be, which said election, if ordered, shall be conducted in the same manner as the annual city election, and the same notice thereof given, as is required by law to be given for the annual city election.

729.4 Prosecuting and city attorneys, duties in court

Sec. 4. It shall be the duty of the prosecuting attorney of the county of Kent, or his authorized deputy or assistant, to attend all sessions of said police court, and prosecute all state criminal cases therein; and it shall be the duty of the city attorney, or any assistant authorized by the common council, to attend all sessions of said court, to prosecute all violations of the charter, by-laws or ordinances therein.

729.5 Place for holding court; power of court; peremptory challenges

Sec. 5. The police judge shall hold a court in said city, at a suitable place, to be provided by the common council thereof, to be styled the police court, and which shall not be a court of record. Said police judge shall have power and authority to take complaints, issue all processes necessary in said court, to be signed by or attested in the name of said judge, and the court shall have the same power to punish contempts and preserve order, to compel the attendance of witnesses, parties and jurors, and determine as to the qualifications of jurors, and such further powers incident to a circuit court, and the judge thereof, as may be convenient in the exercise of the jurisdiction and powers herein conferred upon him as such court; he shall also have all the powers and authority of a justice of the peace, except in the trial of civil cases. And in every trial in said court by jury, the city or the people, as the case may be, shall be entitled to but 2 peremptory challenges, and the accused to but 2 peremptory challenges.

729.6 Jurisdiction; entries as evidence; arrest without process

Sec. 6. Said police court shall have exclusive original jurisdiction to issue process for, hear, try and determine all cases against persons charged with violations of the provisions of the charter of said city, or of any act of the legislature relating to the government thereof, and of the by-laws and ordinances of the common council thereof, already enacted, or that may hereafter be enacted, anything in any other law of this state or the charter of said city or any ordinance of said city contained to the contrary thereof notwithstanding; and all the provisions of law relative to complaints against offenders for violations of the provisions of the charter of said city or any by-law or ordinance of the common council of said city or of the acts aforesaid and relative to process, proceedings and judgments therein, and relative to executions upon such judgments and proceedings therein shall apply to said police court. Said police court shall also have exclusive original jurisdiction to issue process for, hear, try and determine all cases of misdemeanor, and of a quasi criminal nature, committed within the corporate limits of said city heretofore or hereafter within the jurisdiction of justices' courts, anything otherwise herein or in any other law of this state contained to the contrary thereof in any wise notwithstanding. Said police court shall also have exclusive original jurisdiction to issue process for, hear, try and examine, and to hold to bail or discharge all persons charged therein with the commission of felonies within the corporate limits of said city. Said police court shall have authority to sentence any person convicted therein of the commission of a misdemeanor and triable in justice courts of this state, the same as justices of the peace may by law do. It shall not be necessary to file a record of any conviction had in said court, but the dockets or journal entries and file shall be prima facie evidence of all proceedings had in said court. And in all cases of the violation of the provisions of the charter, by-laws or ordinances of said city, each member of the police force may make arrest without process when committed in his presence, in which case complaint and arraignment [arraignment] shall be made without delay, so that no injustice shall be done.

729.7 Practice; process; service, record

Sec. 7. The practice in said court may be the same as practice in courts of justices of the peace in criminal cases, and the laws of this state relative to such practice, and the procedure before justices of the peace in criminal cases shall, except where herein otherwise provided, extend to said police court, so far as is consistent with the practice of said court. All process issued out of said court shall be directed to the chief of police, or any member of the police force of said city, or to the sheriff of Kent county, but no such process shall be served or executed by the chief of police or any member of said police force outside of the corporate limits of said city, unless in case of immediate pursuit in view of such officer, in which case he or they may pursue and arrest the same as the sheriff of the county might in like case do. It shall be the duty of the sheriff to keep a record of all process required to be served and executed outside of said city, which record shall show the date of the process, name of the accused, a summary of the proceedings had therein and the amount of fees and charges of the officers who shall execute the same.

729.8 Fees and salary of judge, clerk and police

Sec. 8. The police judge and clerk shall receive no fees or perquisites for their services performed under this act, but in lieu thereof the police judge shall receive an annual salary of 1,800 dollars, $\frac{1}{2}$ of which shall be paid by the city of Grand Rapids monthly in the manner provided by law for the salary of the judge of the superior court of Grand Rapids, and $\frac{1}{2}$ of which shall be paid by the treasurer of the county of Kent, out of the treasury of said county, in the manner provided by law for the payment of the salary of the prosecuting attorney. The clerk of said police court shall receive an annual salary, to be paid in the manner herein provided for the payment of the salary of the police judge, of 1,200 dollars, $\frac{1}{2}$ of which shall be paid by said city and $\frac{1}{2}$ thereof by the treasurer of the county of Kent, out of the treasury of said county. Neither the chief of police nor any member of the police force of said city shall be entitled to receive for his own use any fees for services performed under this act, but in lieu thereof the chief of police and members of the police force of said city shall receive such annual salary as shall be fixed by the board of police and fire commissioners of the city of Grand Rapids.

729.9 Office and supplies for judge and clerk

Sec. 9. It shall be the duty of the common council of said city to provide a suitable office for the judge and clerk of said court adjacent to the court room thereof, as near as may be, and such necessary furniture, light, fuel, records, blanks, stationery and other articles as may be required for the judge, court, clerk, jury and other officers of said court; the office of said judge not to be with that of the clerk.

729.10 Court open at all times; adjournments; bailiff, appointment, powers, removal, salary, vacancy; vacancy in office of judge or clerk

Sec. 10. The police court shall always be open for business, but may adjourn its sittings from day to day and from time to time as may be convenient and not inconsistent with the dispatch of business therein. Cases and examinations pending in said court may be adjourned from time to time, not exceeding 3 months from the arraignment of the accused therein, unless the court shall be satisfied by proper evidence that the attainment of justice requires a further continuance, and then only for such further time as the exigency of the case for the attainment of the object aforesaid shall require. One member at least of the police force of said city shall attend each session of said court to assist the bailiff. The judge of said court shall appoint a good and competent elector of said city bailiff of said court, which appointment shall be in writing signed by said judge and filed with the clerk of said court as the files or record thereof; thereupon said clerk shall make a duly certified copy of such appointment to and file the same with the board of police and fire commissioners of the city of Grand Rapids, which said board shall at that time or at its first session thereafter, by a proper resolution, duly clothe such person with police powers, and who shall thereupon be a policeman of said city, vested with all the powers, rights and liabilities of such officer and of police constables, but not to receive pay as such policeman. The person thus appointed may be removed at the pleasure of such judge; such bailiff shall receive a salary at the rate of 800 dollars per year, to be paid in the same manner as the salary of the judge of said court is paid; and upon a vacancy occurring in said office by removal or otherwise, the same shall be immediately filled as above provided. In case of the removal from the city of the judge of said police court, his death, resignation or removal from office, his office shall be deemed vacant, and such vacancy filled in the manner hereinbefore provided. The same causes shall be deemed to constitute a vacancy in the office of clerk of said police court, and such vacancy shall be filled as hereinafter provided.

729.11 Judge to instruct jury; appeals; juries

Sec. 11. It shall be the duty of the judge of said court to instruct the jury as to the laws applicable to the case, which instruction shall be received by the jury as the law of the case. Such defendant shall have the right of appeal, provided such appeal shall be taken and perfected within 24 hours from the time of the court pronouncing its judgment or sentence, and certiorari from final judgment of said court, as provided by law for appeals and certiorari from final judgments of justices of the peace in criminal cases, such appeals being taken and perfected as hereinbefore in this section provided. In State criminal cases appeals and writs of certiorari shall when taken be taken to the circuit court for the county of Kent. Juries shall be obtained and appeals and writs of certiorari, both in city and State cases, shall be taken, perfected, and returned in the manner provided by law for like acts before justices of the peace in criminal cases, except as herein otherwise provided.

729.12 Assistant police judge

Sec. 12. At the first annual meeting of the common council of said city in each year, or within 20 days thereafter, said council shall select, upon the nomination of the mayor, from among the justices of the peace of said city, a suitable and qualified person as assistant police judge, who shall possess the same qualifications as are required of the police judge, and exercise the power, authority and jurisdiction herein conferred upon said police judge, in case of the absence, inability, or disability of the police judge to perform the duties of his office. He shall receive compensation for the time he shall officiate at the rate of 3 dollars per day, to be paid in the same manner as the police judge, except that his claim for such salary shall be allowed as other claims against said city and county.

729.13 Cases for violation of city ordinances; fines and costs; report

Sec. 13. Cases commenced in the name of said city for violations of the provisions of the charter or ordinances of said city, or of any act of the legislature relating to the government thereof, shall be prosecuted and proceeded in and the judgment thereon, and the final process upon such judgment to carry the same into effect, shall be in all respects as in criminal cases, but all fines and costs collected in such cases shall be by the clerk of the police court paid to the treasurer of the city of Grand Rapids on the first Monday of each and every month or within 3 days thereafter, and all fines and costs collected in state criminal cases shall at the same time be paid to the treasurer of the county of Kent by the clerk of the police court, and receipts therefor shall be duly issued to said clerk. Said clerk shall at the same time report in writing to the common council of said city, in city and state criminal cases, and to the board of supervisors in state criminal cases, the names of all persons tried in said court during the preceding month, the offense charged against each, and the amount of fine and costs separately collected by him, and shall make oath thereto that the same are correct, and that he has paid over all the said moneys respectively in accordance with the provisions of this act.

729.14 Fees and costs

Sec. 14. The fees and costs in each case in the said court, whether under the laws of this state or under the charter, by-laws or ordinances of said city, shall be the same as are or may be provided by law for like cases before justices of the peace, in criminal cases, and shall be taxed by the said clerk. The fees of witnesses, jurors, sheriffs and constables, other than police officers of said city, shall when collected be paid to them by said clerk, to their own use, and in city cases commenced before said police court for the recovery of fines, penalties or forfeitures, and in all cases of offenses against the criminal laws of this state, within the jurisdiction of said court to try and determine. If the defendant shall plead guilty to the offense charged, or shall be found guilty thereof on trial by said judge, judgment for costs accruing in the case shall be rendered against and paid by said defendant, in addition to the fine, penalty, or forfeiture imposed.

729.15 Security for costs; judgment for costs against sureties

Sec. 15. The said police judge or clerk shall have authority in all cases, either state or city, at his discretion, either before or after issuing of process, to require of the complaining witness security for costs to the satisfaction of said judge or clerk, and the person becoming such surety shall sign a memorandum in writing to that effect, which said clerk shall keep as a part of the record in the case. If the defendant or accused be discharged on examination or acquitted on trial, the said police court shall enter a judgment for costs against the surety and the complaining witness, either or both of them, which shall be of like force and effect, and shall be collected as upon judgments rendered by a justice of the peace in actions commenced by warrant, and of like form with such executions as near as may be: Provided however, Before rendering such judgment said court shall cause to be certified on the record that such payment of costs by such complainant is just and equitable.

729.16 County to pay part of expenses of court; limit

Sec. 16. One-half of all the costs and expenses of said city in maintaining and providing for said court other than for the salaries of its officers, shall be paid to the clerk of said city annually by the treasurer of said county, out of the treasury of said county, and by said city clerk deposited in the treasury of said city at the close of the regular annual session of the board of supervisors of said county: Provided, That $\frac{1}{2}$ the whole amount of the expense of said city for salaries of the police judge and clerk of the police court, and for rent of court-room and office for said clerk, and records, blanks, and stationery for use of said court and the officers thereof, in any 1 year, shall not exceed the sum of 1,600 dollars. It shall be the duty of the clerk of said city on the first day of each annual session of said board, to present the claim of said city therefor, duly certified, and said board shall, if found correct, at the same session, audit and allow the same, and order the payment thereof as aforesaid.

729.17 Clerk; duties, deputy, vacancy, power as to writs and process, administration of oaths, other powers

Sec. 17. The clerk of the police court shall keep the records of said court, and do all the necessary clerical work of said court, except as hereinafter provided, and be the custodian of the records and files and property of said court. He shall provide the court and its officers with necessary stationery, records, blanks and other articles, to be furnished by said city on requisition on the common council thereof. The journal or docket entries of said court shall be signed by the judge thereof. Said clerk shall receive and account for all moneys collected in said court. He shall annually nominate a suitable person as deputy, to be elected by the common council of said city. Such deputy shall, before acting, take and file the oath of office, and make and file the like bonds as are required of the clerk. The said deputy clerk shall perform the duties of said clerk when so required by said judge, and during absence of said clerk, for which he shall receive compensation for the time he shall officiate at the rate of 3 dollars per day, to be paid in the manner hereinbefore provided for the payment of the salary of the judge of said court, which said amount so paid to said deputy clerk shall, when paid, be deducted from the salary of the clerk of said court. In case the office of said clerk shall become vacant by resignation or as hereinbefore provided, said deputy clerk shall become the clerk of said court until the next charter election of said city of Grand Rapids, and thereupon it shall become his duty to file bonds as clerk of said court and appoint a deputy as hereinbefore provided. The clerk of said court shall file and preserve all the records and files of said court, and he shall not be concerned as counsel in any case therein. Said clerk may sign and seal either with a scroll or device, and if with a device, such device as may be ordered by such police judge, which order, if made, shall be filed and recorded by said clerk as a part of the records of said court, all writs and processes issuing from said court, as provided in section 5 of this act, and shall have power generally to administer oaths and affidavits, take recognizance or bail, swear witnesses and jurors, and to do all acts usual and proper to do by the clerk of the superior court of Grand Rapids, within the jurisdiction of said police court.

729.18 Suspension of judge

Sec. 18. Said police judge may be suspended from his said office and removed therefrom in the same manner and form as provided by law for the suspension and removal of justices of the peace.

729.19 Commitments

Sec. 19. Whenever any person shall be sentenced by the police court, to confinement in any place of imprisonment outside of the corporate limits of said city, it shall be the duty of the sheriff or any deputy sheriff of Kent county to take, transfer, convey and deliver such sentenced person, under commitment of said court, to such place of imprisonment; but all other commitments may be executed by said sheriff or by the chief of police, or any member of the police force of said city.

729.21 Cases pending when act becomes effective

Sec. 21. All criminal cases arising in said city and commenced before any justice of the peace before this act shall take effect, shall be tried, heard, determined or examined as if this act had not been passed, and all cases pending in the police court of said city at the time of the passage of this act, shall be tried, heard, determined or examined into as if this act had not been passed.

729.23 Immediate effect

Sec. 23. This act shall take immediate effect.

REPEAL OF PUBLIC ACT NO. 353 OF 1913
(ON POLICE COURT JUDGES, CLERKS, AND BAILIFFS)

A bill to repeal Act No. 353 of the Public Acts of 1913, entitled "An Act to fix the term of office and compensation of the judge, clerk, bailiff and stenographer; to prescribe the duties and powers of such officers; to prescribe the manner and limit the time for appeals of police courts in cities of this state of a population not less than 125,000 and not more than 200,000 inhabitants, and to provide for the appointment of a deputy clerk," being sections 729.101 to 729.106 of the Compiled Laws of 1970, as amended.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. Sections 1 to 6 of Act No. 353 of the Public Acts of 1913, being sections 729.101 to 729.106 of the Compiled Laws of 1970, are repealed.

Comment. This Act refers to courts that no longer exist. Moreover, none of the remaining municipal courts derive their authority from this Act. The provisions to be repealed are set forth below:

729.101 Police judge; salary; fees of judge and clerk

Sec. 1. In all cities of this state having a population of not less than 125,000 inhabitants nor more than 200,000 inhabitants, the police judge and clerk shall receive no fees for their services, but in lieu thereof the police judge shall receive an annual salary of \$6,500.00, and such additional sums as the city commission or other legislative body of the city or board of supervisors of the county wherein said court is located may by resolution provide, which salary shall be paid $\frac{3}{5}$ by the city in which said court is held, monthly, and in the manner provided by law for the payment of salaries of city officers, and $\frac{2}{5}$ of which shall be paid by the treasurer of the county in which said city is located, out of the treasury of said county in the manner provided by law for the payment of the salary of the prosecuting attorney thereof.

729.102 Same; election, term, oath, qualifications

Sec. 2. The police judge of said court existing under the law at the time this act takes effect, and now officiating in said court, shall continue to hold his office and exercise his powers and duties herein conferred under the title of police judge, until the expiration of the time for which he was elected. At the charter election in said city or cities, coming under this act, held in April, 1914, a police judge of said court shall be elected to hold his office for the term of 6 years from and after the first Monday in May next after his election, and until his successor shall be elected and qualified. Before entering upon the duties of his office he shall take, subscribe and file in duplicate with the clerk of said city and with the clerk of said county, respectively, the constitutional oath of office. He shall be an attorney and counselor of law, entitled to practice in all the courts of this state, and a resident and a qualified elector in the said city.

729.103 Clerk; salary, appointment, term, qualifications

Sec. 3. The clerk of said police court shall receive an annual salary of \$4,000.00, and such additional sums as the city commission or other legislative body of the city or board of supervisors of the county wherein said court is located may by resolution provide, which salary shall be paid in the same manner as that of police judge, $\frac{3}{5}$ of which shall be paid by said city, and $\frac{2}{5}$ thereof by the county in which said city may be located, out of the treasury of said county. Notwithstanding any charter provisions or other statutes to the contrary, the clerk of said court shall be appointed by the judge thereof, and a memorandum of such appointment shall be filed with the clerk of said city. Such clerk shall hold his office at the pleasure of the court. The first appointment under this section shall not take effect until the first Monday in May, 1956. He shall be a resident in and a qualified elector of the said city. As amended P.A.1956, No. 1, § 1, Imd. Eff. Feb. 27.

729.104 Bailiff; appointment, powers, rights and liabilities, salary, vacancy, oath, bonds, deputy clerk

Sec. 4. The judge of said court shall appoint a good and competent elector of said city, bailiff of said court, which appointment shall be in writing signed by said judge and filed with said clerk of said court as a part of the records thereof, and thereupon, said clerk shall make a duly certified copy of such appointment and file with the director of public safety of said city, who shall duly clothe such person with police power, and he shall thereupon be a policeman of said city, vested with all the powers, rights and liabilities of such officers and of police constables but not to receive pay as such policeman. The person thus appointed may be removed at the pleasure of such judge. Said bailiff shall receive an annual salary of \$3,000.00 per year and such additional sums as the city commission or other legislative body of the city or board of supervisors of the county wherein said court is located may by resolution provide, which salary shall be paid in the same manner as the salary of the judge of the said court is paid, and upon a vacancy occurring in the said office by removal or otherwise, the same shall be immediately filled as above provided. The said bailiff shall by virtue of his office be the deputy clerk of said court. Such deputy shall before acting take and file the oath of office, and make and file the like bonds as are required of the clerk. The said deputy clerk shall perform the duties of said clerk when so required by said judge, and during the absence of said clerk. As amended P.A.1956, No. 1, § 1, Imd. Eff. Feb. 27.

729.104a Court stenographer; appointment, duties, compensation, removal

Sec. 4a. The police judge, by and with the advice and consent of the justices of the peace of the city in which said court is located, shall appoint a competent court stenographer for said court, whose duty it shall be to take down in shorthand the testimony in examinations of offenders by the police court or the justices courts in the county in which said court is located, for offenses committed against the criminal laws of his state when said police court or justice courts have jurisdiction to examine and hold to bail only. The stenographer so appointed shall receive as compensation a salary of \$4,000.00 per annum and such additional sums as the city commission or other legislative body of the city or board of supervisors of the county wherein said court is located may by resolution provide, which salary shall be paid 2/5 by the city in which said court is held, monthly, and in the manner provided by law for the payment of salaries of city officers, and 3/5 of which shall be paid by the treasurer of the county in which said city is located, out of the treasury of said county in the manner provided by law for the payment of the salary of the prosecuting attorney thereof. Said stenographer shall furnish a copy of the transcript of the testimony whenever desired and shall receive from the party so receiving it, the sum of 10 cents per folio. Said stenographer shall be provided suitable office facilities and stationery for the work. Said stenographer may be removed from office for misconduct or incompetency.

729.105 Jury; drawing, instruction

Sec. 5. And it shall be the duty of the judge of said court to instruct the jury as to the law applicable to any case on trial before a jury, which instruction shall be received by the jury as the law of the case. Juries shall be drawn in the manner provided by law for the drawing of juries before justices of the peace in criminal cases.

729.106 Appeals and certiorari

Sec. 6. Subject to the provisions of this act, the defendant shall have the right of appeal and certiorari from final judgments of said court as provided by law for appeals and certiorari from final judgments of justices of the peace in criminal cases.

**REPEAL OF SECTION 10 OF PUBLIC ACT NO. 63 OF 1889
(RELATING TO THE COUNTY BOARD OF AUDITORS)**

A bill to repeal section 10 of Act No. 63 of the Public Acts of 1889, entitled "an act to authorize the boards of supervisors of counties to create a board of county auditors, appoint such officers, and prescribe their powers, duties and compensation," being section 47.10 of the Compiled Laws of 1970, as amended.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. Section 10 of Act No. 63 of the Public Acts of 1889, being section 47.10 of the Compiled Laws of 1970, is repealed.

Comment: This section relates to the paying of bills of a justice of the peace by the County Board of Auditors. The provision has no relevance to any of the current courts. The section to be repealed is set forth below.

47.10 Same; justice's bills, certified by treasurer

Sec. 10. Before allowing the bills of any justice of the peace of said county, the board of auditors shall require said justice to furnish a certified statement from the county treasurer showing that all fines collected by the said justice of the peace have been paid over to the county treasurer, up to and including all pending bills, as required by law.

REPEAL OF SECTION 66 OF CHAPTER 14 OF THE
REVISED STATUTES OF 1846 (RELATING TO
FUNCTIONS OF COUNTY CLERKS)

A bill to repeal section 66 of Chapter 14 of the Revised Statutes of 1846, entitled "Of county officers," being section 50.66 of the Compiled Laws of 1970.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. Section 66 of Chapter 14 of the Revised Statutes of 1846, being section 50.66 of the Compiled Laws of 1970, is repealed.

Comment: This section relates to the duties of the county clerk with respect to justices of the peace. It is not relevant to any current courts. The section to be repealed is set forth below.

50.66 Annual report to secretary of state

Sec. 66. The clerk of each county shall transmit to the secretary of state annually, within 1 week after the fourth day of July, a list, certified by him, of all justices of the peace of the county, stating the time of their respective elections and their terms of service, their post-office addresses, and whether elected to fill a vacancy, and if so, what vacancy; and whenever the county clerk shall receive information of the death, removal, or resignation of any justice of the peace of his county, it shall be his duty, forthwith, to notify the secretary of state of such vacancy; he shall also annually, immediately after receiving from the township and city clerks of his county the names and post-office addresses of the township and city officers, transmit to the secretary of state the names and postoffice addresses of the several township and city clerks and supervisors, with the name of the township or city for which they are such clerks and supervisors set opposite their respective names.

AMENDMENT OF PUBLIC ACT 343 OF 1925
(RELATING TO THE REPORTING OF VITAL STATISTICS)

A bill to amend section 8 of Act No. 343 of the Public Acts of 1925, entitled as amended "An act to provide for registration of births, deaths, and adoptions in this state; the appointment of registrars thereof; to provide for the determination of death; requiring physicians and others to make certain reports; to provide for certified copies of certain vital statistics records; and to provide penalties," being section 326.8 of the Compiled Laws of 1970.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. Section 8 of Act No. 343 of the Public Acts of 1925, being section 326.8 of the Compiled Laws of 1970, is amended to read as follows:

Sec. 8. In case of any death occurring without medical attendance it shall be the duty of the undertaker or person acting as such UNDERTAKER to notify 1 of the COUNTY MEDICAL EXAMINER county coroners, or a justice of the peace acting as coroner, who shall investigate or hold an inquest as the circumstances require and shall certify as to the cause of such THE death on the death certificate and shall sign the same CERTIFICATE officially as coroner or acting coroner MEDICAL EXAMINER. If such THE death was the result of violence, the said coroner, or justice of the peace acting as such, MEDICAL EXAMINER shall state the cause of the violence and whether or not it was apparently accidental, suicidal or homicidal and shall furnish such further information as may be required by the State Commissioner of Health.

Comment: These amendments would alter the references in this provision to conform with the procedures adopted in the proposed technical revision of the Criminal Code and Public Act No. 189 of 1953. See the 13th Annual Report (1978) at pp. 96-106.

UNIFORM FEDERAL LIEN REGISTRATION ACT

Michigan was one of 28 states to adopt the Uniform Federal Tax Lien Registration Act. See P.A. 1967, No. 162 (M.C.L. §211.671, etc.). Since the adoption of that Act, Congress has created a new source of federal liens (the Pension Reform Act) and other sources are under consideration. The 1978 Uniform Federal Lien Registration Act is designed to accommodate these new liens. It deletes references in the former act that were limited to tax liens and substitutes references to all federal liens that are treated in the same manner as tax liens. Appendix A contains (1) the prefatory note and commentary to the Uniform Federal Lien Registration Act, prepared by the National Conference of Commissioners on Uniform State Laws, and (2) the provisions of the Uniform Tax Lien Registration Act, which will be repealed.

The proposed bill follows:

UNIFORM FEDERAL TAX LIEN REGISTRATION ACT

A bill to provide for the recording and filing of notices of federal liens and discharges, thereof; and to repeal certain acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1. This Act applies only to federal tax liens and to other federal liens notices of which under any Act of Congress or any regulation adopted pursuant thereto are required or permitted to be filed in the same manner as notices of federal tax liens.

Sec. 2. (a) Notices of liens, certificates, and other notices affecting federal tax liens or other federal liens must be filed in accordance with this Act.

(b) Notices of liens upon real property for obligations payable to the United States and certificates and notices affecting the liens shall be filed in the office of the register of deeds of the county or counties in which the real property subject to the liens is situated.

(c) Notices of federal liens upon personal property, whether tangible or intangible, for obligations payable to the United States and certificates and notices affecting the liens shall be filed as follows:

(1) if the person against whose interest the lien applies is a corporation or a partnership whose principal executive office is in this state, as these entities are defined in the internal revenue laws of the United States, in the office of the secretary of state;

(2) in all other cases, in the office of the register of deeds of the county where the person against whose interest the lien applies resides at the time of filing of the notice of lien.

Sec. 3. Certification of notices of liens, certificates, or other notices affecting federal liens by the Secretary of the Treasury of the United States or his delegate, or by any official or entity of the United States responsible for filing

or certifying of notice of any other lien, entitles them to be filed and no other attestation, certification, or acknowledgement is necessary.

Sec. 4. (a) If a notice of federal lien, a refiling of a notice of federal lien, or a notice of revocation of any certificate described in subsection (b) is presented to a filing officer who is:

(1) the secretary of state, he shall cause the notice to be marked, held, and indexed in accordance with the provisions of subsection (4) of section 9403 of Act No. 174 of the Public Acts of 1962, as amended, known as the uniform commercial code and being section 440.9403 of the Compiled Laws of 1970, as if the notice were a financing statement within the meaning of that code; or

(2) any other officer described in section 2, he shall endorse thereon his identification and the date and time of receipt and forthwith file it alphabetically or enter it in an alphabetical index showing the name and address of the person named in the notice, the date and time of receipt, the title and address of the official or entity certifying the lien, and the total amount appearing on the notice of lien.

(b) If a certificate of release, non-attachment, discharge, or subordination of any lien is presented to the secretary of state for filing he shall:

(1) cause a certificate of release or non-attachment to be marked, held, and indexed as if the certificate were a termination statement within the meaning of the uniform commercial code, but the notice of lien to which the certificate relates may not be removed from the files; and

(2) cause a certificate of discharge or subordination to be marked, held, and indexed as if the certificate were a release of collateral within the meaning of the uniform commercial code.

(c) If a refiled notice of federal lien referred to in subsection (a) or any of the certificates or notices referred to in subsection (b) is presented for filing to any other filing officer specified in section 2, he shall permanently attach the refiled notice or the certificate to the original notice of lien and enter the refiled notice or the certificate with the date of filing in any alphabetical lien index on the line where the original notice of lien is entered.

(d) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file, on the date and hour stated therein, any notice of lien or certificate or notice affecting any lien filed under this Act or Act 162 of the Public Acts of 1967 naming a particular person, and if a notice or certificate is on file, giving the date and hour of filing of each notice or

certificate. The fee for a certificate is \$3.00. Upon request, the filing officer shall furnish a copy of any notice of federal lien, or notice or certificate affecting a federal lien, for a fee of \$3.00 per page.

Sec. 5 (a) The fee for filing and indexing each notice of lien or certificate or notice affecting the lien is:

(1) for a lien on real estate, the same fee provided by law for recording a real estate mortgage;

(2) for a lien on tangible and intangible personal property, \$3.00;

(3) for a certificate of discharge or subordination, the same fee provided by law for recording a discharge of a real estate mortgage;

(4) for all other notices, including a certificate of release or non-attachment, \$3.00.

The officer shall bill the district directors of internal revenue or other appropriate federal officials on a monthly basis for fees for documents filed by them.

Sec. 6. This Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among states enacting it.

Sec. 7. This Act may be cited as the Uniform Federal Lien Registration Act.

Sec. 8. Act 162 of the Public Acts of 1967, being sections 211.671-211.678 of the Compiled Laws of 1970, is repealed.

Appendix A

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

APPROVED, AUGUST 1978

UNIFORM FEDERAL LIEN REGISTRATION ACT (1978)

PREFATORY NOTE

This Act is a successor to the Revised Federal Tax Lien Registration Act as revised by the Conference in 1966 and does not make any drafting changes to the previous Act except as required to prescribe the method of perfecting the employer liability lien, provided by the Pension Reform Act, and any other similar liens.

Since most of the policy decisions made in drafting this Act were derived from the Revised Uniform Federal Tax Lien Registration Act as it was revised in 1966, it would appear helpful to include here the Prefatory Note which was included with the earlier Act in 1966.

"Section 6323 of the United States Internal Revenue Code of 1954, as amended by P.L. 89-719, Federal Tax Lien Act of 1966 provides that liens for an unpaid federal tax shall not be valid as against mortgagees, pledges, judgment creditors, purchasers and holders of other security interest until notice of the tax lien has been filed in an office designated by the law of the state in which the property subject to the lien is situated, or, in the absence of a valid state designation, in the federal district court for the place where the property is situated. Under federal law, personal property is deemed situated at the residence of the taxpayer regardless of its physical location.

"Thus the new federal act would invalidate any provision of a state law which required filing of liens for property other than real estate at more than one office or at any state office other than that associated with the residence of the taxpayer. State law requiring filing at the physical location of personal property or at both physical location and residence of the taxpayer is not permissible and if a state law includes such a provision the Internal Revenue Service would, for that state, file liens in the federal district court rather than in a state office.

"The new federal legislation provides for filing of certain types of certificates and notices affecting previously filed liens which some of the existing state legislation does not provide for. The effectiveness of these additional notices as a communication to interested persons depends on their being filed in the same office where the notice of lien is filed. It is necessary, therefore, that state law be broadened to permit filing and indexing of these additional notices.

"In addition to the above reasons for new state legislation, there is another reason for revising existing state laws concerned with

federal tax liens. Many of the existing laws are no longer appropriate in the states (all but three in December, 1966) which have enacted the Uniform Commercial Code. It is highly desirable that the place for filing and searching for federal tax liens be the same place as that designated by the state law under the Uniform Commercial Code for filing and searching for a security interest in the same property. Unfortunately, complete coordination of federal tax lien filing with the rules for filing under the Uniform Commercial Code cannot be fully achieved by state legislation. The United States Supreme Court has held that the Congressional permission to a state to designate the office for filing of federal tax liens cannot be taken advantage of by the states in such a way as to require the federal tax collector to specify the particular property to which the lien applies. *United States v. Union Central Life Insurance Company*, 363 U.S. 291 (1961). The Internal Revenue Service has interpreted this decision to preclude a state requirement for filing federal tax liens in conformity with the Uniform Commercial Code because of the Code's differing requirements for various types of property and its requirement for filing in two offices in some cases. Rev. Rul. 64-170, 1964-1 Cum. Bull. 499. P.L. 89-719 continues this interpretation.

"Nevertheless, it is possible to go a long way toward bringing federal tax lien filing into conformity with the Uniform Commercial Code and it is highly desirable to do so in order to accommodate to commercial convenience so far as possible within the limitations of federal law. States which departed from the uniformity of the Commercial Code by amendment as to the place of filing may now wish to conform their Commercial Code to the original uniform version at the same time they change the federal tax lien requirements. The Act presented here calls for filing on taxpayers who are corporations or partnerships in the office of the Secretary of State and in all other cases in an office in the place where the taxpayer resides. No provision is possible calling for filing of the tax lien at the place where particular kinds of property are physically located. Any attempt to deviate from the proposed place of filing in this Code risks non-compliance with Federal Law. The federal act does permit filing of notices as to real property in an office at the place where the real property is situated. It has no such permission for other kinds of property. Section 1 of the Act contained herein complies with the federal requirement.

"The present Act was prepared in light of Public Law 89-719 of 1966 amending Section 6323 of the Internal Revenue Code of 1954. The Internal Revenue Service has reviewed the Act and believes it meets the requirement of federal law. The Conference recommends that it be adopted and that existing legislation concerning federal tax liens be repealed."

UNIFORM FEDERAL LIEN REGISTRATION ACT

1 SECTION 1. [*Scope.*] This Act applies only to federal tax
2 liens and to other federal liens notices of which under any
3 Act of Congress or any regulation adopted pursuant thereto
4 are required or permitted to be filed in the same manner as
5 notices of federal tax liens.

COMMENT

This Act is a successor to the Revised Federal Tax Lien Registration Act as revised by the Conference in 1966. The changes made in the previous Act are brought about by the provisions of the Pension Reform Act which prescribes the method of perfecting the employer liability lien to be the same as for federal tax liens.

Therefore, the Act has been changed and now applies to the employer liability lien established by Section 4068(a) of the Pension Reform Act as well as a federal tax lien. Other similar liens that may be perfected like a federal tax lien, such as the provisions for collection of federal fines contained in proposed revisions to the federal criminal laws, are within the scope of this Act.

1 SECTION 2. [*Place of Filing.*]
2 (a) Notices of liens, certificates, and other notices affecting
3 federal tax liens or other federal liens must be filed in ac-
4 cordance with this Act.
5 (b) Notices of liens upon real property for obligations
6 payable to the United States and certificates and notices af-
7 fecting the liens shall be filed in the office of the [_____] of the [_____] in which the real property
8 subject to the liens is situated.
9 (c) Notices of federal liens upon personal property, whether
10 tangible or intangible, for obligations payable to the United
11 States and certificates and notices affecting the liens shall be
12 filed as follows:
13 (1) if the person against whose interest the lien applies is
14 a corporation or a partnership whose principal executive
15 office is in this State, as these entities are defined in the
16

17 internal revenue laws of the United States, in the office of
18 the Secretary of State;
19 (2) in all other cases, in the office of the [_____]
20 of the [_____] where the person against whose
21 interest the lien applies resides at the time of filing of the
22 notice of lien.

COMMENT

1. In order to accommodate to commercial convenience so far as possible within the limitations of Section 6323 of the Internal Revenue Code, filing with the Secretary of State is provided for the lien on tangible and intangible personal property of partnerships and corporations (as those terms are defined in Section 7701 of the Internal Revenue Code of 1954 and the implementing regulations) thus including within "partnerships" such entities as joint ventures and within "corporations" such entities as joint stock corporations and business trusts.

Because most purchases and secured transactions involving personal property of natural persons relate to consumer goods or farm personal property, searches for liens against those persons are more likely to be made at the local level. Thus, with few exceptions a search for corporation federal tax liens with the Secretary of State and for natural persons with an officer in the county of residence will normally be in the same office as searches for security interests under the Uniform Commercial Code.

Section 6323 of the Internal Revenue Code "locates" all tangible and intangible personal property at the residence of the taxpayer even though it is physically located elsewhere in the same or in another state. State law cannot vary this requirement. State law does affect the result, however, in that state law determines the "residence" of a taxpayer. See IRC Section 6323(f)(2). Filing at the physical location of personal property of a taxpayer who is not a resident of the state of location of the property cannot be required.

2. The coverage of this Act now extends beyond federal tax liens as described in the Comment to Section 1.

3. In some jurisdictions, a question may be raised concerning the propriety of incorporating federal law by reference. In others, the place of filing described in this Act may not correspond to the place of filing under the Uniform Commercial Code. Alteration of this Act in these respects may create the peril that the notices will be filed in the federal district court, thus eliminating the benefits of this Act.

1 SECTION 3. [*Execution of Notices and Certificates.*] Cer-
2 tification of notices of liens, certificates, or other notices
3 affecting federal liens by the Secretary of the Treasury of
4 the United States or his delegate, or by any official or entity
5 of the United States responsible for filing or certifying of
6 notice of any other lien, entitles them to be filed and no
7 other attestation, certification, or acknowledgement is
8 necessary.

COMMENT

This section addresses only the validity of the filing and not the validity of the lien.

1 SECTION 4. [*Duties of Filing Officer.*]

2 (a) If a notice of federal lien, a refiling of a notice of
3 federal lien, or a notice of revocation of any certificate
4 described in subsection (b) is presented to a filing officer
5 who is:

6 (1) the Secretary of State, he shall cause the notice to
7 be marked, held, and indexed in accordance with the provi-
8 sions of [Section 9-403(4),] of the Uniform Commercial
9 Code as if the notice were a financing statement within the
10 meaning of that Code; or

11 (2) any other officer described in Section 2, he shall
12 endorse thereon his identification and the date and time of
13 receipt and forthwith file it alphabetically or enter it in an
14 alphabetical index showing the name and address of the
15 person named in the notice, the date and time of receipt,
16 the title and address of the official or entity certifying the
17 lien, and the total amount appearing on the notice of lien.

18 (b) If a certificate of release, non-attachment, discharge,
19 or subordination of any lien is presented to the Secretary of
20 State for filing he shall:

21 (1) cause a certificate of release or non-attachment to
22 be marked, held, and indexed as if the certificate were a
23 termination statement within the meaning of the Uniform
24 Commercial Code, but the notice of lien to which the
25 certificate relates may not be removed from the files; and

26 (2) cause a certificate of discharge or subordination to
27 be marked, held, and indexed as if the certificate were a
28 release of collateral within the meaning of the Uniform
29 Commercial Code.

30 (c) If a refiled notice of federal lien referred to in sub-
31 section (a) or any of the certificates or notices referred to in
32 subsection (b) is presented for filing to any other filing
33 officer specified in Section 2, he shall permanently attach
34 the refiled notice or the certificate to the original notice of
35 lien and enter the refiled notice or the certificate with the
36 date of filing in any alphabetical lien index on the line
37 where the original notice of lien is entered.

38 (d) Upon request of any person, the filing officer shall

39 issue his certificate showing whether there is on file, on the
40 date and hour stated therein, any notice of lien or certificate
41 or notice affecting any lien filed under this Act [or (refer-
42 ence previous federal tax lien registration act)], naming a
43 particular person, and if a notice or certificate is on file,
44 giving the date and hour of filing of each notice or certifi-
45 cate. The fee for a certificate is [\$_____]. Upon request,
46 the filing officer shall furnish a copy of any notice of federal
47 lien, or notice or certificate affecting a federal lien, for a
48 fee of [\$_____] per page.

COMMENT

1. It is the practice of the Internal Revenue Service to regard a "certificate of discharge" as primarily referable to specific pieces of property, so a certificate of discharge corresponds to a release under Section 9-406 of the Uniform Commercial Code. A "certificate of release" in tax practice is equivalent to a "termination statement" in Section 9-404 of the Uniform Commercial Code in the sense that it is a general statement applicable to all property or types of property referred to in the termination statement.

2. It is expected that the Pension Benefit Guaranty Corporation will adopt the same practices as the Internal Revenue Service or other practices as the circumstances may require.

1 SECTION 5. [Fees.] The fee for filing and indexing each
2 notice of lien or certificate or notice affecting the lien is:
3 (1) for a lien on real estate, [\$_____];
4 (2) for a lien on tangible and intangible personal property,
5 [\$_____];
6 (3) for a certificate of discharge or subordination,
7 [\$_____];
8 (4) for all other notices, including a certificate of release or
9 non-attachment, [\$_____].
10 The officer shall bill the district directors of internal
11 revenue or other appropriate federal officials on a monthly
12 basis for fees for documents filed by them.

COMMENT

1. It is understood that the Treasury accepts the obligation to pay non-discriminatory filing fees for filing notice of tax liens but desires those payments to be on a monthly billing basis. For notice of tax lien on real property, the filing fee for a real estate mortgage may serve as a standard; for a filing fee on notice of tax lien on personal property the filing fee for filing a financing statement may serve as a standard. There is now no established practice concerning fees for other notices. The certificate of discharge is comparable to a satisfaction of a real estate mortgage and to release

of collateral under Section 9-406 of the Uniform Commercial Code. Those instruments are usually filed by persons other than the Treasury, and a filing fee for filing them should be prescribed.

A different problem is presented by certificates of release or non-attachment. Sometimes those certificates serve the purpose of permitting the public filing official to clear his records, and for that purpose the filing fee perhaps should be low in order to induce filing. Sometimes those notices are filed for purposes of the taxpayer. Given the volume of notices of tax liens which are filed daily in large filing offices, it may serve the public interest to have filed certificates of release. From the standpoint of the Treasury, those certificates serve no important purpose, and the Treasury may not file them if the fee is large. In adoption of this Act, consideration should be given by the states to providing a substantially smaller fee for filing a certificate of release, so that when a tax case is closed the Treasury will file those releases in a routine manner in order to reduce the storage and administrative problem of the local and state filing officers.

2. It is understood that the Pension Benefit Guaranty Corporation will accept the same obligations as those imposed on the Treasury for federal tax liens.

- 1 SECTION 6. [*Uniformity of Application and Construction.*]
- 2 This Act shall be applied and construed to effectuate its
- 3 general purpose to make uniform the law with respect to
- 4 the subject of this Act among states enacting it.

- 1 SECTION 7. [*Short Title.*] This Act may be cited as the
- 2 Uniform Federal Lien Registration Act.

- 1 SECTION 8. [*Repeal.*] The following acts and parts of acts
- 2 are repealed:
- 3 (1) [existing federal tax lien registration act];
- 4 (2)
- 5 (3)

- 1 SECTION 9. [*Time of Taking Effect.*] This Act shall take
- 2 effect _____

THE UNIFORM FEDERAL TAX LIEN REGISTRATION ACT

211.671 Short title; uniform federal tax lien registration act.

Sec. 1. This act shall be known and may be cited as the "uniform federal tax lien registration act".

211.672 Lien notices and certificates; filing.

Sec. 2. (a) Notices of liens upon real property for taxes payable to the United States, and certificates and notices affecting the liens shall be recorded in the office of the register of deeds of the county or counties in this state in which the real property subject to a federal tax lien is situated.

(b) Notices of liens upon personal property, whether tangible or intangible, for taxes payable to the United States and certificates and notices affecting the liens shall be filed as follows:

(1) If the person against whose interest the tax lien applies is a corporation or a partnership whose principal executive office is in this state, as these entities are defined in the internal revenue laws of the United States, in the office of the secretary of state.

(2) In all other cases in the office of the register of deeds of the county where the taxpayer resides at the time of filing of the notice of lien.

211.673 Certification by secretary of the treasury.

Sec. 3. Certification by the secretary of the treasury of the United States or his delegate of notices of liens, certificates, or other notices affecting tax liens entitles them to be filed and no other attestation, certification or acknowledgment is necessary.

211.674 Duties of filing officers; fees.

Sec. 4. (a) If a notice of federal tax lien, a refiling of a notice of tax lien, or a notice of revocation of any certificate described in subsection (b) is presented to the filing officer and

(1) He is the secretary of state, he shall cause the notice to be marked, held and indexed in accordance with the provisions of subsection (4) of section 9403 of Act No. 174 of the Public Acts of 1962, as amended, known as the uniform commercial code and being section 440.9403 of the Compiled Laws of 1948, as if the notice were a financing statement within the meaning of that code; or

(2) He is any other officer described in section 2 of this act, he shall indorse thereon his identification and the date and time of receipt and forthwith file it alphabetically or enter it in an alphabetical index showing the name and address of the person named in the notice, the date and time of receipt, the serial number of the district director and the total unpaid balance of the assessment appearing on the notice of lien.

(b) If a certificate of release, nonattachment, discharge or subordination of any tax lien is presented to the secretary of state for filing he shall

(1) Cause a certificate of release or nonattachment to be marked, held and indexed as if the certificate were a termination statement within the meaning of the uniform commercial code, except that the notice of lien to which the certificate relates shall not be removed from the files, and

(2) Cause a certificate of discharge or subordination to be held, marked and indexed as if the certificate were a release of collateral within the meaning of the uniform commercial code.

(c) If a refiled notice of federal tax lien referred to in subsection (a) or any of the certificates or notices referred to in subsection (b) is presented for filing with any other filing officer specified in section 2, he shall permanently attach the refiled notice or the certificate to the original notice of lien and shall enter the refiled notice or the certificate with the date of filing in any alphabetical federal tax lien index on the line where the original notice of lien is entered.

(d) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file, on the date and hour stated therein, any notice of federal tax lien or certificate or notice affecting the lien, filed or after the effective date of this act, naming a particular person, and if a notice or certificate is on file, giving the date and hour of filing of each notice or certificate. The fee for a certificate is \$1.00. Upon request the filing officer shall furnish a copy of any notice of federal tax lien or notice or certificate affecting a federal tax lien for a fee of \$1.00 per page.

211.675 Maintenance of files for notices, liens, or certificates recorded prior to January 1, 1968.

Sec. 5. Officers with whom notices of federal tax liens, certificates and notices affecting such liens have been recorded on or before January 1, 1968 shall, after that date, continue to maintain a file labeled "federal tax lien notices recorded prior to January 1, 1968" containing notices and certificates recorded in numerical order of receipt. If a notice of lien was recorded on or before January 1, 1968, any certificate or notice affecting the lien shall be filed in the same office.

211.676 Recording, filing, and indexing fees.

Sec. 6. The fee for recording or filing and indexing each notice of lien or certificate or notice affecting the tax lien is:

(1) For a tax lien on real estate, the same fee provided by law for recording a real estate mortgage.

(2) For a tax lien on tangible and intangible personal property, \$1.00.

(3) For a certificate of discharge or subordination, the same fee provided by law for recording a discharge of a real estate mortgage.

(4) For all other notices, including a certificate of release or nonattachment, \$1.00.

The officer shall bill the district directors of internal revenue on a monthly basis for fees for documents filed by them.

211.677 Construction of act.

Sec. 7. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

211.678 Repeal.

Sec. 8. Act No. 107 of the Public Acts of 1956, as amended, being sections 211.661 to 211.669 of the Compiled Laws of 1948, is repealed.