

Michigan Law Revision Commission

**TWENTIETH ANNUAL REPORT
1985**

**MICHIGAN
LAW REVISION COMMISSION**

Term Members:

TOM DOWNS, *Chairman*
DAVID LEBENBOM
RICHARD McLELLAN
RICHARD C. VAN DUSEN

Ex-officio Members:

Senators:

ALAN CROPSEY
BASIL W. BROWN

Representatives:

PERRY BULLARD
ERNEST W. NASH

Director, Legislative Service Bureau
ELLIOTT SMITH, *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 48109-1215

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MICHIGAN LAW REVISION COMMISSION
Twentieth Annual Report to the Legislature

To the Members of the Michigan Legislature:

The Law Revision Commission hereby presents its twentieth 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.

Membership

The ex-officio members of the Commission during 1985 were Senator Alan Cropsey of DeWitt, Senator Basil W. Brown of Highland Park, Representative Perry Bullard of Ann Arbor, Representative Ernest W. Nash of Dimondale, and Elliott Smith, Director of the Legislative Service Bureau. The appointed members of the Commission were Tom Downs, David Lebenbom, Theodore W. Swift (through June 6th), Richard McLellan (after June 6th), and Richard C. Van Dusen. Mr. Tom Downs served as Chairman; Professor Jerold Israel of the University of Michigan Law School served as Executive Secretary.

The Commission's Work in 1985

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, and other learned bodies.

3. To receive and consider suggestions from justices, judges, legislators and other public officials, lawyers and the public generally as to the 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 the 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 chairpersons to secure disposition of various proposals previously recommended by the Commission. 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 certain Uniform or Model Acts, we found that the subjects treated had been considered by the Michigan legislature in recent legislation. In other instances, Uniform or Model Acts were not pursued as formal recommendations because similar or identical legislation was currently before the legislature upon the initiation of legislators having a special interest in the parti-

cular subject. A major project was the examination of the laws in Michigan and other states applicable to workers' cooperatives. The Commission did not offer a specific proposal in this regard, but furnished its research to the legislative committee which is also examining the subject.

Two of the topics studied by the Commission over the past year have resulted in legislative recommendations. Those are:

- (1) Repeals of various Justice of the Peace provisions
- (2) The Uniform Law on Notarial Acts

Recommendations and proposed statutes on these two topics accompany this Report.

Proposals for Legislative Consideration in 1985

In addition to our new recommendations, the Commission recommends favorable consideration of the following recommendations of past years upon which no final action was taken in 1985.

(1) Amendments to the Uniform Limited Partnership Act. See Recommendations of 1983 Annual Report, page 9.

(2) Appeals to the Tax Tribunal -- H.B. 4373. See Recommendations of 1978 Annual Report, page 9.

(3) In Rem Jurisdiction by Attachment or Garnishment Before Judgment -- H.B. 4787. See Recommendations of 1978 Annual Report, page 22.

(4) Repeal of M.C.L. Section 764.9 -- H.B. 4424, passed by the House. See Recommendations of the 1982 Annual Report, page 9.

(5) Disclosure in the Sale of Visual Art Objects Produced in Multiples -- H.B. 4070, 4071, and 4072, passed by the House. See Recommendations of the 1981 Annual Report, page 57.

(6) Uniform Transfers to Minors Act -- H.B. 4769. See Recommendations of the 1984 Annual Report, page 17.

(7) Amendment of the Assumed Names Act (limited partnership) -- H.B. 5166. See Recommendations of the 1984 Annual Report, page 11.

(8) Uniform Transboundary Pollution Reciprocal Access Act. See Recommendations of the 1984 Annual Report, page 71.

(9) Amendments to Article 8 of the Uniform Commercial Code. See Recommendations of the 1984 Annual Report, page 97.

Current Study Agenda

Topics on the current study agenda of the Commission are:

- (1) Eliminating Statutory References to Justice of the Peace and Other Abolished Courts
- (2) Inconsistent References to "Police Officer" and "Peace Officer"
- (3) Transfer of A Business Having Liquor Sales As A Minor Portion of Its Activities
- (4) Registration of Assumed Names by Individuals and Partnerships
- (5) Granting and Withdrawal of Medical Practice Privileges in Hospitals
- (6) Duties, Rights, and Responsibilities of Receivers
- (7) Uniform Unclaimed Property Act
- (8) Responsibilities of Finders of Lost Property

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 48109-1215. By using faculty members at the several law schools as consultants and law students as researchers, the Commission has been able to operate at a budget substantially lower than that of similar commissions in other jurisdictions.

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.

Prior Enactments

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>
Original Jurisdiction of Court of Appeals	1966, p. 43	65
Corporation Use of Assumed Names	1966, p. 36	138
Interstate and International Judicial Procedures	1966, p. 25	178
Stockholder Action Without Meetings	1966, p. 41	201
Powers of Appointment	1966, p. 11	224
Dead Man's Statute	1966, p. 29	263

1968 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Possibilities of Reverter and Right of Entry	1966, p. 22	13
Stockholder Approval of Mortgaging Assets	1966, p. 39	287
Corporations as Partners	1966, p. 34	288
Guardian Ad Litem	1967, p. 53	292
Emancipation of Minors	1967, p. 50	293
Jury Selection	1967, p. 23	326

1969 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Access to Adjoining Property	1968, p. 21	55
Recognition of Acknowledgments	1968, p. 61	57
Dead Man's Statute Amendment	1969, p. 29	63
Notice of Tax Assessments	1968, p. 30	115
Antenuptial Agreements	1968, p. 27	139
Anatomical Gifts	1968, p. 39	189
Administrative Procedures Act	1967, p. 11	306
Venue Act	1968, p. 19	333

1970 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Land Contract Foreclosures	1967, p. 55	86
Artist-Art Dealer Relationships Act	1969, p. 44	90
Minor Students Capacity to Borrow Act	1969, p. 51	107
Warranties in Sales of Art Act	1969, p. 47	121
Appeals from Probate Court Act	1968, p. 32	143
Circuit Court Commission Power of Magistrates Act	1969, p. 62	238

1971 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
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

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Summary Proceeding for Possession of Premises	1970, p. 16	120
Interest on Judgments Act	1969, p. 64	135
Business Corporation Act	1970, Supp.	284
Constitutional Amendment re Juries of 12	1969, p. 65	HJR "M"

1973 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Execution and Levy in Proceedings	1970, p. 51	96
Technical Amendments to Business Corporation Act	1973, p. 8	98

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
Amendment to "Dead Man's" Statute	1972, p. 70	305
Attachment Fees Act	1968, p. 23	306
Contribution Among Joint Tortfeasors Act	1967, 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

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Amendment of Hit-Run Provisions to Provide Specific Penalty	1973, p. 54	170
Equalization of Income Rights of Husband and Wife in Entirety Property	1974, p. 30	288
Uniform Disposition of Community Property Rights at Death Act	1973, p. 50	289
Insurance Policy in Lieu of Bond Act	1969, p. 54	290
Uniform Child Custody Jurisdiction Act	1969, p. 22	297

1976 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
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>
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
Elimination of References to Abolished Courts		
a. Township By-Laws	1976, p. 74	103
b. Public Recreation Hall Licenses	1976, p. 74	138
c. Village Ordinances	1976, p. 74	189
d. Home Rule Village Ordinances	1976, p. 74	190
e. Home Rule Cities	1976, p. 74	191
f. Preservation of Property Act	1976, p. 74	237
g. Bureau of Criminal Identification	1976, p. 74	538
h. Fourth Class Cities	1976, p. 74	539
i. Election Law Amendments	1976, p. 74	540
j. Charter Townships	1976, p. 74	553
Amendments of the Plat Act	1976, p. 58	367
Amendments to Article 9 of the Uniform Commercial Code	1975, Supp.	369

1980 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Condemnation Procedures Act	1968, p. 11	87
Technical Revision of the Code of Criminal Procedure	1978, p. 37	506

1981 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Elimination of Reference to the Justice of the Peace: Provision on the Sheriff's Service of Process	1976, p. 74	148
Amendment of R.J.A. Section 308 (Court of Appeals Jurisdiction) in accord with R.J.A. Section 861	1980, p. 34	206

1982 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Revised Uniform Limited Partnership Act	1980, p. 40	213
Technical Amendments to the Business Corporation Act	1980, p. 8	407
Amendment of Probate Code as to Interest on Judgments	1980, p. 37	412

1983 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Elimination of Various Statutory References to Abolished Courts	1979, p. 9	87
Uniform Federal Lien Registration Act	1979, p. 26	102

1984 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Study Report on Legislative Privilege		
a. Immunity in Civil Actions	1983, p. 14	27
b. Limits of Immunity in Contested Cases	1983, p. 14	28
c. Amendments to R.J.A. for Legislative Immunity	1983, p. 14	29
Disclosure of Treatment Under the Psychologist/Psychiatrist-Patient Privilege	1978, p. 28	362

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

Respectfully submitted,

Tom Downs, Chairman
David Lebenbom
Richard D. McLellan
Richard C. Van Dusen

Ex-Office Members

Sen. Alan Cropsey
Sen. Basil W. Brown
Rep. Perry Bullard
Rep. Ernest W. Nash
Elliott Smith, Secretary

Date: January 30, 1986

JUSTICE OF THE PEACE REPEALERS

[Each of the Bills that follow, as explained in the commentary, would repeal a provision relating to courts no longer in existence. These proposals are part of an ongoing "housekeeping" project.]

A Bill to repeal sections 7701 to 7741 of Act No. 236 of the Public Acts of 1961, entitled "An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of such courts, and of the judges and other officers thereof: the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in civil and criminal actions and proceedings and proceedings in said courts; to provide remedies and penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with, or contravening any of the provisions of this act.", being sections 600.7701 to 600.7741 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. Sections 7701 to 7741 of Act No. 236 of the Public Acts of 1961, being sections 600.7701 to 600.7741 of the Michigan Compiled Laws, are repealed.

Comment

This chapter of the Revised Judicative Act of 1961 establishes for the procedure for appeals from Justice Courts. MCL § 600.8343 transferred all cases from abolished courts to district courts, where they would be appealed according to the district court guidelines. Appeals from district courts are now covered by MCL § 600.8342 and Michigan Court Rule 701. Appeals from municipal courts are governed by Michigan Court Rule 702, which is almost identical to Michigan Court Rule 701.

* * *

A Bill to repeal Act No. 299 of the Public Acts of 1911 entitled "An act to provide for justice courts in all cities of not less than 80,000 population, whose justice court or other courts are not provided for their present charters or by other general or local acts, and to repeal all acts and parts of acts inconsistent with this act.", being sections 730.1 to 730.30 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. Act No. 299 of the Public Acts of 1911, being section 730.1 to 730.30 of the Michigan Compiled Laws, is repealed.

Comment

This Act provides for the establishment of municipal courts in cities with a population of over 80,000. Michigan compiled laws § 600.9921 provided for the abolishment of justice courts and municipal courts except for those cities which chose to

retain their municipal courts under § 600.9928. No new municipal courts can be established. See § 600.9928(4). Since none of the five remaining municipal courts were established under this Act, and thus are not governed by any of its sections, the entire Act can be repealed.

* * *

A Bill to repeal Act No. 171 of the Public Acts of 1911, entitled "An act to provide for clerks in justice courts in cities over 25,000 and under 10,000 inhabitants, where the justices of the peace are paid a salary.", being sections 730.201 to 730.203 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. Act No. 171 of the Public Acts of 1911, being sections 730.201 to 730.203 of the Michigan Compiled Laws, is repealed.

Comment

This bill provides for clerks for justice courts with a population between 25,000 and 100,000. Since justice courts were abolished by § 600.9921, there obviously is no longer a need for an act providing clerks for these courts. Clerks for district courts are provided for under § 600.8281 and clerks for municipal courts are provided for under § 730.107 et seq.

* * *

A Bill to repeal Act No. 41 of the Public Acts of 1947, entitled "An act to authorize justices of the peace and municipal judges to act in the place of and for justices of the peace or other judicial officers having the jurisdiction of justices of the peace, in cities, under certain conditions; and to authorize cities to fix by ordinance the compensation to be paid such justices and the procedure to be followed in authorizing them to act in such cities and in paying them for services.", being sections 730.301 to 730.302 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. Act No. 41 of the Public Acts of 1947, being sections 730.301 to 730.302 of the Michigan Compiled Laws, is repealed.

Comment

These sections provide for the authorization of substitute justices or municipal judges. These sections can be eliminated, as there is no longer any need for substitute justices and substitute municipal judges are provided for in MCL § 730.508.

* * *

A Bill to repeal Act No. 103 of the Public Acts of 1947, entitled "An Act to authorize the commission or governing bodies of certain cities to change the name of justice court to municipal court; and to prescribe the power, duties and functions of such courts.", being sections 730.351 to 730.354 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. Act No. 103 of the Public Acts of 1947, being sections 730.351 to 730.354 of the Michigan Compiled Laws, is repealed.

Comment

This Act, providing for changing the name of justice court to municipal courts, also should be repealed, since justice courts have been abolished.

THE UNIFORM LAW ON NOTARIAL ACTS

Proposed by the National Conference of Commissioners on Uniform State Laws in 1982, the Uniform Law on Notarial Acts (ULNA) (App. A) is intended to replace two previous uniform laws: the Uniform Acknowledgments Act (UAA) and the Uniform Recognition of Acknowledgments Act (URAA), which was enacted in Michigan in 1969, M.C.L. 565.261, et seq., (App. B). As the N.C.C.U.S.L. recommended, Michigan repealed the UAA when it enacted the URAA (14 U.L.A. 198). Thus, for Michigan, the ULNA would replace only the URAA.

The purpose of the ULNA is to facilitate the acknowledgment, verification, certification, or protest of words, documents, signatures, and documents executed outside the forum state or within it but not under the state's authority (e.g. federal courts). The primary reasons for changing the existing law are (1) the difficulty of insuring that a notarial act recognized outside of the forum state will be valid within it and (2) the difficulty of proving that a notarial act made outside the forum state was proper according to both the laws of the forum state and the place of the acknowledgment. Though the URAA was drafted in part to alleviate these two difficulties, with the continual geographical dispersion of individuals and other legal agents, producing more experience as to the needs for recognition of notarial acts in various domestic and foreign jurisdictions, certain deficiencies in the URAA have become apparent.

Like the UAA and URAA, the ULNA does not establish the qualifications or procedures for the selection of notary publics. The ULNA consolidates the UAA's definition of the form and content of acknowledgments and the URAA's rules on the recognition of acknowledgments. The ULNA, moreover, goes beyond the two previous acts by both modifying and extending them. The ULNA also makes it easier to prove the authority of notarial officers.

The basic elements of the ULNA are set forth below. Appendix C contains a memorandum by Eric Schnauffer examining in detail the specific provisions of the UNLA.

I. Effects on previous notarial acts. Previous notarial acts would be unaffected by the adoption of the ULNA. Section 9 of the UNLA states that the law applies only to notarial acts on or after its effective date. Relatedly, the use of "short forms" prescribed by the older URAA are acceptable under the UNLA. (Official Comment to ULNA Sec. 7)

II. Effects on future notarial acts. The primary effect of adoption of the ULNA will be to make the recognition of notarial acts easier, particularly those performed by public notaries, judges, clerks, and deputy clerks in U.S. jurisdictions and those with an "Apostille" in foreign jurisdictions. In fact, some notarial acts will be "conclusively established" "automatically".

III. Changes affecting uniformity and modernization. National and international uniformity is furthered by the ULNA. A relevant chapter of the Uniform Commercial Code (UCC) (3-509) is incorporated. An international form for establishing the validity of foreign notaries' signatures and titles is also included. Descriptions of military officers and foreign service personnel have been sharpened.

IV. Structural changes. There are four main structural changes: (1) The ULNA is organized around the jurisdiction of the notarial act instead of around the notarial officer; (2) The ULNA uses a three step procedure for recognizing notarial acts; (3) The UNLA has much more detailed descriptions and classifications of notarial acts; (4) The ULNA states specific requirements for certificates of notarial acts and how specific types of notarial acts are to be executed.

Since the Commission recommends adoption of the ULNA without any changes, and the ULNA is set forth in Appendix A, we have not set forth a proposed bill as such. Section 12 should be worded to repeal Public Act No. 57 of 1969 (the URAA). Otherwise the language of the bill should be that of the ULNA.

APPENDIX A

UNIFORM LAW ON NOTARIAL ACTS

Commissioner's Prefatory Note

This Uniform Act is designed to define the content and form of common notarial acts and to provide for the recognition of such acts performed in other jurisdictions. It thus replaces two Uniform Laws, the Uniform Acknowledgment Act (As Amended), and the later Uniform Recognition of Acknowledgments Act. The original Acknowledgment Act served to define the content and form of acknowledgments. The Recognition Act later provided for more specific rules for recognition of acknowledgments and "other notarial acts" from outside of the state, although its title was more narrowly stated.

This statute is thus a consolidation, extension, and modernization of the two previous acts. It consolidates the provisions of the two acts relating to acknowledgments of instruments. It extends the coverage of the earlier act to include other notarial acts, such as taking of verifications and attestation of documents.

In addition, the act seeks to simplify and clarify proof of the authority of notarial officers.

UNIFORM LAW ON NOTARIAL ACTS

Sec.	Sec.
1. Definitions.	7. Certificate of Notarial Acts.
2. Notarial Acts.	8. Short Forms.
3. Notarial Acts in This State.	9. Notarial Acts Affected by This Act.
4. Notarial Acts in Other Jurisdictions of the United States.	10. Uniformity of Application and Construction.
5. Notarial Acts Under Federal Authority.	11. Short Title.
6. Foreign Notarial Acts.	12. Repeals.
	13. Time of Taking Effect.

§ 1. Definitions

As used in this [Act]:

(1) "Notarial act" means any act that a notary public of this State is authorized to perform, and includes taking an acknowledgment, administering an oath or affirmation, taking a verification upon oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy, and noting a protest of a negotiable instrument.

(2) "Acknowledgment" means a declaration by a person that the person has executed an instrument for the purposes stated therein and, if the instrument is executed in a representative capacity, that the person signed the instrument with proper authority and executed it as the act of the person or entity represented and identified therein.

(3) "Verification upon oath or affirmation" means a declaration that a statement is true made by a person upon oath or affirmation.

(4) "In a representative capacity" means:

(i) for and on behalf of a corporation, partnership, trust, or other entity, as an authorized officer, agent, partner, trustee, or other representative;

(ii) as a public officer, personal representative, guardian, or other representative, in the capacity recited in the instrument;

(iii) as an attorney in fact for a principal; or

(iv) in any other capacity as an authorized representative of another.

(5) "Notarial officer" means a notary public or other officer authorized to perform notarial acts.

Commissioners' Comment

This Uniform Law defines common notarial acts and provides for the recognition of notarial acts performed in other states and in foreign jurisdictions. It does not prescribe the qualifications of notaries public or other officers empowered to perform notarial functions, nor does it establish the procedure for their selection or term of office.

The Act uses the term "notarial officer" to describe notaries public and other persons having the power to perform "notarial acts." These notarial acts are described in Section 2. Section 3 then describes who, in addition to notaries public, is a notarial officer in this state; Sections 4, 5, and 6 provide for the recognition of acts of notarial officers appointed by other jurisdictions.

§ 2. Notarial Acts

(a) In taking an acknowledgment, the notarial officer must determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the officer and making the acknowledgment is the person whose true signature is on the instrument.

(b) In taking a verification upon oath or affirmation, the notarial officer must determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the officer and making the verification is the person whose true signature is on the statement verified.

(c) In witnessing or attesting a signature the notarial officer must determine, either from personal knowledge or from satisfactory evidence, that the signature is that of the person appearing before the officer and named therein.

(d) In certifying or attesting a copy of a document or other item, the notarial officer must determine that the proffered copy is a full, true, and accurate transcription or reproduction of that which was copied.

(e) In making or noting a protest of a negotiable instrument the notarial officer must determine the matters set forth in [Section 3-509, Uniform Commercial Code].

(f) A notarial officer has satisfactory evidence that a person is the person whose true signature is on a document if that person (i) is personally known to the notarial officer, (ii) is identified upon the oath or affirmation of a credible witness personally known to the notarial officer or (iii) is identified on the basis of identification documents.

Commissioners' Comment

This section authorizes common notarial acts. It does not limit other acts which notaries may perform, if authorized by other laws.

Subsection (a) specifies what a notarial officer certifies by taking an acknowledgment. The notarial officer certifies to two facts: (1) the identity of the person who made the acknowledgment and (2) the fact that this person signed the document as a deed (or other specific instrument), and not as some other form of writing. The personal physical appearance of the acknowledging party before the notarial officer is required. An acknowledgment, as defined in Section 1(2) is a statement that the person has signed and executed an instrument; it is not

the act of signature itself. Hence a person may appear before the notarial officer to acknowledge an instrument which that person had previously signed.

Similarly subsection (b) specifies the requisites of taking of a verification on oath or affirmation. There are again two elements: (1) the identity of the affiant and (2) the fact that the statement was made under oath or affirmation. Here again, the personal physical presence of the affiant is required.

Subsection (c) defines the requirements for witnessing (or attesting) a signature. Here only the fact of the signature, not the intent to execute the instrument, is certified by the notarial officer.

Subsection (d) defines the standards for attestation or certification of a copy of a document by a notarial officer. This is commonly done if it is necessary to produce a true copy of a document, when the original cannot be removed from archives or other records. In many cases, the custodian of official records may also be empowered to issue official certified copies. Where such official certified copies are available, they constitute official evidence of the state of public records, and may be better evidence thereof than a notarially certified copy.

Subsection (e) refers to a provision of the Uniform Commercial Code which confers authority to note a pro-

test of a negotiable instrument on notaries and certain other officers.

Subsection (f) describes the duty of care which the notarial officer must exercise in identifying the person who makes the acknowledgment, verification or other underlying act. California law, for example, provides an exclusive list of identification documents on which the notarial officer may rely. These are documents containing pictorial identification and signature, such as local drivers' licenses, and U.S. passports and military identification papers, issued by authorities known to exercise care in identification of persons requesting such documentation.

§ 3. Notarial Acts in This State

(a) A notarial act may be performed within this state by the following persons:

- (1) a notary public of this State,
- (2) a judge, clerk or deputy clerk of any court of this State,
- [(3) a person licensed to practice law in this State,] [or]
- [(4) a person authorized by the law of this State to administer oaths,]
- [or]
- [(5) any other person authorized to perform the specific act by the law of this State.]

(b) Notarial acts performed within this State under federal authority as provided in section 5 have the same effect as if performed by a notarial officer of this State.

(c) The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

Commissioners' Comment

Subsection (a) lists the persons who are entitled to serve as notarial officers in the state. In addition to notaries public, all judges, clerks and deputy clerks of courts of the state may automatically perform notarial acts. The language follows the more modern form of the Uniform Recognition of Acknowledgments Act. It is more abbreviated than the Uniform Acknowledgments Act, in that it consolidates the several judicial offices into one listing.

Several optional additional notarial officers are listed. A state may authorize all duly licensed attorneys at law to serve as notaries public by virtue of their attorneys' licenses. It may also authorize other individuals who have authority to administer oaths to do so. If other particular officers, such as recorders or registrars of deeds or commissioners of titles, may perform notarial acts in the state it

would be advisable to list them here, because this list will be a ready reference point for those who seek to determine the validity of their acts, when they are used in another state.

Proof of authority of a notarial officer usually involves three steps:

1. Proof that the notarial signature is that of the named person,
2. Proof that that person holds the designated office, and
3. Proof that holders of that office may perform notarial acts.

Subsection (c) sets forth the presumption of genuineness of signature and the presumption of truth of assertion of authority by the notarial officer, the first two elements of authentication. Since the officers listed in subsection (a) are authorized to act by this statute, no further proof of the third element, the authority of such an officer, is required.

§ 4. Notarial Acts in Other Jurisdictions of the United States

(a) A notarial act has the same effect under the law of this State as if performed by a notarial officer of this State, if performed in another state, commonwealth, territory, district, or possession of the United States by any of the following persons:

- (1) a notary public of that jurisdiction;
- (2) a judge, clerk, or deputy clerk of a court of that jurisdiction; or
- (3) any other person authorized by the law of that jurisdiction to perform notarial acts.

(b) Notarial acts performed in other jurisdictions of the United States under federal authority as provided in section 5 have the same effect as if performed by a notarial officer of this State.

(c) The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

(d) The signature and indicated title of an officer listed in subsection (a)(1) or (a)(2) conclusively establish the authority of a holder of that title to perform a notarial act.

Commissioners' Comment

Sections 4, 5, and 6 of this act are adapted from Sections 1 and 2 of the Uniform Recognition of Acknowledgments Act. That Act set forth the individuals outside of the state who could take acknowledgments or perform other notarial acts, and separately set forth the authentication of those acts which was necessary. Different standards applied in the cases of persons acting under the authority of another state, of the federal government, or of a foreign country. This statute distinguishes between the three kinds of authority from outside the state, and provides the authentication separately for each type.

Subsection (a) is adapted from Section 1 of the Uniform Recognition of Acknowledgments Act. Subsection (c) gives prima facie validity to the signature and assertion of title of the person who acts as notarial officer. It follows Section 2(d) of the Uniform Recognition of Acknowledgments Act. It thus provides the first two elements of proof of authority of the notarial

officer set forth in the comments to Section 3.

Subsection (d) provides the third element of that proof of authority. It recognizes conclusively the authority of a notary public or of a judge or clerk or deputy clerk of court to perform notarial acts, without the necessity of further proof that such an officer has notarial authority. It is copied from Section 2(a) of the Uniform Recognition of Acknowledgments Act. These two subsections abolish the need for a "clerk's certificate" to authenticate the act of the notary, judge, or clerk. The authority of a person other than a notary, judge, or clerk to perform notarial acts can most readily be proven by reference to the law of that state. Any other form of proof of such authority acceptable in the receiving jurisdiction, such as a clerk's certificate, as is currently provided by Section 2(c) of the Uniform Recognition of Acknowledgments Act, would also suffice.

§ 5. Notarial Acts Under Federal Authority

(a) A notarial act has the same effect under the law of this State as if performed by a notarial officer of this State if performed anywhere by any of the following persons under authority granted by the law of the United States:

- (1) a judge, clerk, or deputy clerk of a court;
- (2) a commissioned officer on active duty in the military service of the United States;
- (3) an officer of the foreign service or consular officer of the United States; or

(4) any other person authorized by federal law to perform notarial acts.

(b) The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

(c) The signature and indicated title of an officer listed in subsection (a)(1), (a)(2), or (a)(3) conclusively establish the authority of a holder of that title to perform a notarial act.

Commissioners' Comment

Some acknowledgments are performed by persons acting under federal authority, or holding office under federal authority. This section provides for the automatic recognition of those notarial acts within the enacting state. The list of persons whose acts are immediately recognized by this section is drawn from Section 1 of the Uniform Recognition of Acknowledgments Act, but has been simplified. This law no longer limits recognition of the notarial acts performed by military officers to acts performed for persons in the military service "or any other persons serving with or accompanying the armed forces of the United States." Such a limitation in recognition merely places another cloud on the validity of the notarial act. The act does not purport to extend the authority of military officers to perform these acts, but merely immunizes the private party relying on them from any consequences of the officer's excess of authority. Both in the case of commissioned military officers and foreign service officers, the language has been modified to reflect modern descriptions of the offices in question. In both instances, the further reference to "any other person authorized by regulation" has also been omitted as duplicative of paragraph 4 of this subsection.

Subsection (b), like its counterpart in Section 4, is drawn from Section 2(d) of the Uniform Recognition of Acknowledgments Act. It confers pri-

ma facie validity upon the signature and assertion of rank or title by the notarial officer, thus providing the first two elements of proof described in the comments to Section 3.

Subsection (c) is drawn from Section 2(a) of the same law. It provides the third element of proof of the notarial officer's authority. It immediately recognizes the authority of a judge or clerk, or military officer or foreign service or consular officer to perform notarial acts, without the necessity of further reference to the federal statutes or regulations to prove that the officer has notarial authority. There is no need for further authentication of these persons' authority to perform notarial acts. A variety of other federal officers may be authorized to perform notarial acts, such as wardens of federal prisons, but their authority must be demonstrated by other means. The authority of such an officer to perform the notarial act can most readily be demonstrated by reference to the federal law or published regulation granting such authority. Any other form of authentication, such as a clerk's certificate, could also be used.

A military officer who performs notarial services should insert the appropriate title (e.g., commanding officer) in the place designated for "title (and rank)" to conform to 10 U.S.C. § 936(d). The officer's rank and branch of service should also be inserted there.

§ 6. Foreign Notarial Acts

(a) A notarial act has the same effect under the law of this State as if performed by a notarial officer of this State if performed within the jurisdiction of and under authority of a foreign nation or its constituent units or a multinational or international organization by any of the following persons:

(1) a notary public or notary;

(2) a judge, clerk, or deputy clerk of a court of record; or

(3) any other person authorized by the law of that jurisdiction to perform notarial acts.

(b) An "Apostille" in the form prescribed by the Hague Convention of October 5, 1961, conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.

(c) A certificate by a foreign service or consular officer of the United States stationed in the nation under the jurisdiction of which the notarial act was performed, or a certificate by a foreign service or consular officer of that nation stationed in the United States, conclusively establishes any matter relating to the authenticity or validity of the notarial act set forth in the certificate.

(d) An official stamp or seal of the person performing the notarial act is prima facie evidence that the signature is genuine and that the person holds the indicated title.

(e) An official stamp or seal of an officer listed in subsection (a)(1) or (a)(2) is prima facie evidence that a person with the indicated title has authority to perform notarial acts.

(f) If the title of office and indication of authority to perform notarial acts appears either in a digest of foreign law or in a list customarily used as a source for that information, the authority of an officer with that title to perform notarial acts is conclusively established.

Commissioners' Comment

This section deals with the authority of notarial officers empowered to act under foreign law. Note that the act of any notary is recognized, as well as that of judges or clerk of courts of record. The notarial acts of other persons will be recognized if they are authorized by the law of the place in which they are performed.

Proof of validity of foreign notarial acts is a more difficult problem than recognition of such acts from other states of the United States, because the relative authority of public and

quasi-public officers may vary. See the special rules previously provided under the Uniform Recognition of Acknowledgments Act, Section 2(b).

The United States is now a party to an international convention regarding the authentication of notarial and other public acts. The first method of recognition of foreign notarial acts is that set forth in the treaty. The Apostille may be stamped on the document or an attached page by a specified officer in the foreign country. It has the following form.

APOSTILLE

(Convention de La Haye du 5 octobre 1961)

1. Country:
This public document
2. has been
signed by
3. acting in
the capacity of
4. bears the seal/stamp of

CERTIFIED

5. at 6. the
7. by
8. No.
9. Seal/Stamp 10. Signature:

It may be in the language of the issuing country, but the words "Apostille (Convention de La Haye, du 5 octobre 1961)" are always in French. Under the terms of the treaty, to which the United States is a party, the Apostille must be recognized if issued by a competent authority in another nation which has also ratified it. The

text of the convention is reproduced in the volume of 28 U.S.C.A. containing the annotations to Rule 44 of the Federal Rules of Civil Procedure, and in Martindale-Hubbell.

Although federal law provides for mandatory recognition of an Apostille only if issued by another ratifying nation, this statute provides for recogni-

tion of all apostilles issued by any foreign nation in that form. They, are in effect, no more than a standard form for authentication. Use of the form eases problems of translation.

Recognition may also be accorded in a number of other ways, which are taken from Section 2(b) of the Uniform Recognition of Acknowledgments Act.

§ 7. Certificate of Notarial Acts

(a) A notarial act must be evidenced by a certificate signed and dated by a notarial officer. The certificate must include identification of the jurisdiction in which the notarial act is performed and the title of the office of the notarial officer and may include the official stamp or seal of office. If the officer is a notary public, the certificate must also indicate the date of expiration, if any, of the commission of office, but omission of that information may subsequently be corrected. If the officer is a commissioned officer on active duty in the military service of the United States, it must also include the officer's rank.

(b) A certificate of a notarial act is sufficient if it meets the requirements of subsection (a) and it:

- (1) is in the short form set forth in Section 8;
- (2) is in a form otherwise prescribed by the law of this State;
- (3) is in a form prescribed by the laws or regulations applicable in the place in which the notarial act was performed; or
- (4) sets forth the actions of the notarial officer and those are sufficient to meet the requirements of the designated notarial act.

(c) By executing a certificate of a notarial act, the notarial officer certifies that the officer has made the determinations required by Section 2.

Commissioners' Comment

This section requires a written certification by the notarial officer of the notarial act. That certification may be simple. It need only record the notarial act and its place and date, together with the signature and office of the notarial officer. Subsection (b) provides that the certificate may be in any one of the short forms set forth in this act, or in any other form provided by local law, or in any other form provided by the law of the place where it is performed, or in any form that sets

forth the requisite elements of the appropriate notarial act. Thus acknowledgments or other notarial acts executed in the more elaborate forms of the former Uniform Acknowledgments Act or the Uniform Recognition of Acknowledgments Act would continue to qualify under subsection (b)(4). Subsection (c) reemphasizes the obligation of the notarial officer to make the determinations required by Section 2 and to certify that the officer has done so.

§ 8. Short Forms

The following short form certificates of notarial acts are sufficient for the purposes indicated, if completed with the information required by Section 7(a):

(1) ~~Form~~ acknowledgment in an individual capacity:

State of _____
(County) of _____

This instrument was acknowledged before me on _____ (date)
(name(s) of person(s)) _____ by

(Seal, if any)

(Signature of notarial officer)

Title (and Rank)
[My commission expires: _____]

(2) For an acknowledgment in a representative capacity:
State of _____
(County) of _____

This instrument was acknowledged before me on (date) by (name(s) of person(s)) as (type of authority, e.g., officer, trustee, etc.) of (name of party on behalf of whom instrument was executed.)

(Signature of notarial officer)

(Seal, if any)

Title (and Rank)
[My commission expires: ____]

(3) For a verification upon oath or affirmation:
State of _____
(County) of _____

(date)

Signed and sworn to (or affirmed) before me on _____ by
(name(s) of person(s) making statement).

(Signature of notarial officer)

(Seal, if any)

Title (and Rank)
[My commission expires: ____]

(4) For witnessing or attesting a signature:
State of _____
(County) of _____

(date)

(name(s) of person(s)).

Signed or attested before me on _____ by _____

(Signature of notarial officer)

(Seal, if any)

Title (and Rank)
[My commission expires: ____]

(5) For attestation of a copy of a document:
State of _____
(County) of _____

I certify that this is a true and correct copy of a document in the possession of _____

Dated _____

(Signature of notarial officer)

(Seal, if any)

Title (and Rank)
[My commission expires: ____]

Commissioners' Comment

This section provides statutory short forms for notarial acts. These forms are sufficient to certify a notarial act. See Section 7(b)(1). Other forms may also qualify, as provided in Section 7.

A notarial seal is optional under this Act. See Section 7(a). A military officer who is acting as a notarial officer will normally enter both title (e.g., commanding officer, Company A, etc.) and rank (Captain, U.S. Army) as identification.

§ 9. Notarial Acts Affected by This Act

This [Act] applies to notarial acts performed on or after its effective date.

§ 10. Uniformity of Application and Construction

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.

§ 11. Short Title

This [Act] may be cited as the Uniform Law on Notarial Acts.

§ 12. Repeals

The following acts and parts of acts are repealed:

- (1) [The Uniform Acknowledgment Act (As Amended)]
- (2) [The Uniform Recognition of Acknowledgments Act]
- (3) _____

Commissioners' Comment

This statute is intended to replace the Uniform Acknowledgment Act and the Uniform Recognition of Acknowledgments Act, and may also replace other state legislation on this topic.

§ 13. Time of Taking Effect

This [Act] takes effect _____.

APPENDIX B

ACKNOWLEDGMENT OF WRITTEN INSTRUMENTS

Act 185, 1895, p. 346; Eff. Aug. 30

565.251-565.256 Repealed. 1969, p. 106, Act 57, Eff. Mar. 20, 1970.

UNIFORM RECOGNITION OF ACKNOWLEDGMENTS ACT

Act 57, 1969, p. 104; Eff. Mar. 20, 1970

AN ACT to establish the recognition to be given in this state to acknowledgments and notarial acts outside this state; and to repeal certain acts and parts of acts.

The People of the State of Michigan enact:

565.261 Uniform recognition of acknowledgments act; short title.

Sec. 1. This act shall be known and may be cited as the "uniform recognition of acknowledgments act".

History: New 1969, p. 104, Act 57, Eff. Mar. 20, 1970

Cross-references: As to acknowledgment of deeds or other instruments by married women, see § 565.281 et seq.

565.262 Notarial acts; definition; recognition when performed out of state.

Sec. 2. For the purposes of this act, "notarial acts" means acts which the laws of this state authorize notaries public of this state to perform, including the administering of oaths and affirmations, taking proof of execution and acknowledgments of instruments, and attesting documents. Notarial acts may be performed outside this state for use in this state with the same effect as if performed by a notary public of this state by the following persons authorized pursuant to the laws and regulations of other governments in addition to any other person authorized by the laws of this state:

(a) A notary public authorized to perform notarial acts in the place in which the act is performed.

(b) A judge, clerk or deputy clerk of any court of record in the place in which the notarial act is performed.

(c) An officer of the foreign service of the United States, a consular agent or any other person authorized by regulation of the United States department of state to perform notarial acts in the place in which the act is performed.

(d) A commissioned officer in active service with the armed forces of the United States and any other person authorized by regulation of the armed forces to perform notarial acts if the notarial act is performed for 1 of the following or his dependents: a merchant seaman of the United States, a member of the armed forces of the United States or any other person serving with or accompanying the armed forces of the United States.

(e) Any other person authorized to perform notarial acts in the place in which the act is performed.

History: New 1969, p. 104, Act 57, Eff. Mar. 20, 1970

565.263 Authority of officer; authentication.

Sec. 3. (1) If the notarial act is performed by any of the persons described in subdivisions (a) to (d) of section 2, other than a person authorized to perform notarial acts by the laws or regulations of a foreign country, the signature, rank or title and serial number, if any, of the person are sufficient proof of the authority of a holder of that rank or title to perform the act. Further proof of his authority is not required.

(2) If the notarial act is performed by a person authorized by the laws or regulations of a foreign country to perform the act, there is sufficient proof of the authority of that person to act if any of the following exist:

(a) Either a foreign service officer of the United States resident in the country in which the act is performed or a diplomatic or consular officer of the foreign country resident in the United States certifies that a person holding that office is authorized to perform the act.

(b) The official seal of the person performing the notarial act is affixed to the document.

(c) The title and indication of authority to perform notarial acts of the person appears either in a digest of foreign law or in a list customarily used as a source of such information.

(3) If the notarial act is performed by a person other than 1 described in subsections (1) and (2), there is sufficient proof of the authority of that person to act if the clerk of a court of record in the place in which the notarial act is performed certifies to the official character of that person and to his authority to perform the notarial act.

(4) The signature and title of the person performing the act are prima facie evidence that he is a person with the designated title and that the signature is genuine.

History: New 1969, p. 104, Act 57, Eff. Mar. 20, 1970.

565.264 Certificate of person taking acknowledgment.

Sec. 4. The person taking an acknowledgment shall certify that the person acknowledging appeared before him and acknowledged he executed the instrument; and the person acknowledging was known to the person taking the acknowledgment or that the person taking the acknowledgment had satisfactory evidence that the person acknowledging was the person described in and who executed the instrument.

History: New 1969, p. 105, Act 57, Eff. Mar. 20, 1970.

565.265 Certificate of acknowledgment; form acceptable.

Sec. 5. The form of a certificate of acknowledgment used by a person whose authority is recognized under section 2 shall be accepted in this state if 1 of the following is true:

(a) The certificate is in a form prescribed by the laws or regulations of this state.

(b) The certificate is in a form prescribed by the laws applicable in the place in which the acknowledgment is taken.

(c) The certificate contains the words "acknowledged before me", or their substantial equivalent.

History: New 1969, p. 105, Act 57, Eff. Mar. 20, 1970.

565.266 Acknowledged before me; definition.

Sec. 6. The words "acknowledged before me" means:

(a) That the person acknowledging appeared before the person taking the acknowledgment.

(b) That he acknowledged he executed the instrument.

(c) That, in the case of:

(i) A natural person, he executed the instrument for the purposes therein stated.

(ii) A corporation, the officer or agent acknowledged he held the position or title set forth in the instrument and certificate, he signed the instrument on behalf of the corporation by proper authority and the instrument was the act of the corporation for the purpose therein stated.

(iii) A partnership, the partner or agent acknowledged he signed the instrument on behalf of the partnership by proper authority and he executed the instrument as the act of the partnership for the purposes therein stated.

(iv) A person acknowledging as principal by an attorney in fact, he executed the instrument by proper authority as the act of the principal for the purposes therein stated.

(v) A person acknowledging as a public officer, trustee, administrator, guardian or other representative, he signed the instrument by proper authority and he executed the instrument in the capacity and for the purposes therein stated.

(d) That the person taking the acknowledgment either knew or had satisfactory evidence that the person acknowledging was the person named in the instrument or certificate.

History: New 1969, p 105, Act 57, Eff. Mar. 20, 1970

565.267 Statutory short forms of acknowledgment.

Sec. 7. (1) The forms of acknowledgment set forth in this section may be used and are sufficient for their purposes under any law of this state. The forms shall be known as "statutory short forms of acknowledgment" and may be referred to by that name. The authorization of the forms in this section does not preclude the use of other forms.

- (2) For an individual acting in his own right:
State of _____
County of _____
The foregoing instrument was acknowledged before me this (date) by
(name of person acknowledged).
(Signature of person taking acknowledgment)
(Title or rank)
(Serial number, if any)
- (3) For a corporation:
State of _____
County of _____
The foregoing instrument was acknowledged before me this (date) by
(name of officer or agent, title or officer or agent) of (name of corporation
acknowledging) a (state or place of incorporation) corporation, on behalf of
the corporation.
(Signature of person taking acknowledgment)
(Title or rank)
(Serial number, if any)
- (4) For a partnership:
State of _____
County of _____
The foregoing instrument was acknowledged before me this (date) by
(name of acknowledging partner or agent), partner (or agent) on behalf of
(name of partnership), a partnership.
(Signature of person taking acknowledgment)
(Title or rank)
(Serial number, if any)

- (5) For an individual acting as principal by an attorney in fact:
State of _____
County of _____

The foregoing instrument was acknowledged before me this (date) by
(name of attorney in fact) as attorney in fact on behalf of (name of
principal).

(Signature of person taking acknowledgment)
(Title or rank)
(Serial number, if any)

- (6) By any public officer, trustee or personal representative:
State of _____
County of _____

The foregoing instrument was acknowledged before me this (date) by
(name and title of position).

(Signature of person taking acknowledgment)
(Title or rank)
(Serial number, if any)

History: New 1969, p 105, Act 57, Eff. Mar. 20, 1970

565.268 Acknowledgments unaffected by act.

Sec. 8. A notarial act performed prior to the effective date of this act is not affected by this act. This act provides an additional method of proving notarial acts. Nothing in this act diminishes or invalidates the recognition accorded to notarial acts by other laws of this state.

History: New 1969, p 106, Act 57, Eff. Mar. 20, 1970

565.269 Uniformity of interpretation.

Sec. 9. This act shall be so interpreted as to make uniform the laws of those states which enact it.

History: New 1969, p 106, Act 57, Eff. Mar. 20, 1970

565.270 Repeal.

Sec. 10. Act No. 185 of the Public Acts of 1895, being sections 565.251 to 565.256 of the Compiled Laws of 1948, is repealed.

History: New 1969, p 106, Act 57, Eff. Mar. 20, 1970

APPENDIX C

1

COMPARISON OF SELECTED ULNA SECTIONS WITH MICHIGAN'S URAA

A. Section 1 of the ULNA: "Definitions"

The definition of "notarial act" is clarified and expanded in the ULNA. Instead of including only "attesting documents," the ULNA encompasses certifying and attesting copies, noting protest of negotiable instruments, and witnessing and attesting signatures. And instead of merely "administering" oaths or affirmations, the ULNA also includes verifying oaths and affirmations. The ULNA also defines the terms "acknowledgment," "verification," "in representative capacity of," and "notarial officer" which Michigan's URAA does not. None of the ULNA's definitions of these terms conflicts with their usage in Michigan's URAA.

B. Section 2: "Notarial Acts"

This section delineates the requirements for the accomplishment of the notarial acts defined in Section 1 of the ULNA. The only point of similarity of Section 2 with the URAA are the requirements for taking an acknowledgment. (M.C.L. 565.264) Verification of oaths and affirmations, witnessing and attesting signatures, certifying and attesting copies of documents, and making and noting a protest of a negotiable instrument each have specific requisites. These requisites are substantially similar to the requisites for acknowledgment; they change, however, with the purpose and intent of the notarial act.

A noteworthy change from the URAA is reference to the Uniform Commercial Code (UCC) for making and protesting negotiable instruments. (UCC 3-509) (UNLA Sec. 2(e)) (App. C) Since Michigan has enacted the UCC, including Section 3-509 (See M.C.L. 440.3509), this change in the existing uniform law on acknowledgment is appropriate for Michigan.

Section 2 requires personal knowledge or "satisfactory evidence" for the identification of a person making an

1. A memorandum prepared by Eric Schnauffer, 2nd year student, University of Michigan Law School.

acknowledgment before a notarial officer. A notarial officer is said to have "satisfactory evidence" if the person making the acknowledgment is:

(i) personally known to the notarial officer, (ii) is identified upon oath or affirmation of a credible witness personally known to the notarial officer or (iii) is identified on the basis of identification documents. (ULNA Sec. 2(f))

The URAA neither designates personal knowledge as an element of "satisfactory evidence" nor defines "satisfactory evidence." (M.C.L. 565.264)

C. Section 3: Notarial Acts in this State

Section 3(a) of the ULNA begins a four section division of those empowered to make acknowledgments, three according to the venue of the actual acknowledgment and one according to the authority under which it was executed. This breakdown clarifies, modernizes, and organizes the list of persons entitled to perform notarial acts in Michigan's URAA. (M.C.L. 565.262(a-e))

The existing Michigan statute (M.C.L. 565.262(1)) which refers to notary publics, judges, clerks of a court, and deputy clerks follows Section 3(a)(1-2). The Official Comment to the ULNA recommends that other individuals empowered to make acknowledgments also be listed in Section 3(a) for the convenience of persons in other states. (14 U.L.A. 14) In Michigan, if we follow current law, this should include members of the legislature and some commissioners. (M.C.L. Secs. 565.8, 280.74)

Section 3(b) of the ULNA explicitly states that the notarial acts performed within the enacting state under federal authority are valid. Existing Michigan statutes do not include this general language; they only designate specific persons whose notarial acts under federal authority are to be recognized.

Section 3(c) states that the "signature and title of the person performing a notarial act are prima facie evidence that the signature is genuine and that person holds the designated title." This is nearly the same wording as Michigan statute. (M.C.L. 565.263(4)) The same clause appears in the ULNA Sections 4(c) and 5(c). The departure in the ULNA from the URAA is that this evidentiary standard does not apply to foreign notarial acts. (ULNA Sec. 6; see discussion below.)

The effect of Section 3(c) on the establishment of the validity of the notarial act is equivalent to existing Michigan law. Because authorized notarial officers are listed in Section 3(a), the Official Comment to the ULNA states that "no further proof" besides their signatures and titles is required to establish the validity of their acts. (14 U.L.A. 14) The existing Michigan statute states:

(1) If the notarial act is performed by any of the persons described in subdivisions (a) to (d) of section 2, other than a person authorized to perform notarial acts by the laws or regulations of a foreign country, the signature, rank or title and serial number, if any, are sufficient proof of the authority of a holder of than rank or title to perform the act. Further proof of his authority is not required. [emphasis added] (M.C.L. 565.263(1)).

D. Section 4: Notarial Acts in Other Jurisdiction of the United States

There is no difference in the notarial officers described under Section 4(a) of the ULNA and existing Michigan statute. (M.C.L. 565.262(a-b; e)) Section 4(a) does specify that commonwealths, territories, districts, and possessions of the United States, as well as states other than the enacting states are considered. There is no definition of a "foreign" country in URAA.

Section 4(d) of the ULNA states that the authority of public notary, judge, clerk or deputy clerk of the other jurisdiction is "conclusively" established by his or her signature and title. This is equivalent to the "sufficient proof" standard of Michigan's URAA. (M.C.L. 565.263(1)) For notarial officers authorized by other U.S. jurisdictions, reference to the statute so authorizing is sufficient to prove their authority. (See Official Comment to ULNA Sec. 4) This eliminates the Michigan's URAA requirement that those notarial officers authority be authenticated by a certificate from a court clerk of the jurisdiction. (M.C.L. 565.263(2)(c))

E. Section 5: Notarial Acts Under Federal Authority

Section 5(a)(1-3) recognizes the notarial acts performed by federally authorized persons as Michigan's URAA. (M.C.L. 565.262(a-e)) The changes in the descriptions of those persons are designed to simplify and modernize.

Some federally authorized notarial officers' notarial acts are "conclusively" established by their signature and title: judges, clerks, deputy clerks, commissioned officers on active duty, foreign service officers, and consular officers. The notarial acts of military personnel are no longer restricted to a limited class of individuals. Also, unlike M.C.L. 565.263(1), there is no reference to "rank and serial number" but simply to "title" as the requisite (along with signature) to establish proof of authority. Other persons federally authorized acts may be proven through a clerk's certificate or reference to the appropriate federal statute. (Official Comment to the ULNA Sec. 5)

F. Section 6: Foreign Notarial Acts

The verification of notarial acts performed in foreign countries is more difficult than for other such acts because the authority of foreign officials may vary from jurisdiction to jurisdiction. (Official Comment to ULNA Sec. 6) The ULNA also incorporates a number of changes which reflect the trend towards internationalization.

The first of these changes is the explicit recognition of the notarial powers of international and multi-national entities. (ULNA Sec. 6(a)) There was no reference to such jurisdictions in the URAA. The second change is the incorporation of an internationally recognized form for notaries. When an "Apostille," as the form is called, is used, the genuineness of the signature and the fact that the person holds the title are "conclusively" established. This is true even if the jurisdiction in which the notarial act was made has not approved the treaty establishing the Apostille.

Besides being modernized, the treatment of foreign notarial acts has become more complex, specifically in its treatment of the signature, title and authority of a foreign notarial officer. In the URAA, all signatures and titles of the foreign notarial officers were prima facie evidence of the genuineness of the signatures and that those officers held their designated titles. (M.C.L. 565.263(4)) The ULNA, on the other hand, does not consider all signatures and titles of foreign notaries prima facie evidence of the validity of the signatures and that those officers held their designated titles. (M.C.L. 565.263(4)) The ULNA, on the other hand, does not consider all signatures and titles of foreign notaries prima facie evidence of the validity of those signatures and titles. Only those signatures under official stamp or seal are prima facie evidence of the genuineness of the signatures and that the persons hold the

indicated titles. (ULNA Sec. 6(d)) Some signatures and titles, however, may be conclusively established under the UNLA: they may be conclusively established by appropriate certification under Section 6(c) or by Apostille under Section 6(b).

In the URAA the authority of a foreign notarial officer was established by "sufficient proof." In the ULNA, there is either "prima facie evidence" of a foreign notarial officer's authority or that authority is "conclusively established." Like the URAA, the ULNA has three ways of showing the authority of the notarial officer to make notarial acts, two of which are noteworthy modifications of the earlier. (As in previous sections of the ULNA, the phrase "conclusively establish" appears instead of the URAA's "sufficient proof.")

The way of proving the authority of foreign notarial acts which did not change in the ULNA is reference to a digest or customary summary of foreign law; the appearance in the digest or summary of the title of the notarial officer and his or her authority to perform notarial acts conclusively establishes the authority of the officer to perform notarial acts. (ULNA Sec. 6(f); M.C.L. 565.263(2)(c))

The way of conclusively establishing the authority of a foreign notarial officer which did change is certification. A notarial officer's authority may be conclusively established through certification by a U.S. foreign service or consular officer in the jurisdiction of the notarial act or a consular of the foreign jurisdiction who is in the U.S. (ULNA Sec. 6(c)) Section 6(c) goes beyond the parallel provision in the URAA (M.C.L. 565.263(2)(a)) which concerns only the authority of notarial officers. Section 6(c) provides: "A certificate ... conclusively establishes any matter relating to the authenticity or validity of the notarial act set forth in the certificate." The legal affect of notarial certificates is thus broadened in the ULNA.

Not all authority of notarial officers is conclusively established. Wherein the URAA the seal of the notarial officer was sufficient proof of his or her authority to make notarial acts, Section 6(e) of the ULNA makes the seal or stamp of the notarial officer prima facie evidence of the authority of the notarial officer to act if and only if that notarial officer is a notary, judge, clerk or deputy clerk in the jurisdiction in which the notarial act was made. Proof of the authority of foreign notaries is thus made more difficult.

The result of these modifications in the URAA is a matrix of possible legal degrees of proof the recognition of foreign notarial officers' signatures, titles, and authority can take. Under the URAA there was only one basic standard for each prima facie evidence of the validity of the signature and title and sufficient proof of the authority of the officer to act. Under the ULNA there are four possibilities as to the combined proof of a notarial officer's the signature, title, and authority:

- (1) Prima facie evidence of signature, title, and authority;
- (2) Prima facie evidence of signature and title but conclusive establishment of authority;
- (3) Conclusive establishment of signature and title but prima facie evidence of authority; and
- (4) Conclusive establishment of signature, title, and authority.

There seem to be two primary reasons for the changes in the recognition of foreign notarial acts. First, some foreign notarial titles and signatures are made more difficult to impeach. Under the ULNA the signatures and titles of foreign notarial officers can be conclusively established (by an Apostille) while in the URAA there can only be prima facie evidence of the validity of those signatures and titles. Second, as to authority, less emphasis is placed on seals. Instead, references to digests of foreign law or the statement of a foreign service or consular officer is needed to conclusively establish the authority of a notarial officer.

G. Section 7: Certificate of Notarial Acts (

Section 7 consolidates, expands and perhaps clarifies two sections of the URAA: M.C.L. 565.264-5. Section 7 requires that notarial acts be certified and specifies the form that the certificate must take, the information it must contain and the basis upon which it is to be made. The URAA, for example, does not specify that a certificate include identification of the jurisdiction or the expiration date of a notary public's commission; the UNLA requires these details among others. (UNLA Sec. 7(a)) While it may have been implicit in the URAA that such details would be included in any certificate of acknowledgment, they were not always required by law.

The acceptance of a certificate of a notarial act is warranted if the proper information is included (Sec. 7(a)), the notarial officer actually executed a certificate under the rules

established under Section 2 (Sec. 7(c), and the proper form is used (Sec. 7(b)). Whereas the URAA states that a properly executed certificate of acknowledgment "shall be accepted" (M.C.L. 565.265), the UNLA uses the word "sufficient" to describe a certificate meeting the requirements of the UNLA (Sec. 7(b)). This makes the language of acceptance of a certificate uniform since the appropriate URAA forms were "sufficient." (M.C.L. 565.267)

There is one notable change in the forms of certificates accepted. The words "acknowledged before me" are no longer the basis for a nonstandard acknowledgment form, i.e., a form not prescribed by the laws of the enacting state or the jurisdiction in which the notarial act was executed. (M.C.L. 565.265(c)) In place of that specific phrase, the UNLA allows notarial certificates which set forth the actions of the notarial officer and "are sufficient to meet the requirements of the notarial act." (Sec. 7(b)(4)) There is thus less likelihood that a proper notarial certificate which is not prescribed by law will be accepted.

H. Section 8: Short Forms

The main difference in the short forms of the URAA and the UNLA is the latter's inclusion of forms specifically for verification of oaths or affirmations, witnessing or attesting a signature, and attesting a copy of a document. (UNLA Sec. 8(3-5)) Where the URAA had special forms for different types of representative capacity, e.g. attorney in fact, the UNLA has a generic short form for representative capacity. (UNLA Sec. 8(2); M.C.L. 565.267(3-6)) The UNLA relies on the definition of "in a representative capacity" in Section 1(4), not on the short forms, do certify notarial acts by representatives.