Michigan
Law Revision Commission

Second Annual Report
1967

TABLE OF CONTENTS

MICHIGAN LAW REVISION COMMISSION
Second Annual Report to the Legislature

To the Members of the Michigan Legislature:

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

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

The members of the Commission during 1967 were Senator Robert L. Richardson of Saginaw, Senator Basil W. Brown of Highland Park, Representative Donald E. Holbrook, Jr. of Clare, Representative Daniel S. Cooper of Oak Park, A. E. Reyhons of Lansing (commencing September 1967), as ex-officio members; Tom Downs, Jason L. Honigman, David Lebenbom, and Harold S. Sawyer, as appointed members. The Legislative Council appointed Jason L. Honigman Chairman and Tom Downs Vice Chairman of the Commission. Professor William J. Pierce of the University of Michigan Law School continues to serve as Executive Secretary of the Commission.

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 the 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 directed its studies during its second year of operation were largely identified by a study of statute and case law of Michigan and legal literature by the Commissioners and Executive Secretary. Other subjects were brought to the attention of the Commission by various organizations and groups, and the Commission has responded to any suggestions received from members of the Legislature. From the available topics, the Commission selected the following for immediate study and report:

(1) Michigan Administrative Procedure Act
(2) Jury Selection Act
(3) Stockholder Liability for Labor Debts Act
(4) Recrimination in Divorce Act
(5) Quo Warranto Act
(6) Trustees' Powers Act
(7) Emancipation of Minors Act
(8) Guardian Ad Litem Act
(9) Land Contract Act
(10) Contribution Among Joint Tortfeasors Act

Recommendations and proposed statutes have been prepared on the above ten subjects and accompany this report. Commission members will be available to discuss the proposed statutes before any of the committees of the Legislature when called upon so to do.

Topics on the current study agenda of the Commission are:

(1) Condemnation Law and Procedures
(2) Interpleader Where Insurance Coverage Is Insufficient
(3) Court Costs
(4) Local Administrative Procedures Act
(5) Uniform Single Publication Act
(6) Joint Estates in Real and Personal Property
(7) Interspousal and Parental Immunity from Torts
(8) Partial Subrogation in Accident Cases
(9) Mechanics' Liens
(10) Access to Adjoining Property To Improve One's Own Property
(11) Venue

Topics on the future study calendar of the Commission are:

(1) Evidence Code
(2) Probate Code
(3) Corporation Code
(4) Realty Brokers' Commissions
(5) Antenuptial Agreements

(6) Tax Refund Procedures
(7) Notice of Change in Assessment
(8) Disposition of Automobile Accident Cases

It is apparent that a number of extremely important topics warrant investigation and study, but the Commission has been guided in its selection during its initial period of operation by consideration of time and budgetary limitations. As an important part of its functions, the Commission reviews current court decisions to ascertain whether or not these decisions necessitate or make desirable changes in Michigan law. The Commission has now reviewed the court decisions during the last seven years and the Commission continues to welcome the advice and assistance of the Justices and Judges of the courts of this state.

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

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

Throughout its operation the Commission has provided progress reports to the Legislative Council and members of the Commission have met with the Council to obtain its advice on several specific problems. The Commission wishes to express its deep appreciation to the Legislature, the Legislative Council, and the Legislative Service Bureau for the assistance they have rendered during 1967.

In its first annual report in 1966 the Commission recommended legislation on the following twelve subjects, with indications of those which have already been enacted into law in the 1967 session of the Legislature:

(1) Creation and Exercise of Powers of Appointment (Public Act 224).
(2) Multiple-Party Bank Deposits.
(3) Limitations on Possibilities of Reverter and Rights of Entry.
(4) Interstate and International Judicial Procedures (Public Act 178).
(5) Dead Man's Statute (Public Act 263).
(6) Qualifications of Fiduciaries.

(7) Corporations as Partners.
(8) Corporation Use of Assumed Names (Public Act 138).
(9) Stockholder Approval of Mortgaging Assets.
(10) Stockholder Action Without Meeting (Public Act 202).
(11) Original Jurisdiction of Court of Appeals (Public Act 65).
(12) Appeals from Probate Courts.

The bills not yet enacted into law are presently pending before the Legislature for consideration during the 1968 session.

The Commission continues to welcome suggestions for improvement of its programs and proposals from the members of the Legislature.

Respectfully submitted,

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

Ex-Officio Members:
Sen. Robert Richardson
Sen. Basil W. Brown
Rep. Donald E. Holbrook, Jr.
Rep. Daniel S. Cooper
A. E. Reyhons, Secretary

Date: December 15, 1967

RECOMMENDATION TO THE LEGISLATURE RELATING TO ADMINISTRATIVE PROCEDURES

Probably the most significant development in government in the last fifty years has been the increasing utilization of the administrative agency having quasi-legislative and quasi-judicial powers. Because of its extraordinary combination of powers, the administrative agency has caused continuous examination of its operations, particularly with respect to the opportunities for abuse of powers. Michigan was one of the first states to adopt legislation dealing with administrative rules, having adopted Act No. 88 of the Public Acts of 1943 governing the making, filing, compiling, and publication of rules and regulations. Thereafter, Michigan was also one of the first states to adopt comprehensive legislation governing administrative procedures and judicial review of administrative action by enacting Act No. 197 of the Public Acts of 1952 which was patterned substantially upon the Federal Administrative Procedure Act.

Since 1952 many changes have been made in the federal legislation and others have been recommended by various groups, including the Hoover Commission. Furthermore, the National Conference of Commissioners on Uniform State Laws promulgated a Revised Model Administrative Procedure Act in 1961. Meanwhile, the Michigan Legislature has become increasingly concerned with the operations of the state administrative agencies and enacted amendments to the 1943 legislation to provide legislative review of rules. The principle of legislative review was also written into the 1963 Michigan Constitution.

The Law Revision Commission has undertaken during this last year a comprehensive review of administrative procedure law in Michigan and engaged Frank E. Cooper, Esq., of Detroit, a nationally recognized expert on administrative law, to act as its consultant. As a result of its study, the Law Revision Commission has concluded that new comprehensive legislation dealing with administrative procedures, rule-making, and decisions is necessary in Michigan. The reasons for this conclusion are that the present statutory provisions are in need of integration, statutory exemptions for some agencies cause confusion and hamper ready disposal of the people's business with agencies, restrictive judicial interpretations have served to emasculate the current legislation and the goals expressed therein, and experiences of recent years demonstrate the desirability of reexamining the public policies involved.

The proposed legislation governs rule-making procedures, rules of practice before agencies, publication of rules, effective dates of rules, initiation of rule-making procedures by the public, legislative review of rules during sessions and during interims between sessions, declaratory judgment

actions regarding the validity or applicability of rules, declaratory rulings, by agencies, proceedings in contested cases, rules of evidence, examination of evidence by agencies, decisions and orders of agencies, ex parte consultations, licenses, judicial review of contested cases, and appellate review.

A copy of the proposed statute is attached.

PROPOSED BILL

A bill relating to the making, filing, compiling, codification, and publication of certain rules and regulations of state officers, boards, departments, agencies, and commissions; the rights of the public in the administrative procedure before state administrative agencies; the promulgation of procedural rules and regulations; the hearing of contested cases; the rules of evidence with respect thereto; the decisions and orders of state administrative agencies, and the judicial review thereof; and to repeal certain acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1. As used in this act, unless the context otherwise requires;

(1) "agency" means each state agency, board, commission, department, officer, bureau, division, authority, or institution, other than the legislature or the courts, authorized by law to make rules or to determine contested cases;

(2) "contested case" means a proceeding (including but not limited to rate-making, price-fixing, and licensing) in which the legal rights, duties, obligations or privileges of a party are required by law to be determined by an agency after an opportunity for hearing;

(3) "license" includes the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by law, but it does not include a license required solely for revenue purposes;

(4) "licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license;

(5) "party" means each person or agency named or admitted in a contested case as a party, or properly seeking and entitled as of right to be admitted as a party in a contested case;

(6) "person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency;

(7) "rule" means each agency regulation, standard, or statement of policy or interpretation of general applicability that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any agency. The term includes the amendment or repeal of a prior rule, but does not include (a) statements concerning only the internal management of any agency, or (b) declaratory rulings issued pursuant to section 9, or (c) intra-agency memoranda, or (d) rules relating to the use of streets or highways, whose terms are indicated to the public by means of signs or signals.

Sec. 2. (a) In addition to other rule-making requirements imposed by law, each agency shall:

(1) adopt as a part of its rules a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submission or requests;

(2) adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available, including forms and instructions;

(3) make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted, or used by the agency in the discharge of its functions;

(4) make available for public inspection all final orders, decisions, and opinions;

(5) upon request for identifiable agency records (except records related solely to the internal procedural practices of the agency and records which are specifically exempt from disclosure by law) make such records promptly available to any party. The circuit court of the county in which a party resides or has a place of business, or in which the agency records are situated, shall have jurisdiction to order the production of any agency records improperly withheld from such party. In such cases the circuit court shall determine de novo the question of the right of the party to examine such records and the burden as to such issue shall be upon the agency to sustain its action. Proceedings before the circuit court,solely for relief under this subsection, shall take precedence on the docket over all other civil causes and shall be assigned for hearing and trial at the earliest practicable date and expedited in every way.

(b) No agency rule, order, or decision is valid or effective against any person, nor may it be invoked by the agency for any purpose, until it has been made available for public inspection as herein required. This provision is not applicable in favor of any person who has actual knowledge thereof.

Sec. 3. (a) Prior to the adoption, amendment, or repeal of any rule, the agency shall:

(1) give at least 20 days' notice of its intended action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, and the time when, the place where, and the manner in which interested persons may present their views thereon. The notice shall be mailed to all persons who have made timely request of the agency for advance notice of its rule-making proceedings, and shall be published in a newspaper of general circulation or otherwise circulated in a manner reasonably deemed adequate by the agency for the purpose, and shall in addition comply with any other applicable statutory requirement as to publication.

(2) afford all interested persons reasonable opportunity for a period of at least 20 days to submit data, views, or arguments, orally or in writing. In case of rules other than those of a procedural nature, opportunity for oral hearing must be granted if requested in writing by a person who will be materially affected thereby, another agency or a government subdivision. Upon adoption, amendment, repeal, or rejection of a rule, the agency, if requested to do so by an interested person either prior thereto or within 30 days thereafter, shall issue a concise statement of the principal reasons for its action.

(b) If an agency finds that danger to the public health or safety requires adoption of a rule upon fewer than 20 days' notice or without advance publication, and states in writing its reasons for that finding, it may proceed without prior notice, publication or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. The emergency rule may be effective for a period of not longer than 120 days (renewable once for a period not exceeding 60 days) but the adoption of an identical rule under subsections (a)(1) and (a)(2) of this section is not precluded.

(c) No rule hereafter adopted is valid unless adopted in substantial compliance with this section. A proceeding to contest any rule on the ground of non-compliance with the procedural requirements of this section must be commenced within 2 years from the effective date of the rule.

(d) No rule, or exception to any rule, shall discriminate in favor of

or against any person, and each person affected by any rule shall be entitled to the same benefits as any other person under the same or similar circumstances.

Sec. 4. (a) Except as provided in subsection (d) of this section, no rule made by an agency shall become effective until an original and two duplicate copies thereof have been filed in the office of the secretary of state and until such rule has been published in the supplement to the Michigan administrative code as provided in section 5. Each rule so filed shall include a citation of the authority pursuant to which it or any part thereof was adopted, and, if an amendment, a reference to the original rule.

(b) The secretary of state shall endorse on the original and duplicates of each rule so filed the time and date of filing thereof, and shall maintain a file of such rules for public inspection.

(c) No rule made by any agency shall be filed with the secretary of state until it has been approved by the legislative service bureau as to form and section numbers, and by the attorney general as to legality, and has been subsequently confirmed and formally adopted by the promulgating agency in accordance with law.

(d) Unless otherwise provided by law, an emergency rule adopted pursuant to section 3(b) becomes effective immediately upon filing with the secretary of state, or at a subsequent date stated therein, if the agency finds that such effective date is necessary because of danger to the public health or safety and if the governor shall certify that because of such danger the public interest requires that the rule becomes effective without the delay required for the publication of the rule in the Michigan administrative code or the approval of the legislative service bureau or the attorney general. In such cases the rule, together with a brief statement of the reasons for the agency's finding of danger to the public health or safety, and a copy of the certification of the governor, shall be published in the next available issue of the supplement to the Michigan administrative code, and in the meantime the agency shall take appropriate measures to comply with the notice and approval requirements hereunder.

Sec. 5. (a) The secretary of state shall compile, publish, and index all effective rules adopted by each agency in a publication to be known as the Michigan administrative code.

(b) The secretary of state shall compile, publish, and index quarterly supplements to the Michigan administrative code which shall be published every 3 months. Such quarterly supplements shall contain all rules filed in the office of the secretary of state not less than 30 days before the end

of the preceding calendar quarter, and bear a publication date and certification of the period covered by the rules contained therein.

(c) The secretary of state shall publish an annual supplement to the Michigan administrative code wherein all rules theretofore published in a calendar year shall be compiled and indexed. The annual supplement shall contain a cumulative table of changes and index.

(d) All rules, compilations, codifications and supplements shall be prepared, indexed, and published in a uniform manner and at the earliest practicable date. Quarterly supplements shall be published not later than 45 days after the close of the period covered thereby.

(e) The cost of editing, publishing, and printing the quarterly and annual supplements to the Michigan administrative code shall be prorated by the secretary of state on the basis of the volume of rules by each agency compiled in such supplements, and the cost thereof shall be paid out of appropriations to the agencies.

(f) the secretary of state shall publish a revised edition of the Michigan administrative code at least once every 5 years. Upon request of the secretary of state, the legislative service bureau shall perform editorial work in connection with the publication of supplements and revised editions of the Michigan administrative code to the end that the classification, arrangement, and enumeration of rules will conform as near as may be to the compiled laws.

(g) The secretary of state may omit from the Michigan administrative code any rule, the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient if the rule in printed or processed form is made available on application to the adopting agency, and if the Michigan administrative code contains a notice stating the general subject of the omitted rule and stating how a copy thereof may be obtained.

(h) The legislative service bureau is authorized to maintain the text of the Michigan administrative code and supplements thereto and to acquire and maintain the type used in printing any part thereof and to make the same conform to the rules as thereafter amended, altered, added, or abrogated. Any of the materials so prepared, and the type conforming thereto may, by agreement made with the legislative service bureau for reimbursement of the cost thereof, be used in the compiling, printing, and indexing for any agency such portions of the rules as may be agreed upon.

(i) The Michigan administrative code shall be arranged, indexed, and printed in such manner as to make convenient the publication in separate pamphlets of the portions relating to different agencies. Agencies shall order such separate pamphlets prior to the printing of the Michigan

administrative code, the cost of such pamphlets to be paid out of appropriations to the agencies so ordering separate pamphlets.

(j) There shall be published a sufficient number of copies of the Michigan administrative code and the supplements to supply as requested the following persons, officers, libraries, corporations, and agencies with one copy each, viz., agencies; members of the legislature during their terms of office; judges of courts of record; prosecuting attorneys; county clerks; clerks of incorporated villages and cities; public, free and uncorporated libraries, county law libraries, law school libraries, and bar association libraries. In addition to the foregoing, there shall be published such further number of copies as the secretary of state shall deem needful; and 200 copies shall be deposited with the state library for use in said library and for exchanges, and the remaining copies shall be deposited in the office of the secretary of state for sale at a price not less than cost to be determined by the state administrative board.

(k) The filing or publication of a rule shall raise a rebuttable presumption that:

(1) the rule was duly adopted, issued or promulgated;

(2) the rule was duly filed with the secretary of state and made available for public inspection at the day and hour endorsed on it;

(3) the copy of the rule printed is a true and correct copy of the original rule;

(4) all requirements of this act relative to such rules have been complied with.

(l) The courts shall take judicial notice of any rule duly filed or published under the provisions of this act.

Sec. 6. An interested person may petition an agency requesting the promulgation, amendment, or repeal of a rule. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition. Within 90 days after submission of a petition, the agency shall either deny the petition in writing (stating its reasons for the denial) or shall initiate rule-making proceedings in accordance with section 3.

Sec. 7. (a) Copies of all rules adopted by any agency during periods of time when the legislature is not in regular session shall be transmitted by the secretary of state, within 10 days after they shall have been filed in his office, to the secretary of the joint committee on administrative rules

created by subsection (b) of this section; and additional copies shall be transmitted to the secretary of the senate and to the clerk of the house of representatives and to each member of the legislature on or before the first day of the regular session of the legislature next following the adoption of such rules. The secretary of state shall in the same manner transmit to the legislature, within 10 days after they shall have been filed in his office, all rules adopted by any agency during periods of time when the legislature is in regular session. The secretary of the senate and the clerk of the house of representatives shall lay all such rules before the senate and house of representatives, and the same shall be referred to the joint committee on administrative rules in the same manner as bills are referred to standing committees.

(b) There is hereby created a joint committee on administrative rules, which shall consist of 3 members of the senate and 3 members of the house, appointed in the same manner as standing committees are appointed, for terms of 2 years. Members of the committee shall serve without compensation but shall be reimbursed for expenses incurred while on the business of the committee, the expenses of the members of the senate to be paid from the appropriations to the senate and the expenses of the members of the house to be paid from the appropriations to the house of representatives. The committee may, upon request of any interested party, hold a hearing upon any agency rule referred to it.

(c) If the joint committee on administrative rules, or any member of the legislature, shall be of the opinion that such rule is unwarranted, a concurrent resolution may be introduced declaring the legislative intent and expressing the determination of the legislature that such rule should be revoked or altered in whole or in part. Adoption of such concurrent resolution shall suspend the rule until the end of the next regular legislative session, but rejection of the resolution shall not necessarily be construed as legislative approval of the rule. If any agency persists in a rule disapproved by the legislature, it may be abrogated by legislation.

(d) The joint committee on administrative rules may meet during the interims between regular sessions of the legislature to consider all rules adopted too late to be considered by it during the last preceding regular session, and shall conduct hearings on such rules as it deems necessary. The committee may suspend any rule in whole or in part pending the next regular session of the legislature. The committee shall notify the agency adopting the rule and the secretary of state of any rule it suspends, and such rule shall not be published in the administrative code, while so suspended. The committee shall report to the legislature at the commencement of its next regular session its doings in the interim. Any rules which have been suspended by the committee between sessions of the legislature shall continue to be suspended, pending action upon an appropriate concurrent resolution, but the suspension shall continue no longer than the end of the next regular

legislative session.

Sec. 8. The validity or applicability of a rule may be determined in an action for declaratory judgment in the circuit court of the county in which plaintiff resides or has a place of business or in the circuit court for the county of Ingham, if it is alleged that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff. The agency shall be made a party to the action. A declaratory judgment may be rendered whether or not the plaintiff has requested the agency to pass upon the validity or applicability of the rule in question.

Sec. 9. Each agency shall provide by rule for the filing and prompt disposition of written requests for declaratory rulings as to the applicability of any statutory provision or of any rule or order of the agency.

Sec. 10. (a) In a contested case all parties shall be afforded an opportunity for hearing after reasonable notice, in conformity with all applicable statutory requirements.

(b) The notice, in addition to complying with any other applicable statutory requirement, shall include:

(1) a statement of the time, place, and nature of the hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) a reference to the particular sections of the statutes and rules involved;

(4) a short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter upon application a more definite and detailed statement shall be furnished.

(c) Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved. If the agency is empowered by statute to issue subpoenas, and if written application therefor is made by any party, subpoenas shall be issued forthwith requiring the attendance and testimony of witnesses and the production of any evidence including books, records, correspondence, or documents in their possession or under their control. Upon application, the agency shall revoke the subpoena if the evidence whose production is required does not relate to any matter in issue or if the subpoena does not describe with sufficient particularity the evidence

whose production is required, or if for any other reason sufficient in law, the subpoena is otherwise invalid. In case of refusal to comply with the requirements of a subpoena, the party on whose behalf it was issued may file an application in the circuit court for Ingham County or for the county in which the agency hearing is held, seeking an order requiring compliance with the subpoena.

(d) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

(e) Any officer of any agency may administer an oath or affirmation to a witness in any matter before the agency, certify to official acts, and take depositions. Depositions may be used in lieu of other evidence when taken in compliance with the general court rules.

(f) The agency shall prepare an official record which shall include:

(1) all pleadings, motions, intermediate rulings;

(2) evidence received or considered;

(3) a statement of matters officially noticed;

(4) questions and offers of proof, objections, and rulings thereon;

(5) proposed findings and exceptions;

(6) any decision, opinion, or report by the officer presiding at the hearing;

(7) all staff memoranda or data submitted to the hearing officer or members of the agency in connection with their consideration of the case.

(g) Oral proceedings shall be recorded but need not be transcribed unless requested by a party. The requesting party shall pay for the transcription of the portion requested unless otherwise provided by law.

(h) Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

(i) In cases where the agency's findings are based in part on reports of physical tests or physical examinations not supported by proofs in evidence, or on staff reports which were not made available for examination by the parties for a reasonable time prior to the hearing, and in cases where for justifiable reasons the testimonial record made at the hearing is asserted to be inadequate for purposes of judicial review, the agency

shall, upon motion of any party, or on its own motion, grant a rehearing if an application therefor is filed within the time fixed by law for instituting proceedings for judicial review. The evidence received upon such rehearing shall be included in the record for agency reconsideration and for judicial review.

Sec. 11. In contested cases:

(1) Irrelevant, immaterial or unduly repetitious evidence shall be excluded. The rules of evidence as applied in non-jury civil cases in the circuit courts shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Agencies shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any evidence may be received in written form under oath before a notary public.

(2) All evidence, including records and documents in the possession of the agency of which it desires to avail itself, shall be offered and made a part of the record in the case; and no other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available, or may be incorporated by reference. Upon request, parties shall be given an opportunity to compare the copy with the original when available.

(3) Every party shall have the right of cross-examination, which shall include the right to cross-examine the author of any document prepared by or on behalf of or for the use of the agency and offered in evidence. Every party shall have the right to submit rebuttal evidence.

(4) Agencies may take notice of judicially cognizable facts and, in addition, may take notice of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified, before the hearing, or during the hearing if advance notice is impracticable, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the facts so noticed. Agencies may utilize their experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to them. The provisions of this section shall not be construed as permitting an agency to take notice of any evidence contrary to statutory provisions applicable to such agency.

(5) Any hearing that is required to be conducted under the provisions of this act or any other law, unless otherwise provided by such law, may be referred by the agency to a member of the agency's staff who shall hear the evidence, prepare a record, and file a report with all parties.

Sec. 12. Whenever, in a contested case, a majority of the officials of the agency who are to render the final decision have not heard the case or read the whole record, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposal for decision has been served upon the parties and an opportunity has been afforded to each party adversely affected to file exceptions and present briefs and oral argument to a majority of the officials who are to render the decision. The proposal for decision shall contain a statement of the reasons therefor and the determination reached as to each issue of fact or law necessary to the proposed decision. The parties, by written stipulation or at the hearing, may waive compliance with this section.

Sec. 13. Every decision and order adverse to a party to the proceeding other than the agency itself, rendered by an agency in a contested case, shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If in accordance with agency rules, a party submitted proposed findings of fact which would be controlling in the decision, the decision shall include a ruling upon each such proposed finding. A copy of the decision and order and findings and conclusions shall forthwith be delivered or mailed to each party or to his attorney of record. Unless otherwise provided by law or the rules of the agency, a rehearing may be ordered by the agency upon petition filed within 20 days after its decision. The petition may be filed by any party upon notice to other parties or the agency may grant a rehearing on its own motion.

Sec. 14. (a) When the grant, denial, or renewal of a license is required to be preceded by notice and opportunity for hearing, the provisions of this act concerning contested cases apply.

(b) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(c) No revocation, suspension, annulment, or withdrawal of any license

is lawful unless, prior to the institution of agency proceedings, the agency gave notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license. If the agency finds that the public health or safety imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

Sec. 15. (a) Any person who has exhausted all administrative remedies available within the agency, and who is aggrieved by a final decision in a contested case, whether such decision is affirmative or negative in form, is entitled to judicial review under this act by appeal to the court of appeals as a matter of right, whether or not any other statute (enacted either before or after the enactment of this act) creates a different method for judicial review or limits review of the decisions of such agency, except where such review would be contrary to constitutional requirements. The requirement of exhausting administrative remedies shall not be deemed to necessitate the filing of a motion for rehearing or reconsideration unless the rules of the agency specifically require the filing of such motion before judicial review is sought. The court of appeals, in its discretion, may permit other interested persons to intervene. This section does not limit utilization of, or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law. In any proceeding in which alternative methods of appeal are available any person desiring to take a cross appeal shall take said cross appeal in the same manner in which the original appeal has been taken. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable by leave of the court of appeals, if review of the final agency decision would not provide an adequate remedy.

(b) Proceedings for review shall be instituted by filing a claim of appeal in the court of appeals within 20 days after delivery or mailing notice of the final decision of the agency or, if a rehearing is timely requested under agency rules, within 20 days after delivery or mailing notice of the decision thereon.

(c) The filing of the claim of appeal does not itself stay enforcement of the agency decision. The agency may grant, or the reviewing court may order, a stay upon appropriate terms.

(d) Within 30 days after the service of the claim of appeal, or within such further time as the court of appeals may allow, the agency shall transmit to the court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all the parties to the review proceeding, the record may be shortened. Any party unreasonably refusing

to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

(e) If, before the date set for the hearing, application is made to the court of appeals for leave to take testimony, and it is shown to the satisfaction of the court that no record or an inadequate record was made at the hearing before the agency or that additional evidence is material, and that there were good reasons for failing to record or present it in the proceeding before the agency, the court shall order the taking of testimony before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file with the court, to become a part of the record, the additional evidence together with any modifications, new findings, or decisions.

(f) Except in cases where a hearing de novo is authorized or required by the constitution or by the provisions of a particular statute, the court shall not substitute its judgment for that of the agency on questions of fact, except as herein otherwise provided. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, conclusions or decisions are:

(1) in violation of constitutional or statutory provisions;

(2) in excess of the statutory authority or jurisdiction of the agency;

(3) made upon unlawful procedure which has resulted in a material prejudice to a party;

(4) clearly erroneous in view of the competent, material and substantial evidence on the whole record;

(5) arbitrary, capricious or clearly an abuse of discretion or clearly an unwarranted exercise of discretion;

(6) affected by other substantial and material error of law.

(g) Anything hereinabove provided to the contrary notwithstanding, appeals from the decisions of the state tax commission relating to assessment valuations or allocations shall only review claims that they are based on fraud, error of law, or the adoption of wrong principles; and findings of fact in workmen's compensation proceedings shall be conclusive in the absence of fraud.

Sec. 16. Act No. 88 of the Public Acts of 1943, as amended, being sections 24.71 to 24.80 of the Compiled Laws of 1948, and Act No. 197 of the

Public Acts of 1952, as amended, being sections 24.101 - 24.110 of the Compiled Laws of 1948, are repealed.

Sec. 17. This act takes effect January 1, 1969, and (except as to proceedings then pending) applies to all agencies and agency proceedings not expressly exempted.

Sec. 18. This act shall be know and may be cited as the "administrative procedure act of 1968."

RECOMMENDATION TO THE LEGISLATURE RELATING TO SELECTION OF JURORS

In Robson v. Grand Trunk and Western Railroad Co., 5 Mich. App. 90, 145 N. W. 846 (1966), the Michigan Court of Appeals sustained a motion challenging the selection of a jury panel in a civil action on the ground that it had not been selected at random as required by law. This decision casts serious doubt on the current methods provided by statute for the selection of jurors. The court emphasized that the exclusion of special groups or a selection based upon sex, employment, or age would do violence to the fundamental concept of the jury system. Therefore, the Law Revision Commission undertook a complete re-examination of the Michigan statutes on the subject.

Under the Revised Judicature Act of 1961 selection of jurors in the Upper Peninsula is made from the poll list by certain county officials without specification of random selection methods. In Wayne County a jury commission appointed on recommendation of the circuit court judges selects jurors but no special method of random selection is prescribed. A similar situation exists in Berrien and Saginaw counties. The remainder of the state is governed by the provisions of sections 1201 to 1235 of the Revised Judicature Act, and it was a drawing under these provisions that was challenged in the Robson case. Finally, the municipal court jury code, available for adoption by cities, does provide a detailed method of random selection. (Compiled Laws 1948, §§725.101 - 725.162).

The at-random selection required by law can be best served by the adoption of statutory provisions embodying the so-called key-number system. In addition to carrying out this fundamental policy, a sound jury selection statute should have the following objectives: (1) the system should be uniform throughout the state; (2) the system should be devised to avoid fraud in the selection processes; (3) the jurors should be selected at random from voter registration lists to assure a fair cross section of the community; and (4) the system should minimize the courts' and litigants' expenditure of time and money and utilize a preliminary screening device to eliminate exempt and unfit persons. To accomplish these objectives the Commission recommends the enactment of comprehensive legislation governing jury selection in accordance with the proposed statute which is attached.

PROPOSED BILL

A bill to amend Act No. 236 of the Public Acts of 1961, entitled "revised judicature act of 1961," being sections 600.101 to 600.9911 of the Compiled Laws of 1948, by adding a new chapter 13, and to repeal certain acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. Act No. 235 of the Public Acts of 1961, being sections 600.101 to 600.9911 of the Compiled Laws of 1948, is amended by adding a new chapter 13 to read as follows:

CHAPTER 13

JURORS

SEC. 1301. THE PRESIDING CIRCUIT JUDGE, THE COUNTY CLERK, AND THE SHERIFF SHALL CONSTITUTE A JURY BOARD FOR THE SELECTION OF JURORS FOR ALL COURTS OF EACH COUNTY. TWO MEMBERS CONSTITUTE A QUORUM FOR THE TRANSACTION OF BUSINESS. THE JUDGE SHALL ACT AS CHAIRMAN, AND THE COUNTY CLERK AS SECRETARY, OF THE BOARD. ANY BOARD MEMBER MAY APPOINT SOME OTHER PERSON TO ACT IN HIS PLACE AT A MEETING OF THE BOARD.

SEC. 1302. IN LIEU OF THE JURY BOARD PROVIDED FOR IN SECTION 1301, IN COUNTIES IN WHICH THE BOARD OF SUPERVISORS SO PROVIDES, THE JURY BOARD SHALL CONSIST OF FROM 3 TO 7 QUALIFIED ELECTORS OF THE COUNTY APPOINTED FOR 6-YEAR TERMS BY THE GOVERNOR ON RECOMMENDATION OF THE CIRCUIT JUDGES OF THE CIRCUIT IN WHICH THE COUNTY IS SITUATED. APPOINTMENTS SHALL BE ARRANGED SO THAT NO MORE THAN 1/3 OF THE TERMS SHALL EXPIRE IN ONE YEAR. THE BOARD SHALL ANNUALLY ELECT FROM ITS MEMBERS A PRESIDENT AND SECRETARY. THE MEMBERS OF THE BOARD SHALL BE PAID AN ANNUAL SALARY IN AN AMOUNT FIXED BY THE BOARD OF SUPERVISORS OR IN LIEU THEREOF BE PAID FOR EACH DAY OF SERVICE AN AMOUNT FIXED BY THE BOARD OF SUPERVISORS NOT TO EXCEED $25.00 FOR EACH DAY OF SERVICE. A MAJORITY OF THE BOARD CONSTITUTES A QUORUM.

IN COUNTIES NOW HAVING AN APPOINTIVE BOARD OR COMMISSION FOR THE SELECTION OF JURORS THE MEMBERS THEREOF SHALL SERVE AS MEMBERS OF THE BOARD CREATED UNDER THIS SECTION UNTIL A VACANCY IS CREATED BY EXPIRATION OF TERM OR OTHERWISE. ANY NEW APPOINTMENTS OR APPOINTMENTS TO FILL VACANCIES ARE TO BE MADE UNDER THIS SECTION. IF THE NUMBER OF BOARD MEMBERS IS LESS THAN PREVIOUSLY, APPOINTMENTS ARE NOT TO BE MADE TO FILL VACANCIES UNTIL THE AUTHORIZED NUMBER IS REACHED. THE BOARD OF SUPERVISORS IS GIVEN POWER TO PRESCRIBE THE PROCEDURE FOR THE ORDERLY TRANSITION OF DUTIES.

SEC. 1303. THE JURY BOARD MAY APPOINT ASSISTANTS AS MAY BE NECESSARY. THE COMPENSATION OF THE ASSISTANTS SHALL BE

FIXED BY THE BOARD OF SUPERVISORS.

SEC. 1304. THE JURY BOARD SHALL SELECT FROM THE CURRENT VOTER REGISTRATIONS LISTS OR BOOKS THE NAMES OF SUITABLE PERSONS TO SERVE AS JURORS.

SEC. 1305. THE JURY BOARD SHALL MEET ANNUALLY IN THE MONTH OF MAY AT THE COURT HOUSE. THE PRESIDING CIRCUIT JUDGE SHALL FIX THE TIME AND PLACE OF THE ANNUAL MEETING AND MAY DIRECT THE BOARD TO MEET AT OTHER TIMES AND PLACES. THE BOARD MAY MEET AT OTHER TIMES AND PLACES NECESSARY TO CARRY OUT ITS DUTIES. THE SECRETARY OF THE BOARD SHALL KEEP A RECORD OF THE PROCEEDINGS OF THE BOARD IN A BOOK TO BE PROVIDED FOR THAT PURPOSE, AND THE MEMBERS OF THE BOARD SHALL SIGN THE RECORD, ATTESTED BY THE SECRETARY, AND THE RECORD SHALL THEN BE EVIDENCE IN ALL COURTS AND PLACES OF THE PROCEEDINGS OF THE BOARD.

SEC. 1306. TO QUALIFY JURORS MUST:

(1) BE ELECTORS IN THE COUNTY FOR WHICH THEY ARE SELECTED;

(2) BE OF GOOD CHARACTER, APPROVED INTEGRITY, AND SOUND JUDGMENT;

(3) BE WELL INFORMED;

(4) BE CONVERSANT WITH THE ENGLISH LANGUAGE;

(5) BE IN POSSESSION OF THEIR NATURAL FACULTIES, NOT INFIRM OR DECREPIT AND OTHERWISE FREE FROM ALL LEGAL EXCEPTIONS

(6) NOT HAVE CLAIMED EXEMPTION IF SO ENTITLED;

(7) BE IMPARTIAL AND DISCREET; AND

(8) NOT HAVE SERVED ON A PANEL OF PETIT OR GRAND JURORS, IN A COURT OF RECORD DURING THE PRECEDING 3 YEARS.

NO PERSON MAY BE SELECTED WHO IS NOT, IN THE JUDGMENT OF THE BOARD, QUALIFIED IN EVERY RESPECT TO SERVE AS A JUROR. JURORS NEED NOT BE TAXPAYERS, AND IT IS NOT NECESSARY THAT THEIR NAMES APPEAR ON ANY ASSESSMENT ROLL.

SEC. 1307. ONLY THE FOLLOWING PERSONS MAY CLAIM EXEMPTION AND BE EXCUSED ON REQUEST FROM SERVICE AS JURORS: ALL

OFFICERS OF THE UNITED STATES AND THEIR DEPUTIES; ALL OFFICERS OF THE STATE OF MICHIGAN AND THEIR DEPUTIES; ALL COUNTY OFFICERS AND THEIR DEPUTIES; ALL JUDGES OF COURTS OF RECORD; ALL ATTORNEYS AND COUNSELORS AT LAW; AND ALL PERSONS MORE THAN 70 YEARS OF AGE. UNLESS AN EXEMPTION IS CLAIMED, IT IS WAIVED.

SEC. 1308. ON OR BEFORE MAY 1, ANNUALLY, THE PRESIDING CIRCUIT JUDGE SHALL ESTIMATE THE NUMBER OF JURORS THAT WILL BE NEEDED BY ALL COURTS OF RECORD IN THE COUNTY FOR A 1-YEAR PERIOD BEGINNING THE FOLLOWING SEPTEMBER. THIS ESTIMATE SHALL BE ENTERED ON THE JOURNAL OF THE COURT AND A COPY THEREOF SHALL BE CERTIFIED BY THE CLERK OF THE COURT AND DELIVERED TO THE BOARD. IN MAKING THE ESTIMATE THE JUDGE SHALL GIVE CONSIDERATION TO THE NUMBER OF SLIPS THEN IN THE BOARD BOX WHICH MAY BE AVAILABLE FOR THE PERIOD FOR WHICH THE ESTIMATE IS BEING MADE.

SEC. 1309. THE BOARD SHALL SECURE FROM THE CLERK OF THE CIRCUIT COURT IN THE COUNTY, AND THE CLERK SHALL PROVIDE, A LIST OF ALL PERSONS WHO HAVE SERVED AS JURORS IN COURTS OF RECORD IN THE COUNTY FOR THE PRECEDING 3 YEARS.

SEC. 1310. THE TOWNSHIP, CITY, OR VILLAGE CLERK SHALL ANNUALLY BETWEEN APRIL 15 AND MAY 1 DELIVER TO AND FILE WITH THE COUNTY CLERK A FULL, CURRENT, AND ACCURATE COPY OF THAT PART OF THE VOTER REGISTRATION CARDS THAT CONTAINS THE NAMES AND ADDRESSES OF THE REGISTERED VOTERS INCLUDING THE REGISTRATION AFFIDAVIT. IN LIEU OF A COPY OF THE REGISTRATION CARD A FULL, CURRENT, AND ACCURATE LIST OF THOSE REGISTERED TOGETHER WITH THE CURRENT ADDRESSES SHOWN ON THE CARD MAY BE FILED.

THE BOARD SHALL SECURE FROM THE COUNTY CLERK, AND THE COUNTY CLERK SHALL PROVIDE, THE COPY OF THE CURRENT VOTER REGISTRATION CARDS OR THE CURRENT VOTER REGISTRATION LISTS OR BOOKS FOR EACH PRECINCT IN THE COUNTY. THE BOARD SHALL TREAT THE CARDS AND LISTS AS 1 LIST, WITH VOTERS GROUPED EITHER BY PRECINCT OR BY CITY, TOWNSHIP, OR VILLAGE AS THEY MAY BE PROVIDED.

SEC. 1311. THE BOARD SHALL ARRIVE AT A KEY NUMBER AS FOLLOWS:

(1) ADD THE NUMBER OF JURORS THE JUDGE HAS ESTIMATED

WILL BE NEEDED TO THE NUMBER THAT EXPERIENCE HAS SHOWN WILL BE ELIMINATED BECAUSE OF DISQUALIFICATION OR EXEMPTION.

EXAMPLE: IF THE JUDGE ESTIMATES 100 JURORS WILL BE NEEDED AND THE BOARD HAS FOUND THAT TO SELECT FINALLY 100 JURORS, 50 PERSONS WILL USUALLY BE FOUND TO BE EXEMPT OR DISQUALIFIED (INCLUDING THOSE WHO HAVE MOVED FROM THE COUNTY, DIED, ETC.) THE BOARD SHALL ADD 50 TO THE 100.

(2) DIVIDE THE NUMBER OF NAMES ON THE VOTER REGISTRATION LISTS BY THE RESULT, OBTAINING THE NEAREST INTEGRAL QUOTIENT.

EXAMPLE: IF THERE ARE 50,000 NAMES ON THE VOTER REGISTRATION LIST, DIVIDE 50,000 BY 150.

(3) THE RESULT IS THE KEY NUMBER FOR THE PERIOD FOR WHICH JURORS ARE TO BE SELECTED.

EXAMPLE: 50,000 DIVIDED BY 150 EQUALS 333-1/3, SO 333 WOULD BE THE KEY NUMBER IN THE EXAMPLE.

SEC. 1312. THE BOARD SHALL APPLY THE KEY NUMBER UNIFORMLY TO THE NAMES ON THE VOTER REGISTRATION LIST AND COMPILE A LIST OR CARD INDEX, TO BE KNOWN AS THE FIRST JURY LIST, WHICH SHALL INCLUDE EVERY NAME AND ONLY SUCH NAMES AS THE APPLICATION OF THE KEY NUMBER HAS DESIGNATED. THE BOARD SHALL DO THIS AS FOLLOWS:

(1) ARRANGE THE VARIOUS VOTER REGISTRATION LISTS INTO ONE LIST. THE ORDER IN WHICH THE LISTS ARE ARRANGED OR THE FACT THAT SOME LISTS ARE BY PRECINCTS AND SOME LISTS ARE ALPHABETIZED IS NOT RELEVANT.

(2) SELECT BY A RANDOM METHOD A STARTING NUMBER BETWEEN 0 AND THE KEY NUMBER.

(3) COUNT DOWN THE VOTER REGISTRATION LIST THE NUMBER OF NAMES TO REACH THE STARTING NUMBER. THAT NAME SHALL BE PLACED ON THE FIRST JURY LIST.

(4) CONTINUE FROM THAT NAME COUNTING DOWN THE LIST, BEGINNING TO COUNT AGAIN WITH THE NUMBER 1, UNTIL THE KEY NUMBER IS REACHED. THAT NAME SHALL BE PLACED ON THE FIRST JURY LIST.

(5) REPEAT THE PROCESS PROVIDED IN (4) UNTIL THE WHOLE

VOTER REGISTRATION LIST HAS BEEN COUNTED AND THE NAMES PLACED ON THE FIRST JURY LIST.

(6) THE BOARD SHALL NOT PLACE ON THE FIRST JURY LIST THE NAME OF ANY PERSON WHOM ITS RECORDS SHOW TO HAVE SERVED AS JURORS IN THE CIRCUIT COURT IN THE COUNTY AT ANY TIME WITHIN THE PRECEDING 3 YEARS, AND WHEN THE APPLICATION OF THE KEY NUMBER STRIKES THE NAME OF SUCH A PERSON, THE NAME OF THE NEXT FOLLOWING PERSON ON THE VOTER REGISTRATION LIST ELIGIBLE TO SERVE SHALL BE PLACED ON THE FIRST JURY LIST.

SEC. 1313. THE BOARD SHALL SUPPLY A JUROR QUALIFICATIONS QUESTIONNAIRE TO ALL PERSONS ON THE FIRST JURY LIST. THIS QUESTIONNAIRE SHALL CONTAIN BLANKS FOR THE INFORMATION THE BOARD DESIRES, CONCERNING QUALIFICATIONS FOR, AND EXEMPTIONS FROM, JURY SERVICE. PERSONS ON THE FIRST JURY LIST ARE REQUIRED TO RETURN THE QUESTIONNAIRE FULLY ANSWERED TO THE JURY BOARD WITHIN 10 DAYS FROM THE TIME IT IS RECEIVED.

SEC. 1314. ON THE BASIS OF ANSWERS TO THE JUROR QUALIFICATIONS QUESTIONNAIRES THE BOARD MAY EXCUSE FROM SERVICE ALL PERSONS ON THE FIRST JURY LIST WHO CLAIM EXEMPTION AND GIVE SATISFACTORY PROOF OF SUCH RIGHT, AND ALL PERSONS WHO ARE NOT QUALIFIED FOR JURY SERVICE. THE BOARD MAY INVESTIGATE THE ACCURACY OF THE ANSWERS TO THE QUESTIONNAIRES AND MAY CALL UPON ALL LAW ENFORCEMENT AGENCIES FOR ASSISTANCE IN THE INVESTIGATION.

SEC. 1315. THE JUROR QUALIFICATIONS QUESTIONNAIRES SHALL BE KEPT ON FILE BY THE BOARD FOR A PERIOD OF 3 YEARS. THE PRESIDING CIRCUIT JUDGE MAY ORDER THE QUESTIONNAIRES TO BE KEPT ON FILE FOR A LONGER PERIOD. THE ANSWERS TO THE QUALIFICATIONS QUESTIONNAIRES SHALL NOT BE DISCLOSED EXCEPT THAT THE PRESIDING CIRCUIT JUDGE MAY ORDER ACCESS BE GIVEN TO THE QUESTIONNAIRE AND THE ANSWERS.

SEC. 1316. THE PRESIDING CIRCUIT JUDGE, OR THE BOARD, MAY REQUIRE ANY OR ALL PERSONS ON THE FIRST JURY LIST TO APPEAR BEFORE A BOARD MEMBER AT A SPECIFIED TIME, FOR THE PURPOSE OF TESTIFYING UNDER OATH OR AFFIRMATION CONCERNING THEIR OWN QUALIFICATION TO SERVE AS JURORS, IN ADDITION TO COMPLETING THE QUESTIONNAIRES. NOTICE SHALL BE GIVEN THOSE PERSONS REQUIRED TO APPEAR PERSONALLY, OR BY MAIL, NOT LESS THAN 7 DAYS BEFORE THEY ARE TO APPEAR BEFORE THE BOARD. THE BOARD SHALL HOLD EVENING SESSIONS AS NECESSARY FOR THE EXAMINATION OF PROSPECTIVE JURORS WHO ARE UNABLE TO ATTEND AT

OTHER TIMES.

SEC. 1317. THE BOARD MAY, IN ITS DISCRETION, DISPENSE WITH THE PERSONAL ATTENDANCE OF A PERSON NOTIFIED TO APPEAR BEFORE THE BOARD, WHEN ANOTHER PERSON COGNIZANT OF FACTS WHICH WILL QUALIFY OR DISQUALIFY THE PERSON FROM SERVICE, OR WHICH PREVENT HIM FROM APPEARING IS PRODUCED AND TESTIFIES IN HIS STEAD, OR WHEN A BOARD MEMBER HAS PERSONAL KNOWLEDGE OF FACTS, AND ENTERS THEM IN HIS REPORT ON THAT PERSON'S QUALIFICATIONS.

SEC. 1318. EACH BOARD MEMBER MAY ADMINISTER AN OATH OR AFFIRMATION IN RELATION TO THE EXAMINATION OF ANY MATTER EMBRACED IN THIS ACT.

SEC. 1319. THE BOARD SHALL KEEP A RECORD OF THE BOARD MEMBER'S REPORT ON EACH PERSON EXAMINED, AND A RECORD SHOWING THE QUALIFICATIONS TO SERVE AS A JUROR OF EACH PERSON ON THE FIRST JURY LIST AND WHETHER OR NOT HE IS A FREEHOLDER.

SEC. 1320. THE BOARD SHALL MAKE A PRELIMINARY SCREENING OF THE QUALIFICATIONS AND EXEMPTIONS OF PROSPECTIVE JURORS AND SHALL NOT INCLUDE IN THE SECOND JURY LIST THE NAMES OF PERSONS IT FINDS NOT QUALIFIED OR EXEMPT; BUT THE COURT MAY DECIDE UPON THE QUALIFICATIONS AND EXEMPTIONS OF PROSPECTIVE JURORS UPON A WRITTEN APPLICATION AND SATISFACTORY LEGAL PROOF AT ANY TIME AFTER THE JURORS ATTEND COURT.

SEC. 1321. THE NAMES OF THOSE PERSONS ON THE FIRST JURY LIST WHOM THE BOARD ACCEPTS AS PERSONS QUALIFIED FOR AND NOT EXEMPT FROM JURY SERVICE SHALL BE COMPILED INTO A LIST OR CARD INDEX WHICH SHALL BE KNOWN AS THE SECOND JURY LIST. THE BOARD SHALL WRITE THE NAMES AND ADDRESSES OF THE PERSONS THUS SELECTED, AND WHETHER OR NOT THE RECORDS OF THE BOARD SHOW THEM TO BE FREEHOLDERS, ON SEPARATE SLIPS OF PAPER OF THE SAME SIZE AND APPEARANCE AS NEARLY AS MAY BE. THE BOARD SHALL FOLD UP EACH OF THE SLIPS OF PAPER IN THE SAME MANNER SO AS TO CONCEAL THE NAME THEREON AND SHALL DEPOSIT THEM AT THE TIMES HEREIN PROVIDED, IN A BOX, TO BE CALLED AND LABELED THE "BOARD BOX." THE FORM AND CONSTRUCTION OF THE BOARD BOX SHALL BE APPROVED BY THE CHAIRMAN OR PRESIDENT, AND MAY FROM TIME TO TIME BE CHANGED WITH HIS APPROVAL. IMMEDIATELY AFTER PREPARING THE SLIPS THE BOARD SHALL SEAL THE SECOND JURY LIST. THE LIST SHALL REMAIN SEALED UNTIL

OTHERWISE ORDERED BY THE PRESIDING CIRCUIT JUDGE.

SEC. 1322. THE FIRST DEPOSIT OF SLIPS PREPARED UNDER THIS CHAPTER SHALL TAKE PLACE AS SOON AS PREPARED. SLIPS DRAWN UNDER PREVIOUS STATUTES SHALL FIRST BE REMOVED. SUBSEQUENT DEPOSITS SHALL BE MADE WHEN THE SUPPLY OF SLIPS IN THE BOARD BOX IS EXHAUSTED. AN EARLIER DEPOSIT MAY BE ORDERED BY THE PRESIDING CIRCUIT JUDGE. THE BOARD SHALL KEEP A RECORD OF THE NUMBER OF SLIPS DEPOSITED, AND THE NUMBER WITHDRAWN, AND SHALL INFORM THE PRESIDING CIRCUIT JUDGE OF THE NUMBER OF SLIPS REMAINING IN THE BOARD BOX UPON REQUEST, WITHOUT OPENING THE BOX. NOTHING THEREIN SHALL AFFECT THE VALIDITY OF A PANEL OF JURORS WHICH WAS DRAWN FOR ANY TERM OF COURT BEFORE THE FIRST DEPOSIT OF SLIPS AS PROVIDED HEREIN.

SEC. 1323. IF THE SLIPS ARE NOT TO BE IMMEDIATELY DEPOSITED IN THE BOARD BOX, THEY SHALL BE SEALED UP BY THE BOARD AND REMAIN IN THE CUSTODY OF THE BOARD TO BE DEPOSITED WHEN THE PREVIOUS SUPPLY OF SLIPS IN THE BOARD BOX IS EXHAUSTED OR WHEN ORDERED BY THE PRESIDING CIRCUIT JUDGE.

SEC. 1324. NOT LESS THAN 21 DAYS BEFORE THE TIME AT WHICH A JURY WILL BE NEEDED, THE PRESIDING JUDGE OF EACH COURT OF RECORD IN THE COUNTY SHALL ORDER THE BOARD TO DRAW A SUFFICIENT NUMBER OF JURORS FOR JURY SERVICE FOR THE TERM OF COURT. IF THE NUMBER HAS NOT BEEN FIXED BY THE COURT AT THE TIME OF THE DRAWING, THE COURT SHALL DRAW THE NUMBER OF SLIPS FROM THE JURY BOX IT DEEMS NECESSARY FOR THE BUSINESS OF THE COURT FOR THE TERM, OR PART THEREOF, FOR WHICH JURORS ARE TO BE DRAWN.

SEC. 1325. EACH TERM, OR OFTENER IF PROVIDED BY COURT RULES, AND AS LONG AS THE NEED FOR JURORS EXISTS, THE PRESIDING JUDGE OF EACH COURT SHALL NOTIFY THE BOARD OF THE NUMBER OF JURORS REQUIRED FOR A PERIOD OF SERVICE BEGINNING 21 DAYS THEREAFTER.

SEC. 1326. IF A GRAND JURY IS ORDERED BY THE COURT, OR REQUIRED BY STATUTE, THE BOARD SHALL DRAW THE NAMES OF 23 PERSONS TO SERVE AS GRAND JURORS. THE NAMES SHALL BE DRAWN IN THE SAME MANNER AND FROM THE SAME SOURCE AS THE PETIT JURORS.

SEC. 1327. ALL DRAWINGS OF JURORS SHALL TAKE PLACE IN

PUBLIC ON A DAY AND AT A PLACE DESIGNATED BY THE BOARD, NOT LESS THAN 14 DAYS BEFORE THE DAY AT WHICH THE JURORS WHO ARE DRAWN ARE TO APPEAR FOR SERVICE.

SEC. 1328. TWO DAYS' NOTICE OF THE DRAWING OF JURORS FOR A COURT SHALL BE GIVEN THE PRESIDING JUDGE AND THE CLERK OF THE COURT; AND AT THE TIME AND PLACE APPOINTED THE JUDGE, OR SOME OTHER JUDGE OF THE COURT DESIGNATED BY HIM, AND THE CLERK OR HIS DEPUTY, SHALL ATTEND TO WITNESS AND ASSIST IN THE DRAWING OF JURORS. IF THE WITNESSES ARE NOT PRESENT AT THE APPOINTED TIME THE PROSECUTING ATTORNEY, OR ONE OF HIS ASSISTANTS, SHALL ATTEND THE DRAWING IN THEIR STEAD.

SEC. 1329. THE BOARD SHALL PROCEED IN THE DRAWING AS FOLLOWS: AN EMPLOYEE OF THE BOARD, OR A BOARD MEMBER, SHALL SHAKE OR TURN THE BOARD BOX SO AS FAIRLY TO MIX THE SLIPS OF PAPER DEPOSITED THEREIN WITHOUT EXPOSING THEM. THE EMPLOYEE OR BOARD MEMBER SHALL THEN, IN THE PRESENCE OF THE OFFICER OR OFFICERS ATTENDING, WITHOUT SEEING THE NAMES ON THE SLIPS, DRAW PUBLICLY FROM THE BOX THE NAMES OF AS MANY JURORS AS WERE ORDERED BY THE JUDGE. ONE OF THE ATTENDING OFFICERS OR BOARD MEMBERS OR AN EMPLOYEE OF THE BOARD SHALL KEEP A MINUTE OF THE DRAWING, IN WHICH HE SHALL ENTER THE NAME WRITTEN ON EVERY SLIP OF PAPER DRAWN BEFORE ANY OTHER SLIP IS DRAWN. IF THE NAME OF ANY PERSON IS DRAWN WHO IS NOT QUALIFIED TO SERVE AS A JUROR TO THE KNOWLEDGE OF ANY MEMBER OF THE BOARD, AN ENTRY OF THIS FACT SHALL BE MADE ON THE MINUTE OF THE DRAWING, THE SLIP OF PAPER CONTAINING HIS NAME SHALL BE DESTROYED, AND ANOTHER SLIP THEN DRAWN IN PLACE OF THAT DESTROYED. THE MINUTES OF THE DRAWING SHALL BE SIGNED BY THE BOARD MEMBER AND THE ATTENDING OFFICERS AND FILED IN THE OFFICE OF THE BOARD. THE SIGNATURE SHALL CONSTITUTE A CERTIFICATE THAT THE MINUTES ARE CORRECT AND THAT ALL PROVISIONS OF THE LAW HAVE BEEN COMPLIED WITH.

SEC. 1330. (1) THE LEGALITY OR REGULARITY OF THE DRAWING SHALL NOT BE QUESTIONED IF THE MINUTES OF THE DRAWING ARE PROPERLY SIGNED. IF THE NAMES OF ANY PERSONS NOT QUALIFIED TO SERVE AS JURORS ARE INCLUDED IN THE NAMES DRAWN, THIS FACT SHALL NOT BE A GROUND OF CHALLENGE TO THE ARRAY, BUT ONLY A GROUND OF PERSONAL CHALLENGE TO THE INDIVIDUAL SHOWN TO BE SO DISQUALIFIED.

(2) IF THE JURORS WERE DRAWN IN ACCORDANCE WITH THIS

ACT AND THE RULES OF THE COURT, IT IS NOT A GROUND OF CHALLENGE TO ANY PANEL OR ARRAY OF JURORS THAT THE PERSON WHO DREW THEM WAS A PARTY OR INTERESTED IN THE CAUSE, OR WAS COUNSEL OR ATTORNEY FOR, OR RELATED TO EITHER PARTY THEREIN.

(3) IF THE JURORS WERE DRAWN IN ACCORDANCE WITH THIS ACT AND THE RULES OF THE COURT, IT IS NOT A GROUND OF CHALLENGE TO ANY PANEL OR ARRAY OF JURORS THAT THEY WERE SUMMONED BY THE SHERIFF WHO WAS A PARTY, OR INTERESTED IN THE CAUSE, OR RELATED TO EITHER PARTY THEREIN, UNLESS IT IS ALLEGED IN THE CHALLENGE, AND SATISFACTORILY SHOWN THAT SOME OF THE JURORS DRAWN WERE NOT SUMMONED, AND THAT THIS OMISSION WAS INTENTIONAL.

SEC. 1331. WHEN THE DRAWING IS FINISHED, THE BOARD BOX SHALL BE CLOSED AND SEALED IN THE PRESENCE OF THE OFFICERS. ALL SLIPS DRAWN OUT OF THE BOARD BOX, UNLESS DESTROYED AS PROVIDED IN THIS ACT, SHALL BE DELIVERED TO THE CLERK OF THE COURT FOR WHICH THE JURORS WERE DRAWN.

SEC. 1332. THE BOARD BOX SHALL BE KEPT IN THE CUSTODY OF THE BOARD AT ALL TIMES, AND SHALL NOT BE OPENED NOR THE SEAL BE BROKEN UNTIL ANOTHER DRAWING, UNLESS ORDERED BY THE COURT.

SEC. 1333. THE BOARD SHALL DELIVER TO THE SHERIFF LISTS CONTAINING THE NAMES AND ADDRESSES OF THE JURORS DRAWN, SPECIFYING WHEN AND WHERE THE JURORS SHALL APPEAR, AND COMMANDING THE SHERIFF OR ANY OF HIS DEPUTIES TO SUMMON THE PERSONS NAMED THEREIN TO APPEAR IN THE COURT FOR WHICH THEY WERE DRAWN.

SEC. 1334. THE SHERIFF SHALL SERVE A PERSONAL NOTICE UPON EACH OF THE PERSONS SUMMONED TO SERVE AS JURORS BY SENDING A WRITTEN NOTICE TO THE PERSON SUMMONED ADDRESSED TO HIS PLACE OF RESIDENCE AS SHOWN BY THE RECORDS OF THE BOARD BY ORDINARY MAIL AT LEAST 10 DAYS BEFORE THE DAY FOR WHICH THE JURORS ARE SUMMONED. THE SHERIFF SHALL MAKE A PROPER RETURN TO THE COURT FOR WHICH THE JURORS WERE SUMMONED ON OR BEFORE THE TIME FOR WHICH THEY WERE SUMMONED, SPECIFYING THAT HE HAS SUMMONED THE JURORS FOR THAT TIME AND THE MANNER IN WHICH THE SERVICE WAS MADE. THE RETURN SHALL BE PRESUMPTIVE EVIDENCE OF THE FACT OF SERVICE.

SEC. 1335. A PERSON WHO IS NOTIFIED TO ATTEND AS A JUROR

MAY MAKE APPLICATION TO THE PRESIDING JUDGE OF THE COURT TO BE EXCUSED OR HAVE HIS TERM OF SERVICE POSTPONED ON ANY GROUND HEREIN PROVIDED. HE MAY MAKE THE APPLICATION IN PERSON OR BY A PERSON CAPABLE OF MAKING THE NECESSARY PROOF OF HIS CLAIM. AN ENTRY OF THE ACTION OF THE PRESIDING JUDGE UPON THE APPLICATION AND OF THE REASON THEREFOR SHALL BE MADE ON THE RECORDS OF THE COURT.

SEC. 1336. THE PRESIDING JUDGE MAY EXCUSE ANY JUROR OR JURORS FROM ATTENDANCE WITHOUT PAY FOR ANY PORTION OF THE TERM. THE PRESIDING JUDGE SHALL EXCUSE JURORS FROM ATTENDANCE ON DAYS WHEN IT IS NOT EXPECTED THAT THEY WILL BE REQUIRED. THE PRESIDING JUDGE MAY POSTPONE THE WHOLE OR A PART OF THE TIME OF SERVICE OF A JUROR TO A LATER DAY DURING THE SAME PERIOD OF SERVICE.

SEC. 1337. EACH JUROR EXCUSED TEMPORARILY FROM SERVICE, OR WHOSE TIME OF SERVICE IS POSTPONED UNTIL A DAY CERTAIN, SHALL REPORT TO THE CLERK AND ATTEND AT THE OPENING OF COURT ON THE DAY HIS TEMPORARY EXCUSE OR POSTPONEMENT EXPIRES, AND THEREAFTER UNTIL HE IS DISCHARGED, WITHOUT FURTHER NOTICE. IF HE SO FAILS HE IS LIABLE TO THE SAME PUNISHMENT, AND THE SAME PROCEEDINGS SHALL BE TAKEN, AS IF HE HAD FAILED TO ATTEND AT THE TIME FIXED IN THE ORIGINAL NOTICE GIVEN HIM.

SEC. 1338. THE PRESIDING JUDGE OF THE COURT TO WHICH ANY PERSON IS RETURNED AS A JUROR MAY EXCUSE HIM FROM SERVING WHENEVER IT APPEARS THAT THE INTERESTS OF THE PUBLIC OR OF THE INDIVIDUAL JUROR WILL BE MATERIALLY INJURED BY HIS ATTENDANCE, OR THE HEALTH OF THE JUROR OR THAT OF ANY MEMBER OF HIS FAMILY REQUIRES HIS ABSENCE FROM COURT.

SEC. 1339. IF THE PRESIDING JUDGE FINDS THAT THE NUMBER OF JURORS IN ATTENDANCE IS GREATER THAN THAT NEEDED, HE MAY ORDER THE PANEL OR ANY PART THEREOF DISCHARGED FOR THE BALANCE OF ITS TERM OR EXCUSED UNTIL A DAY CERTAIN THEREIN. ANY JUROR DISCHARGED (NOT EXCUSED) UNDER THE PROVISIONS OF THIS SECTION SHALL BE DEEMED TO HAVE SERVED HIS TERM OF SERVICE BUT SHALL RECEIVE COMPENSATION ONLY FOR THE TIME OF HIS ACTUAL SERVICE ON THE PANEL.

SEC. 1340. WHENEVER THE COURT FINDS THAT ANY PERSON IN ATTENDANCE UPON THE COURT AS A JUROR IS NOT QUALIFIED TO SERVE AS A JUROR, OR IS EXEMPT AND CLAIMS AN EXEMPTION, THE COURT SHALL DISCHARGE THAT JUROR FROM FURTHER

ATTENDANCE AND SERVICE AS A JUROR.

SEC. 1341. (1) WHEN ANY PERSON IS EXCUSED FROM SERVING ON THE GROUND THAT HE IS EXEMPT BY LAW FROM SERVING ON JURIES, OR NOT QUALIFIED TO SERVE AS A JUROR, THE CLERK OF THE COURT SHALL DESTROY THE SLIP CONTAINING THE NAME OF THAT PERSON.

(2) THE SLIP CONTAINING THE NAME OF ANY PERSON WHOSE TIME OF SERVICE IS POSTPONED SHALL NOT BE RETURNED TO THE BOARD BOX.

SEC. 1342. THE PRESIDING JUDGE SHALL REPORT TO THE BOARD THE NAMES OF ALL JURORS WHO HAVE REQUESTED TO BE DISCHARGED OR EXCUSED TO A SUBSEQUENT TIME AND ARE EXCUSED TO A SUBSEQUENT TIME, AND THE NAMES SHALL BE PLACED UPON THE LIST OF JURORS DRAWN FOR THAT TIME. NO MORE NAMES SHALL BE DRAWN FROM THE JURY BOX THAN ARE SUFFICIENT TO MAKE UP THE NUMBER ORDERED BY ADDING THE NAMES OF THE JURORS SO EXCUSED TO THE NAMES THEN DRAWN.

SEC. 1343. THE CLERK OF THE COURT SHALL, WITHIN 10 DAYS AFTER THE CLOSE OF EACH TERM FOR WHICH JURORS HAVE BEEN DRAWN, DELIVER TO THE BOARD HIS CERTIFICATE SPECIFYING DISTINCTLY AND IN DETAIL AS FOLLOWS:

(1) THE NAME AND RESIDENCE OF EACH JUROR WHO WAS EXCUSED OR DISCHARGED BY THE COURT, WITH THE REASON THEREFOR;

(2) THE NAME AND RESIDENCE OF EACH PERSON NOTIFIED, WHO DID NOT ATTEND OR SERVE;

(3) THE NAME AND RESIDENCE OF EACH PERSON PUNISHED FOR CONTEMPT AS PROVIDED IN THIS CHAPTER.

SEC. 1344. THE PRESIDING JUDGE OF A COURT MAY ORDER ADDITIONAL JURORS DRAWN BY THE BOARD FOR THE TERM, OR A PART THEREOF, OR FOR IMMEDIATE SERVICE IN THE PARTICULAR CASE. THE ORDER SHALL SPECIFY THE NUMBER TO BE DRAWN, AND THE TIME AND PLACE OF DRAWING. THE DRAWING SHALL BE MADE IN THE ORDINARY MANNER PRESCRIBED HEREIN, EXCEPT THAT NOTICE OF THE DRAWING NEED NOT BE GIVEN IF THE REQUIRED OFFICERS ARE PRESENT. THE SHERIFF SHALL FORTHWITH NOTIFY THE JURORS SO DRAWN, IN THE SAME MANNER AS OTHER JURORS ARE NOTIFIED, TO ATTEND THE TERM, OR PART THEREOF, AT THE TIME SPECIFIED

IN THE ORDER, AND MAKE DUE AND PROPER RETURN OF THE LISTS WITH HIS SERVICE THEREON. THE RETURN SHALL BE PRESUMPTIVE EVIDENCE OF THE FACT OF SUCH SERVICE.

SEC. 1345. IF THE BOARD FAILS TO MEET AND RETURN THE SECOND JURY LIST AT THE TIME PRESCRIBED, OR IF ANY LIST OF JURORS BECOMES EXHAUSTED OR DECLARED ILLEGAL, THE PRESIDING CIRCUIT JUDGE MAY ORDER THE BOARD TO MEET AND MAKE A NEW LIST OF JURORS.

SEC. 1346. THE TERM OF SERVICE OF JURORS SHALL BE 2 WEEKS, UNLESS AT THE END OF THIS PERIOD A JUROR IS SERVING IN CONNECTION WITH AN UNFINISHED CASE, IN WHICH EVENT HE SHALL SERVE ONLY UNTIL THE CASE IN WHICH HE IS SERVING IS FINISHED. ONCE COMMENCED, THE TERM OF SERVICE SHALL BE CONTINUOUS EXCEPT AS PROVIDED IN SECTIONS 1336, 1338, AND 1339.

SEC. 1347. (1) JURORS SHALL BE PAID MILEAGE AT THE RATE OF 10 CENTS PER MILE FOR THEIR TRAVELING EXPENSES FROM THEIR RESIDENCE TO THE PLACE OF HOLDING COURT AND RETURN FOR EACH DAY OR HALF DAY OF ACTUAL ATTENDANCE AT SESSIONS OF THE COURT OR WHEN REQUIRED TO APPEAR BEFORE THE JURY BOARD MEMBER AS PROVIDED IN SECTION 1316. THEY SHALL ALSO BE COMPENSATED AT THE RATE OF $15.00 PER DAY AND $7.50 PER HALF DAY RESPECTIVELY OF ACTUAL ATTENDANCE AT THE COURT OR BEFORE THE JURY BOARD MEMBER.

(2) ANY CLERK OR DEPUTY CLERK OF THE COURT WHO FRAUDULENTLY ISSUES ANY CERTIFICATE OF ATTENDANCE OF A JUROR ON WHICH THE JUROR RECEIVES PAY, EXCEPT AS ALLOWED BY LAW, IS GUILTY OF A MISDEMEANOR AND ON CONVICTION SHALL BE PUNISHED BY IMPRISONMENT IN THE COUNTY JAIL FOR NOT MORE THAN 6 MONTHS, OR BY A FINE NOT EXCEEDING $500.00, OR BY BOTH.

SEC. 1348. IT IS THE DUTY OF EACH BOARD MEMBER TO REPORT TO THE PROSECUTING ATTORNEY AND THE PRESIDING CIRCUIT JUDGE THE NAMES OF ANY AND ALL PERSONS WHO IN ANY MANNER SEEK BY REQUEST, HINT OR SUGGESTION TO INFLUENCE THE BOARD OR ITS MEMBERS IN THE SELECTION OF ANY JUROR OR JURORS.

SEC. 1349. THE FOLLOWING ACTS ARE PUNISHABLE BY THE CIRCUIT COURT AS CONTEMPT OF COURT:

(1) FAILING TO ANSWER THE QUESTIONNAIRE PROVIDED FOR IN SECTION 1313;

(2) FAILING TO APPEAR BEFORE THE BOARD OR A MEMBER THEREOF, WITHOUT BEING EXCUSED AT THE TIME AND PLACE NOTIFIED TO APPEAR;

(3) REFUSING TO TAKE AN OATH OR AFFIRMATION;

(4) REFUSING TO ANSWER QUESTIONS PERTAINING TO HIS QUALIFICATIONS AS A JUROR, WHEN ASKED BY A MEMBER OF THE BOARD;

(5) FAILING TO ATTEND COURT, WITHOUT BEING EXCUSED, AT THE TIME SPECIFIED IN THE NOTICE, OR FROM DAY TO DAY, WHEN SUMMONED AS A JUROR;

(6) GIVING A FALSE CERTIFICATE, OR MAKING A FALSE REPRESENTATION, OR REFUSING TO GIVE INFORMATION WHICH HE CAN GIVE AFFECTING THE LIABILITY OR QUALIFICATION OF ANY PERSON OTHER THAN HIMSELF TO SERVE AS A JUROR;

(7) OFFERING, PROMISING, PAYING, OR GIVING MONEY OR ANYTHING OF VALUE TO, OR TAKING MONEY OR ANYTHING OF VALUE FROM, ANY PERSON, FIRM, OR CORPORATION FOR THE PURPOSE OF ENABLING HIMSELF OR ANY OTHER PERSON TO EVADE SERVICE OR TO BE WRONGFULLY DISCHARGED, EXEMPTED OR EXCUSED FROM SERVICE AS A JUROR;

(8) TAMPERING UNLAWFULLY IN ANY MANNER WITH ANY JURY LIST, OR WITH THE BOARD BOX, OR WITH THE JURY BOX, OR WITH THE SLIPS;

(9) WILLFULLY DOING OR OMITTING TO DO ANY ACT WITH THE DESIGN TO SUBVERT THE PURPOSE OF THIS ACT;

(10) WILLFULLY OMITTING TO PUT ON THE JURY LIST THE NAME OF ANY PERSON QUALIFIED AND LIABLE FOR JURY DUTY;

(11) WILLFULLY OMITTING TO PREPARE OR FILE A LIST OR SLIP AS PRESCRIBED HEREIN;

(12) DOING, OR OMITTING TO DO ANY ACT WITH THE DESIGN OF PREVENTING THE NAME OF ANY PERSON QUALIFIED AND LIABLE TO SERVE AS A JUROR FROM BEING PLACED IN THE BOARD BOX OR JURY BOX, OR FROM BEING DRAWN FOR SERVICE AS A JUROR;

(13) WILLFULLY PLACING THE NAME OF ANY PERSON UPON ANY LIST, OR PREPARING A SLIP WITH THE NAME OF ANY PERSON THEREON OR PLACING A SLIP IN THE JURY BOX WITH THE NAME OF A PERSON

THEREON, WHO IS NOT QUALIFIED AS A JUROR.

SEC. 1350. ANY PERSON DRAWN OR SUMMONED AS A JUROR WHO TAKES ANYTHING TO GIVE HIS VERDICT OR RECEIVES ANY GIFT OR GRATUITY FROM ANY PARTY TO AN ACTION FOR THE TRIAL OF WHICH HE HAS BEEN DRAWN OR SUMMONED IS LIABLE TO THE PARTY AGGRIEVED FOR THE ACTUAL DAMAGES SUSTAINED PLUS 10 TIMES THE AMOUNT OR VALUE OF THE THING WHICH HE HAS TAKEN, IN ADDITION TO ANY CRIMINAL PUNISHMENT TO WHICH HE MAY BE SUBJECT BY LAW.

SEC. 1351. EVERY EMBRACER WHO PROCURES A PERSON DRAWN OR SUMMONED AS A JUROR TO TAKE GAIN OR PROFIT CONTRARY TO THE PROVISIONS OF SECTION 1350 IS LIABLE TO THE AGGRIEVED PARTY FOR THE ACTUAL DAMAGES SUSTAINED PLUS 10 TIMES THE AMOUNT OR VALUE OF THE THING WHICH WAS TAKEN.

SEC. 1352. ANY EMPLOYER OR HIS AGENT, WHO THREATENS TO DISCHARGE OR WHO DISCHARGES OR CAUSES TO BE DISCHARGED FROM EMPLOYMENT ANY PERSON BECAUSE THAT PERSON IS SUMMONED FOR JURY DUTY, SERVES ON A JURY, OR HAS SERVED ON A JURY, IS GUILTY OF A MISDEMEANOR, AND MAY ALSO BE PUNISHED FOR CONTEMPT OF COURT.

SEC. 1353. NO JUROR MAY BE SUBJECT TO ANY ACTION, CIVIL OR CRIMINAL, ON ACCOUNT OF ANY VERDICT EXCEPT FOR CORRUPT CONDUCT IN RENDERING SUCH VERDICT IN THE CASES PRESCRIBED BY LAW.

SEC. 1354. JURIES FOR CONDEMNATION CASES AND GRADE SEPARATION DAMAGE CASES IN THE CIRCUIT COURTS OF THIS STATE MAY UPON ORDER OF THE COURT BE SELECTED AND IMPANELED FROM THE FREEHOLDERS SUMMONED TO SERVE AS PETIT JURORS AT THAT TERM OF THE COURT HAVING JURISDICTION OVER SUCH PROCEEDINGS, IN THE SAME MANNER AS PETIT JURIES ARE SELECTED AND IMPANELED IN CIVIL CASES IN THE CIRCUIT COURT, IN LIEU OF BEING SELECTED AND IMPANELED IN THE MANNER PRESCRIBED BY THE PROVISIONS OF THE STATUTE UNDER WHICH THE PROCEEDINGS WERE INSTITUTED. ONLY JURORS INDICATED TO BE FREEHOLDERS SHALL BE CALLED AND SWORN IN THE SELECTION AND IMPANELING OF CONDEMNATION AND GRADE SEPARATION JURIES.

SEC. 1355. IN ALL CIVIL CASES BY 12 JURORS, A VERDICT SHALL BE RECEIVED WHEN 10 JURORS AGREE.

SEC. 1356. IN ANY CIVIL CASE IN CIRCUIT COURT, TRIAL SHALL BE BY A JURY OF 6 UPON WRITTEN REQUEST OF ANY PARTY AND THE WRITTEN CONSENT OF ALL OTHER PARTIES NOT LATER THAN THE TIME OF THE PRE-TRIAL CONFERENCE. IN SUCH CIVIL CASES BY 6 JURORS, A VERDICT SHALL BE RECEIVED WHEN 5 JURORS AGREE.

SEC. 1357. THE JUDGES OF EACH CIRCUIT COURT HAVE THE POWER TO ESTABLISH ALL RULES AND REGULATIONS, NOT INCONSISTENT WITH THE PROVISIONS HEREIN, NECESSARY TO CARRY OUT THESE PROVISIONS AND TO INSURE THE PROPER CONDUCT OF THE WORK OF THE BOARD MEMBERS. THE JUDGES OF EACH CIRCUIT COURT HAVE THE POWER TO PROVIDE BY RULE THAT THE TERMS OF JURY SERVICE HEREIN PROVIDED NEED NOT COMMENCE AT THE SAME TIME FOR ALL MEMBERS OF A PANEL.

Section 2. Chapter 12 of Act No. 236 of the Public Acts of 1961, as amended, being sections 600.1201 to 600.1297 of the Compiled Laws of 1948, and Act No. 83 of the Public Acts of 1923, as amended, being sections 725.101 to 725.162 of the Compiled Laws of 1948, are repealed.

RECOMMENDATION TO THE LEGISLATURE RELATING TO STOCKHOLDER LIABILITY FOR LABOR DEBTS

Until January 1, 1964, Michigan constitutions had provided since 1850 that the stockholders of a corporation were individually liable for labor performed for the corporation. Article XII, Section 4, of the Michigan Constitution of 1908 provided:

> "The stockholders of every corporation and joint stock association shall be individually liable for all labor performed for such corporation or association."

As a result of this provision, the Michigan Legislature adopted legislation covering the subject. The current statute is Section 2908 of the Revised Judicature Act, C. L. 1948 §600.2908, which reads:

> "A civil action may be maintained against any or all of the stockholders of a corporation or joint stock association, on their individual liability, for labor performed for the corporation or association if an execution against the corporation is returned unsatisfied, in whole or in part, or if the corporation is adjudicated bankrupt."

The Michigan Supreme Court held that the constitutional provisions were not self-executing. Hanson v. Donkersley, 37 Mich. 184 (1877); Knapp v. Palmer, 324 Mich. 694 (1949). Therefore, the statutory provisions which form the basis for liability must be fully complied with before the liability will attach.

The Michigan Constitution of 1963 does not contain the language of the 1908 Constitution. Thus, the constitutional basis for stockholder liability for labor debts has been eliminated. See Official Record, State of Michigan Constitution Convention 1961, vol. II, pp. 2495-2503. As a result of the deletion of the constitutional basis for stockholder liability, the question arises as to whether or not stockholder liability currently exists. If construed purely as enabling legislation, Section 2908 of the Revised Judicature Act may be said to be non-operative. However, the Legislature may impose stockholder liability in the absence of a constitutional provision, and therefore, it may be argued that the current statute imposes liability even though the constitutional basis has been removed. Clarification of the effect of the existing statute is obviously desirable.

Stockholder liability for labor debts is rather unusual under most modern corporation statutes. A few states have had and continue to have statutory provisions imposing liability. In the formation of corporations having large

numbers of shareholders, the possibility of stockholder liability discourages incorporation under Michigan law. Furthermore, liability of small shareholders for potential massive labor debts seems unwarranted and inequitable. On the other hand, small, closely-held corporations can be created fairly easily, and it is possible that their employees may be poorly treated and forced to accept the financial burdens when the corporation runs into financial difficulty.

Therefore, the Law Revision Commission recommends the adoption of legislation comparable to that existing in New York which imposes no liability for labor debts on stockholders of publicly owned corporations and limits liability for labor debts to the ten largest shareholders in privately held corporations. The proposed legislation would protect employees of privately held corporations while at the same time encouraging incorporation under Michigan laws of large publicly held corporations.

A copy of the proposed statute is attached.

PROPOSED BILL

A bill to amend Act 236 of the Public Acts of 1961, entitled "revised judicature act of 1961," as amended being section 600.101 to 600.9911 of the Compiled Laws of 1948, by adding a new section 2908A; and to repeal certain acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. Act No. 236 of the Public Acts of 1961, as amended, being sections 600.101 to 600.9911 of the Compiled Laws of 1948, is amended by adding a new section 2908A to read as follows:

SEC. 2908A. (1) THE TEN LARGEST SHAREHOLDERS, AS DETERMINED BY THE FAIR VALUE OF THEIR BENEFICIAL INTEREST AS OF THE BEGINNING OF THE PERIOD ON WHICH THE UNPAID SERVICES REFERRED TO IN THIS SECTION ARE PERFORMED, OF EVERY CORPORATION, THE SHARES OF WHICH ARE NOT LISTED ON A NATIONAL SECURITIES EXCHANGE OR REGULARLY QUOTED IN AN OVER-THE-COUNTER MARKET BY ONE OR MORE MEMBERS OF A NATIONAL OR AN AFFILIATED SECURITIES ASSOCIATION, SHALL JOINTLY AND SEVERALLY BE PERSONALLY LIABLE FOR ALL OBLIGATIONS FOR WAGES OR SALARIES DUE AND OWING TO ANY OF ITS LABORERS, SERVANTS OR EMPLOYEES OTHER THAN INDEPENDENT CONTRACTORS, FOR SERVICES PERFORMED BY THEM FOR SUCH CORPORATION. AN ACTION TO ENFORCE SUCH

LIABILITY SHALL BE COMMENCED ONLY AFTER THE RETURN OF AN EXECUTION UNSATISFIED AGAINST THE CORPORATION UPON A JUDGMENT RECOVERED AGAINST IT FOR SUCH SERVICES OR AFTER ITS ADJUDICATION IN BANKRUPTCY AND SUCH ACTION SHALL BE BROUGHT WITHIN ONE YEAR AFTER SUCH RETURN OR ADJUDICATION.

(2) FOR THE PURPOSES OF THIS SECTION, WAGES OR SALARIES SHALL MEAN ALL UNPAID COMPENSATION AND BENEFITS PAYABLE BY AN EMPLOYER TO OR FOR THE ACCOUNT OF THE EMPLOYEE FOR PERSONAL SERVICES RENDERED BY SUCH EMPLOYEE. THESE SHALL INCLUDE OBLIGATIONS FOR SALARIES, WAGES, OVERTIME, VACATION, HOLIDAY, SEVERANCE PAY AND OTHER FRINGE BENEFITS; AND FOR EMPLOYER AND EMPLOYEE CONTRIBUTIONS TO OR PAYMENTS OF INSURANCE OR WELFARE BENEFITS; AND FOR EMPLOYER AND EMPLOYEE CONTRIBUTIONS TO PENSION OR ANNUITY FUNDS; AND FOR ANY OTHER MONEYS OWED FOR SERVICES RENDERED BY SUCH EMPLOYEE.

(3) A SHAREHOLDER WHO HAS PAID MORE THAN HIS PRO RATA SHARE UNDER THIS SECTION SHALL BE ENTITLED TO CONTRIBUTION PRO RATA FROM THE OTHER SHAREHOLDERS LIABLE UNDER THIS SECTION WITH RESPECT TO THE EXCESS SO PAID, OVER AND ABOVE HIS PRO RATA SHARE, AND MAY SUE THEM JOINTLY OR SEVERALLY OR ANY NUMBER OF THEM TO RECOVER THE AMOUNT DUE FROM THEM. SUCH RECOVERY MAY BE HAD IN A SEPARATE ACTION. AS USED IN THIS PARAGRAPH, "PRO RATA" MEANS IN PROPORTION TO BENEFICIAL SHARE INTEREST.

Section 2. Section 2908 of Act No. 236 of the Public Acts of 1961, being section 600.2908 of the Compiled Laws of 1948, is repealed.

RECOMMENDATION TO THE LEGISLATURE RELATING TO RECRIMINATION AND OTHER CONDUCT IN DIVORCE ACTIONS

(1) Recrimination

Under existing Michigan legislation, a divorce may not be granted if both parties are guilty of misconduct constituting grounds for divorce . Mich. Comp. Laws 1948, §552.10. This doctrine of recrimination has been justified on the basis of the so-called "clean hands" equitable maxim requiring a plaintiff to be blameless in order to obtain equitable relief. Permitting recrimination to remain as a defense, however, causes unsalvageable marriages to continue and contributes to the encouragement of collusive divorces and the extraction of unfair property settlement arrangements.

In a recent case in the Michigan Court of Appeals, Fish v. Fish, 4 Mich. Ct. App. 104 (1966), in which divorce was denied because of the misconduct of both parties, Judge Fitzgerald observed: "A more than ample record of unpleasant carryings-on in the Fish household, together with the obvious deleterious effects on the children sheltered under that roof, lead us to wish, as did the circuit judge, that a divorce might be granted in this case."

After examining the laws of other states, most of which do not recognize recrimination as a statutory ground for denial of divorce, we believe that the Michigan statute should be amended to provide additional discretion to the court. If both parties have been guilty of wrongful conduct constituting grounds for divorce, the court would have the discretionary power to grant a divorce to the party least at fault, or to both parties if both are equally at fault, or to the complainant even if he is most at fault. The court would, of course, retain the power not to grant a divorce on grounds other than recrimination.

(2) Conduct During Pendency of Divorce

Considerable difficulty is often created in divorce actions on account of conduct of the parties after the divorce suit has been filed. Each of the parties often feels free to take retaliatory measures and to disregard the normal limitations of marital conduct while the parties were living together. During the pendency of a divorce action, arguments may arise over support and money matters as well as custodial problems concerning minor children. After the parties have separated and divorce action has been instituted, each of the parties often feels free to commence dating under circumstances which would not be condoned while the parties were living together. Thus, the conduct of each during the pendency of the divorce action is often the basis for charges of misconduct warranting the granting or denial of divorce.

By eliminating the availability of conduct during the divorce as a ground

for its granting or denial, there is eliminated the inherent inequity of requiring the same standards of conduct after the parties have separated and divorce suit is pending as is requisite for the normal marital relationship. Exception is made, however, that if the parties have resumed the marital relationship during the pendency of the divorce action, the defense of condonation is still available.

(3) Conclusion

By removing the defense of recrimination as well as conduct during the pendency of divorce, much of the source of protracted litigation in divorce actions will have been eliminated. Both of these defenses are generally used in an inequitable manner and primarily to secure more favorable terms for alimony or property settlement. Elimination of these defenses will serve to encourage settlements and to eliminate much of the protracted litigation in divorce matters.

A copy of the proposed statute is attached.

PROPOSED BILL

A bill to amend section 10 of chapter 84 of the Revised Statutes of 1846, entitled "Of Divorce," as amended, being section 552.10 of the Compiled Laws of 1948.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. Section 10 of chapter 84 of the Revised Statutes of 1846, entitled "Of Divorce," as amended, being section 552.10 of the Compiled Laws of 1948, is amended to read as follows:

Sec. 10. (1) No divorce shall be ~~decreed~~ GRANTED in any case when it shall appear that the ~~petition or bill~~ CLAIM therefor was founded in or exhibited by collusion between the parties; and the oath or affirmation administered to the complainant in swearing to such ~~petition~~ COMPLAINT or ~~bill~~ CROSS-COMPLAINT shall, in addition to other legal requirements, recite the following: "And you do solemnly swear (or affirm), that there is no collusion, understanding or agreement whatever between yourself and the defendant herein, in relation to your application for divorce." ~~And no divorce shall be decreed in any case where the party complaining shall be guilty of the same crime or misconduct charged against the respondent.~~

(2) IN ANY ACTION FOR DIVORCE, WHEN IT SHALL APPEAR TO THE COURT THAT BOTH PARTIES HAVE BEEN GUILTY OF A WRONG

OR WRONGS WHICH MAY CONSTITUTE GROUNDS FOR A DIVORCE, THE COURT SHALL NOT FOR THIS REASON DENY A DIVORCE, BUT SHALL GRANT A DIVORCE

(A) TO THE PARTY LEAST IN FAULT IF BOTH PARTIES SEEK A DIVORCE; OR

(B) TO BOTH PARTIES IF BOTH PARTIES SEEK A DIVORCE AND ARE BOTH EQUALLY AT FAULT; OR

(C) TO THE PARTY SEEKING THE DIVORCE EVEN IF THAT PARTY IS MOST AT FAULT.

(3) EXCEPTING CONDONATION, CONDUCT OF THE PARTIES DURING THE PENDENCY OF A SUIT FOR DIVORCE SHALL NOT CONSTITUTE GROUNDS FOR GRANTING OR DENIAL OF A DIVORCE.

RECOMMENDATION TO THE LEGISLATURE RELATING TO QUO WARRANTO ACTIONS AGAINST PRIVATE CORPORATIONS

The basic function of quo warranto is the prevention of usurpation of governmental rights by individuals or corporations. If usurpation occurs, the Attorney General may institute proceedings to protect the public. Thus, abuse of a corporate franchise may be prevented by the Attorney General acting for the state. The use of quo warranto in Michigan has been expanded to permit private actions against officers of private corporations, but only after the Attorney General has refused to bring the action. Generally, the issue in dispute is between individuals concerning their private interests in the corporation. Normally, the Attorney General declines to act and waives his right to bring the action. In view of this practice, the Law Revision Commission believes that more expeditious process for permitting private action should be established.

We believe that the existing statutory provisions with respect to the responsibility of the Attorney General should be supplemented by legislation authorizing private actions against private corporations without the delay of time and procedure incident to first applying to the Attorney General and then to the court before the suit is started. However, private actions should be authorized only on the condition that the Attorney General receives adequate notice of the action and that the Attorney General have the opportunity to intervene to protect the interests of the public where he deems it necessary.

A copy of the proposed statute is attached.

PROPOSED BILL

A bill to amend section 4501 of Act No. 236 of the Public Acts of 1961, entitled "revised judicature act of 1961," being section 600.4501 of the Compiled Laws of 1948.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. Section 4501 of Act No. 236 of the Public Acts of 1961, being section 600.4501 of the Compiled Laws of 1948, is amended to read as follows:

Sec. 4501. (1) The attorney general shall bring an action for quo warranto when the facts clearly warrant the bringing of that action. If the attorney general receives information from a private party and refuses to act, that private party may bring the action upon leave of court.

(2) A PRIVATE PARTY MAY BRING AN ACTION FOR QUO WARRANTO

AGAINST A PRIVATE CORPORATION. NOTICE OF THE COMMENCEMENT OF THE ACTION, ACCOMPANIED BY A COPY OF THE COMPLAINT, SHALL BE SERVED PERSONALLY OR BY REGISTERED MAIL UPON THE ATTORNEY GENERAL WITHIN 5 DAYS AFTER THE ACTION IS COMMENCED. THE ATTORNEY GENERAL MAY INTERVENE IN THE ACTION.

RECOMMENDATION TO THE LEGISLATURE RELATING TO TRUSTEES' POWERS

The Law Revision Commission has carefully reviewed the provisions of the Uniform Trustees' Powers Act prepared by the National Conference of Commissioners on Uniform State Laws and its impact on the present law of this state. With minor revisions, we recommend its enactment in Michigan.

The trust has become an increasingly attractive income and estate planning device during recent years, particularly because of the federal tax laws. However, in many instances serious question arise as to the scope of the powers of the trustee, particularly where the trust is not of substantial size and its specific provisions as to the trustee's powers are inadequate. To avoid costly and lengthy court proceedings it is desirable that the Legislature establish statutory rules governing the power of trustees. The Uniform Act provides those powers without limiting the powers of the creator of the trust to impose specific trust power restrictions.

The proposed legislation gives a trustee power, subject to trust restrictions imposed by the trust or by law, to perform any act a prudent man would perform for the purposes of the trust. Third persons, without actual knowledge of a breach of trust, are protected in their dealings with a trustee in accordance with generally recognized statutory and common-law principles. Subject to the statutory restrictions and to the terms of the trust, the trustee is given power to engage in normal transactions, such as collecting assets, investing funds, leasing, maintaining and subdividing property, insuring assets, allocating income and principal among beneficiaries, and engaging in other necessary administrative actions. Basically, the statute extends the principles involved in the existing prudent man investment rule to other areas of trust administration.

We believe that trust administration and the creation of trust instruments will be substantially simplified and improved by this legislation in accordance with the proposed statute attached.

PROPOSED BILL

A bill to define the powers of certain trustees under a trust created by a trust instrument or by will in the absence of limitations in the trust instrument and to make uniform the law with respect thereto.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1. As used in this act:

(1) "trust" means an express trust created by a trust instrument, including a will, whereby a trustee has the duty to administer a trust asset for the benefit of a named or otherwise described income or principal beneficiary, or both; "trust" does not include a resulting or constructive trust, a business trust which provides for certificates to be issued to the beneficiary, an investment trust, a voting trust, a security instrument, a trust created by the judgment or decree of a court, a liquidation trust, or a trust for the primary purpose of paying dividends, interests, interest coupons, salaries, wages, pensions or profits, or employee benefits of any kind, an instrument wherein a person is nominee or escrowee for another, a trust created solely in deposits in any financial institution, or other trust the nature of which does not admit of general trust administration;

(2) "trustee" means an original, added, or successor trustee;

(3) "prudent man" means a trustee whose exercise of trust powers is reasonable and equitable in view of the interests of both income and principal beneficiaries, and in view of the manner in which men of ordinary prudence, diligence, discretion, and judgment would act in the management of their own affairs.

Sec. 2. (a) The trustee has all powers conferred upon him by the provisions of this act or any other applicable statute unless limited in the trust instrument.

(b) An instrument which is not a trust under section 1(1) may incorporate any part of this act by reference.

Sec. 3. (a) From time of creation of the trust until final distribution of the assets of the trust, a trustee has the power to perform, without court authorization, every act which a prudent man would perform for the purposes of the trust including but not limited to the powers specified in subsection (c).

(b) A trustee has the power, subject to subsection (a):

(1) to collect, hold, and retain trust assets received from a settlor, including the income and profits thereof, until, in the judgment of the trustee, disposition of the assets should be made; and the assets may be retained even though they include an asset in which the trustee is personally interested;

(2) to receive additions to the assets of the trust;

(3) to continue or participate in the operation of any business or other

enterprise, and to effect incorporation, dissolution, or other change in the form of the organization of the business or enterprise;

(4) to acquire an undivided interest in a trust asset in which the trustee, in any trust capacity, holds an undivided interest;

(5) to invest and reinvest trust assets in accordance with the provisions of the trust or as provided by law;

(6) to deposit trust funds in a bank, including a bank operated by the trustee;

(7) to acquire or dispose of an asset, for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, change the character of, or abandon a trust asset or any interest therein; and to encumber, mortgage, or pledge a trust asset for a term within or extending beyond the term of the trust, in connection with the exercise of any power invested in the trustee;

(8) to make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings;

(9) to subdivide, develop, or dedicate land to public use; or to make or obtain the vacation of plats and adjust boundaries; or to adjust differences in valuation on exchange or partition by giving or receiving consideration; or to dedicate easements to public use without consideration;

(10) to enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the trust;

(11) to enter into a lease or arrangement for exploration, development, and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(12) to grant an option involving disposition of a trust asset, or to take an option for the acquisition of any asset;

(13) to vote a security, in person or by general or limited proxy;

(14) to pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;

(15) to sell or exercise stock subscription or conversion rights; to consent, directly or through a committee or other agent, to the

reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(16) to hold a security in the name of a nominee or in other form without disclosure of the trust, so that title to the security may pass by delivery, but the trustee is liable for any act of the nominee in connection with the stock so held;

(17) to insure the assets of the trust against damage or loss, and the trustee against liability with respect to third persons;

(18) to borrow money to be repaid from trust assets or otherwise; to advance money for the protection of the trust, and for all expenses, losses, and liability sustained in the administration of the trust or because of the holding or ownership of any trust assets, for which advances with any interest the trustee has a lien on the trust assets as against the beneficiary;

(19) to pay or contest any claim; to settle a claim by or against the trust by compromise, arbitration, or otherwise; and to release, in whole or in part, any claim belonging to the trust to the extent that the claim is uncollectible;

(20) to pay taxes, assessments, compensation of the trustee, and other expenses incurred in the collection, care, administration, and protection of the trust;

(21) as to oil, gas, and mineral interests, to drill, test, explore, mine, develop, and otherwise exploit such interests; and in connection therewith to pay from principal or income all delay rentals, lease bonuses, royalties, overriding royalties, taxes, assessments, and other charges; and to surrender or abandon any or all such interests; and to enter into farm-out, pooling, unitization, or dry hole contribution agreements in connection therewith, and to produce, process, sell, or exchange all production from such interests in such manner and to such extent as the trustee may, in his sole discretion deem advisable.

(22) to pay any sum distributable to a beneficiary under legal disability, without liability to the trustee, by paying the sum to the beneficiary or by paying the sum for the use of the beneficiary either to a legal representative appointed by the court, or if none, to a relative;

(23) to effect distribution of property and money in divided or undivided interests and to adjust resulting differences in valuation;

(24) to employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the trustee, to advise or assist the

trustee in the performance of his administrative duties; to act without independent investigation upon their recommendations; and instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary;

(25) to prosecute or defend actions, claims, or proceedings for the protection of trust assets and of the trustee in the performance of his duties;

(26) to execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the trustee.

Sec. 4. This act does not affect the power of a court of competent jurisdiction in an appropriate proceeding from relieving a trustee from any restrictions on his power that are otherwise placed upon him by the trust instrument or by this act.

Sec. 5. (a) Any power vested in 3 or more trustees may be exercised by a majority, but a trustee who has not joined in exercising a power is not liable to the beneficiaries or to others for the consequences of the exercise; and a dissenting trustee is not liable for the consequences of an act in which he joins at the direction of the majority of the trustees, if he expressed his dissent in writing to any of his cotrustees at or before the time of the joinder.

(b) If 2 or more trustees are appointed to perform a trust, and if any of them is unable or refuses to accept the appointment, or, having accepted, ceases to be a trustee, the surviving or remaining trustees shall perform the trust and succeed to all the powers, duties, and discretionary authority given to the trustees jointly.

(c) This section does not excuse a cotrustee from liability for failure either to participate in the administration of the trust or to attempt to prevent a breach of trust.

Sec. 6. With respect to a third person dealing with a trustee or assisting a trustee in the conduct of a transaction, the existence of trust powers and their proper exercise by the trustee may be assumed without inquiry. The third person is not bound to inquire whether the trustee has power to act or is properly exercising the power; and a third person, without actual knowledge that the trustee is exceeding his powers or improperly exercising them is fully protected in dealing with the trustee as if the trustee possessed and properly exercised the powers he purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the trustee.

Sec. 7. Except as specifically provided in the trust, the provisions of this act apply to any trust established after the effective date of this act and

to any trust asset acquired by the trustee after the effective date of this act.

Sec. 8. This act shall be construed to effectuate its general purpose to make uniform the law of those states which enact it.

Sec. 9. This act may be cited as the "uniform trustees' powers act."

RECOMMENDATION TO THE LEGISLATURE RELATING TO EMANCIPATION OF MINORS

At common law the father of a minor was entitled to his services and earnings. Neither the father nor the minor was bound to any contract of employment without the father's consent. However, the father could surrender his rights to services and earnings by emancipating the child. In addition, in modern common law under decisions in some states emancipation of some or all the disabilities of minority may be removed by order of a court of competent jurisdiction. In Michigan, the problem of emancipation is only meagerly covered by statute and on the whole is steeped in uncertainty and confusion. In the opinion of the Law Revision Commission additional legislation governing the status of minors and prescribing the rights and duties of parents is desirable.

Under modern legislation both parents are equally entitled to the custody, control, services, and earnings of a minor unless otherwise determined by a court. That policy is implicit in the existing provision of the Probate Code, Compiled Laws 1948, §703.6, but this policy should be established as a rule of general applicability outside probate administration problems. Duties of support by both parents are established in Michigan, but further strengthening of the obligation appears desirable by making it clear that the duty may be enforced by the minor, any close relative, or by an authorized government agency.

The conditions under which a child is emancipated by operation of law also warrant classification. Emancipation should occur when the child is validly married, becomes 21, enters the armed forces, or upon judicial order. Emancipation may occur at common law by action of the father, but statutory classification is essential to indicate the conditions under which an emancipation may occur. Emancipation should not occur by actions of a parent if the child is dependent upon him for support. If a child is emancipated, the child should be able to establish a domicile of his choice.

Earnings of an unemancipated minor should be payable to the minor unless his parents give notice to the employer that payments are to be made to them directly. Obligations of support now imposed by law should not be affected by legislation classifying the circumstances under which emancipation may occur. To clarify the status of children affected by acts that may result in emancipation under common-law decisions, the Law Revision Commission recommends the enactment of additional statutory provisions in Michigan.

A copy of the proposed statute is attached.

PROPOSED BILL

A bill to establish the status of minors, to define the rights of parents, and to establish the conditions for emancipation of minors.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1. As used in this act, unless the context otherwise requires:

(1) "minor" means a person under the age of 21 years;

(2) "parents" means (1) natural parents, if married prior or subsequent to the minor's birth; (2) adopting parents, if the minor has been legally adopted; or (3) the mother, if the minor is illegitimate.

(3) "emancipation" means the termination of the rights of the parents to the custody, control, services, and earnings of a minor.

Sec. 2. Unless otherwise ordered by a court order, the parents of an unemancipated minor are equally entitled to the custody, control, services, and earnings of the minor, but if one parents provides, to the exclusion of the other parent, for the maintenance and support of the minor, that parent has the paramount right to control the services and earnings of the minor.

Sec. 3. (a) The parents shall be jointly and severally obligated to support a minor unless: (1) a court of competent jurisdiction modifies or terminates the obligation; or (2) the minor is emancipated by operation of law except as otherwise ordered by a court of competent jurisdiction.

(b) The duty of support may be enforced by the minor, his guardian, any relative within the third degree, or by an authorized government agency. Action by enforcement shall be brought in the circuit court and judgment shall be enforcible in like manner as a child support judgment in a divorce action.

Sec. 4. (a) An emancipation shall occur by operation of law:

(1) when a minor is validly married;

(2) when a person reaches the age of 21 years;

(3) during the period when the minor is on active duty with the armed forces of the United States; or

(4) if a court of competent jurisdiction orders an emancipation in the best interests of the minor.

(b) (1) An emancipation shall occur by action of the parents when both parents or a surviving parent or a parent having exclusive rights of custody release their parental rights by written instrument or by conduct which clearly indicates intent to release their rights.

(2) Abandonment by the parents is presumptive evidence of emancipation and relinquishment of parental rights.

(3) Emancipation by action of the parents shall not occur if the minor is in fact dependent upon his parents for support.

(4) Emancipation by action of the parents may be revoked by agreement between the parents or surviving parent and the minor or by a resumption of family relations inconsistent with the prior emancipation.

(c) An emancipated minor may acquire a domicile of his choice.

Sec. 5. The earnings of an employed unemancipated minor may be paid directly to him unless his parents or his guardian give notice to the employer that future payments should be made to the parents or guardian.

Sec. 6. This act does not affect obligations of support imposed under other laws of this state.

RECOMMENDATION TO THE LEGISLATURE RELATING TO GUARDIANS AD LITEM

When litigation involves the title or ownership of property in which unborn persons may have an interest, procedures should be available to bind the unborn persons. At the present time, in Michigan and in other states, unborn persons can be bound by the outcome of the litigation under the doctrine of virtual representation. Under this doctrine living persons are considered to represent the interests of the unborn whenever their interests are identical. In addition, if a trust is created, the trustee is considered to represent the interests of unborn beneficiaries. However, both of these principles are limited by the requirement that the interests of the unborn parties represented not be adverse to the living representatives or the trustee. There is a need, therefore, for a method of representing the unborn through the utilization of a guardian ad litem where there is any basis for conflict of interest with the living person.

In Michigan, the probate courts are authorized to protect the interests of unborn persons by appointment of a guardian ad litem. (Compiled Laws 1948 §703.12.) However, no such statutory authority exists with respect to litigation in the circuit courts and other courts affected by the provisions of the Revised Judicature Act of 1961. In order to correct this deficiency, the Law Revision Commission recommends the addition of a new section to the Revised Judicature Act specifically authorizing a court upon its own motion or the motion of any party to appoint a guardian ad litem to represent the interests of an unborn person whose interests are not otherwise protected. The compensation of the guardian ad litem would be taxable as a cost of the proceedings as directed by the court.

A copy of the proposed statute is attached.

PROPOSED BILL

A bill to amend Act No. 236 of the Public Acts of 1961, entitled "revised judicature act of 1961," as amended, being sections 600.101 to 600.9911 of the Compiled Laws of 1948, by adding 1 new section to chapter 20 to stand as section 2045.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. Act No. 236 of the Public Acts of 1961, being sections 600.101 to 600.9911 of the Compiled Laws of 1948, is amended by adding 1 new section to chapter 20 to stand as section 2045, the added section to read as follows:

SEC. 2045. IF IN ANY ACTION OR PROCEEDING, OTHER THAN IN THE PROBATE COURT, IT APPEARS THAT ANY PERSON NOT IN BEING

MAY BECOME ENTITLED TO A PROPERTY INTEREST, REAL OR PERSONAL, LEGAL OR EQUITABLE, INVOLVED IN OR AFFECTED BY THE ACTION OR PROCEEDING, AND THE INTEREST OF THE UNBORN PERSON IS NOT OR CANNOT OTHERWISE BE PROPERLY REPRESENTED AND PROTECTED, THE COURT, UPON ITS OWN MOTION, OR UPON THE MOTION OF ANY PARTY, MAY APPOINT A SUITABLE PERSON TO APPEAR AND ACT AS GUARDIAN AD LITEM OF THE UNBORN PERSON. THE GUARDIAN AD LITEM IS AUTHORIZED TO ENGAGE COUNSEL AND DO WHATEVER SHALL BE NECESSARY TO DEFEND AND PROTECT THE INTEREST OF THE UNBORN PERSON. ANY JUDGMENT OR ORDER, MADE AFTER THE APPOINTMENT, SHALL BE CONCLUSIVE UPON THE UNBORN PERSON FOR WHOM A GUARDIAN WAS APPOINTED.

THE GUARDIAN MAY BE REMOVED BY THE COURT WHICH APPOINTED HIM, WITHOUT NOTICE, WHENEVER IT APPEARS TO THE COURT TO BE FOR THE BEST INTERESTS OF THE WARD. ANY GUARDIAN AD LITEM APPOINTED UNDER THE PROVISIONS OF THIS SECTION MAY BE ALLOWED REASONABLE COMPENSATION BY THE COURT APPOINTING HIM TO BE PAID AND TAXABLE AS A COST OF THE PROCEEDINGS AS DIRECTED BY THE COURT.

RECOMMENDATION TO THE LEGISLATURE RELATING TO FORECLOSURE OF LAND CONTRACTS

The Law Revision Commission has undertaken a thorough study of the various remedies available to the vendor and the protection afforded the purchaser in the event of default under the terms of a land contract. Although historically in Michigan the rights of the purchaser were not adequately protected as in the case of a mortgage, during the last ten years the Michigan Legislature has corrected the major problems.

However, in the event that the vendor elects to foreclose upon the property and have it sold in circuit court proceedings, the land contract purchaser is afforded only a three-month redemption period while the mortgagor is given six months to redeem. It appears equitable that under similar circumstances the land contract purchaser be allowed the same period to redeem as the mortgagor. The Law Revision Commission therefore recommends that the Revised Judicature Act of 1961 be amended to change the existing three-month redemption period on land contract foreclosures to a six-month redemption period.

A copy of the proposed statute is attached.

PROPOSED BILL

A bill to amend section 3140 of Act No. 236 of the Public Acts of 1961, entitled, "revised judicature act of 1961," being section 600.3140 of the Compiled Laws of 1948.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. Section 3140 of Act No. 236 of the Public Acts of 1961, being section 600.3140 of the Compiled Laws of 1948, is amended to read as follows:

Sec. 3140. The mortgagor, his heirs, executors, administrators, or any person lawfully claiming from or under him or them may redeem the entire premises sold by paying, within 6 months from the time of the sale, to the purchaser, his executors, administrators, or assigns, or to the register of deeds in whose office the deed of sale is deposited as provided in the court rules, for the benefit of the purchaser, the sum which was bid with interest from the time of the sale at the rate per cent borne by the mortgage. The vendee of a land contract, his heirs, executors, administrators, or any person lawfully claiming from or under him or them may redeem the entire premises sold within 3 6 months from the time of the sale by paying to the purchaser, his executors, administrators, or assigns or to the register of

deeds in whose office the deed of sale is deposited as provided in the court rules, for the benefit of the purchaser, the sum which was bid with interest from the time of the sale at the rate per cent borne by the land contract. In case the sum is paid to the register of deeds the sum of $1.00 shall be paid to him as a fee for the care and custody of the redemption money. After these sums have been paid the deed of sale is void and of no effect, but in case any distinct lot or parcel separately sold is redeemed, leaving a portion of the premises unredeemed, then the deed of sale is inoperative merely as to the portion or portions of the premises which are redeemed, and to the portions not redeemed it remains valid and of full effect..

RECOMMENDATION TO THE LEGISLATURE RELATING TO CONTRIBUTION AMONG JOINT TORTFEASORS

At common law a person allegedly injured by the tortious action of two or more persons could choose among the alleged tortfeasors whom to sue and could choose from among those found liable against whom to execute judgment. The tortfeasor who paid all or a disproportionate share of the judgment could not obtain contributions from the other tortfeasors. If the injured person chose to settle his claim against one of the joint tortfeasors, the effect of the settlement varied. If the tortfeasor was given a covenant not to sue, claims against other tortfeasors were unaffected. However, if a release was given, all tortfeasors were released regardless of any reservations in the release. The tortfeasor who paid the injured person was unable in either case to obtain contributions from his co-tortfeasors.

In 1941 the Michigan Legislature adopted legislation to alleviate some of the problems. This legislation now appears as section 2925 of the Revised Judicature Act of 1961. The legislation is limited in scope, and after its adoption the National Conference of Commissioners on Uniform State Laws in 1955 prepared a revised Uniform Act on the subject. The Law Revision Commission recommends that the basic principles of the 1941 legislation now be extended to parallel the provisions of the revised Uniform Act.

Contribution has received wide acceptance throughout the United States. Twenty-seven jurisdictions have some form of contribution legislation in effect. The basic principle has been law in Michigan since 1941. However, under the 1965 Motor Vehicle Accident Claims Act, it is not contemplated that the Secretary of State be liable where insurance coverage of a tortfeasor not represented by the Secretary of State can provide the basic protection afforded by the Act. The Law Revision Commission recommends that this policy be continued by expressly providing that the contribution act will not operate so as to increase the liability of the Secretary of State under the 1965 Act. Contribution would be available under the Commission's proposal even though judgment has not been recovered against all joint tortfeasors. Contribution is limited to payments in excess of the pro rata share of common liability.

Settlement would not afford a basis for contribution unless the liability of the other tortfeasor was extinguished nor unless the tortfeasor was given notice of the settlement negotiations and afforded an opportunity to participate. Settlements not made in good faith could not form the basis of an action for contribution. Rights of indemnity would not be affected and the Act would not apply to breaches of trust of fiduciary obligations. A one-year statute of limitation is placed upon commencement of an action for contribution.

A copy of the proposed statute is attached.

PROPOSED BILL

A bill to amend Act No. 236 of the Public Acts of 1961, entitled "revised judicature act of 1961," being sections 600.101 to 600.9911, by adding 4 new sections to stand as sections 2925a, 2925b, 2925c, and 2925d; and to repeal certain acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. Act No. 236 of the Public Acts of 1961, as amended, being sections 600.101 to 600.9911 of the Compiled Laws of 1948, is amended by adding 4 new sections to stand as sections 2925a, 2925b, 2925c, and 2925d, the added sections to read as follows:

SEC. 2925a.

(1) EXCEPT AS OTHERWISE PROVIDED IN THIS ACT, WHERE TWO OR MORE PERSONS BECOME JOINTLY OR SEVERALLY LIABLE IN TORT FOR THE SAME INJURY TO PERSONS OR PROPERTY OR FOR THE SAME WRONGFUL DEATH, THERE IS A RIGHT OF CONTRIBUTION AMONG THEM EVEN THOUGH JUDGMENT HAS NOT BEEN RECOVERED AGAINST ALL OR ANY OF THEM.

(2) THE RIGHT OF CONTRIBUTION EXISTS ONLY IN FAVOR OF A TORTFEASOR WHO HAS PAID MORE THAN HIS PRO RATA SHARE OF THE COMMON LIABILITY, AND HIS TOTAL RECOVERY IS LIMITED TO THE AMOUNT PAID BY HIM IN EXCESS OF HIS PRO RATA SHARE. NO TORTFEASOR IS COMPELLED TO MAKE CONTRIBUTION BEYOND HIS OWN PRO RATA SHARE OF THE ENTIRE LIABILITY.

(3) A TORTFEASOR WHO ENTERS INTO A SETTLEMENT WITH A CLAIMANT IS NOT ENTITLED TO RECOVER CONTRIBUTION FROM ANOTHER TORTFEASOR IF (A) LIABILITY OF THE CONTRIBUTEE FOR THE INJURY OR WRONGFUL DEATH IS NOT EXTINGUISHED BY THE SETTLEMENT; (B) NO REASONABLE EFFORT WAS MADE TO NOTIFY THE CONTRIBUTEE OF THE PENDENCY OF THE SETTLEMENT NEGOTIATIONS; (C) NO REASONABLE OPPORTUNITY WAS GIVEN THE CONTRIBUTEE TO PARTICIPATE IN THE SETTLEMENT NEGOTIATIONS; OR (D) THE SETTLEMENT WAS NOT MADE IN GOOD FAITH.

(4) A TORTFEASOR WHO SATISFIES ALL OR PART OF A JUDGMENT ENTERED IN AN ACTION FOR INJURY OR WRONGFUL DEATH IS NOT ENTITLED TO CONTRIBUTION FROM A TORTFEASOR NOT MADE A PARTY TO THE ACTION REGARDING WHOM NO REASONABLE EFFORT WAS MADE TO NOTIFY OF THE COMMENCEMENT OF THE ACTION. UPON TIMELY

MOTION, ANY PERSON RECEIVING SUCH NOTICE MAY INTERVENE IN THE ACTION AND DEFEND AS IF JOINED AS A THIRD-PARTY.

(5) A LIABILITY INSURER, WHO BY PAYMENT HAS DISCHARGED IN FULL OR IN PART THE LIABILITY OF A TORTFEASOR AND HAS THEREBY DISCHARGED IN FULL ITS OBLIGATION AS INSURER, IS SUBROGATED TO THE TORTFEASOR'S RIGHT OF CONTRIBUTION TO THE EXTENT OF THE AMOUNT IT HAS PAID IN EXCESS OF THE TORTFEASOR'S PRO RATA SHARE OF THE COMMON LIABILITY. IT MAY ASSERT THIS RIGHT EITHER IN ITS OWN NAME OR IN THE NAME OF ITS INSURED. THIS PROVISION DOES NOT LIMIT OR IMPAIR ANY RIGHT OF SUBROGATION ARISING FROM ANY OTHER RELATIONSHIP.

(6) THIS SECTION DOES NOT IMPAIR ANY RIGHT OF INDEMNITY UNDER EXISTING LAW. WHERE ONE TORTFEASOR IS ENTITLED TO INDEMNITY FROM ANOTHER, THE RIGHT OF THE INDEMNITY OBLIGEE IS FOR INDEMNITY AND NOT CONTRIBUTION, AND THE INDEMNITY OBLIGOR IS NOT ENTITLED TO CONTRIBUTION FROM THE OBLIGEE FOR ANY PORTION OF HIS INDEMNITY OBLIGATION.

(7) THIS SECTION DOES NOT APPLY TO BREACHES OF TRUST OR OF OTHER FIDUCIARY OBLIGATION.

(8) THIS SECTION SHALL NOT OPERATE AS TO INCREASE THE LIABILITY OF THE SECRETARY OF STATE UNDER ACT 198 OF THE PUBLIC ACTS OF 1965 AS AMENDED.

SEC. 2925b. IN DETERMINING THE PRO RATA SHARES OF TORTFEASORS IN THE ENTIRE LIABILITY: (A) THEIR RELATIVE DEGREES OF FAULT SHALL NOT BE CONSIDERED; (B) IF EQUITY REQUIRES, THE COLLECTIVE LIABILITY OF SOME AS A GROUP SHALL CONSTITUTE A SINGLE SHARE; AND (C) PRINCIPLES OF EQUITY APPLICABLE TO CONTRIBUTION GENERALLY SHALL APPLY.

SEC. 2925c.

(1) WHETHER OR NOT JUDGMENT HAS BEEN ENTERED IN AN ACTION AGAINST TWO OR MORE TORTFEASORS FOR THE SAME INJURY OR WRONGFUL DEATH, CONTRIBUTION MAY BE ENFORCED BY SEPARATE ACTION.

(2) WHERE A JUDGMENT HAS BEEN ENTERED IN AN ACTION AGAINST TWO OR MORE TORTFEASORS FOR THE SAME INJURY OR WRONGFUL DEATH, CONTRIBUTION MAY BE ENFORCED IN THAT ACTION BY JUDGMENT IN FAVOR OF ONE AGAINST OTHER JUDGMENT

DEFENDANTS BY MOTION UPON NOTICE TO ALL PARTIES TO THE ACTION.

(3) IF THERE IS A JUDGMENT FOR THE INJURY OR WRONGFUL DEATH AGAINST THE TORTFEASOR SEEKING CONTRIBUTION, ANY SEPARATE ACTION BY HIM TO ENFORCE CONTRIBUTION MUST BE COMMENCED WITHIN ONE YEAR AFTER THE JUDGMENT HAS BECOME FINAL BY LAPSE OF TIME FOR APPEAL OR AFTER APPELLATE REVIEW.

(4) IF THERE IS NO JUDGMENT FOR THE INJURY OR WRONGFUL DEATH AGAINST THE TORTFEASOR SEEKING CONTRIBUTION, HIS RIGHT TO CONTRIBUTION IS BARRED UNLESS HE HAS EITHER (1) DISCHARGED BY PAYMENT THE COMMON LIABILITY WITHIN THE STATUTE OF LIMITATIONS PERIOD APPLICABLE TO CLAIMANT'S RIGHT OF ACTION AGAINST HIM AND HAS COMMENCED HIS ACTION FOR CONTRIBUTION WITHIN ONE YEAR AFTER PAYMENT, OR (2) AGREED WHILE ACTION IS PENDING AGAINST HIM TO DISCHARGE THE COMMON LIABILITY AND HAS WITHIN ONE YEAR AFTER THE AGREEMENT PAID THE LIABILITY AND COMMENCED HIS ACTION FOR CONTRIBUTION.

(5) THE RECOVERY OF A JUDGMENT FOR AN INJURY OR WRONGFUL DEATH AGAINST ONE TORTFEASOR DOES NOT OF ITSELF DISCHARGE THE OTHER TORTFEASORS FROM LIABILITY FOR THE INJURY OR WRONGFUL DEATH UNLESS THE JUDGMENT IS SATISFIED. THE SATISFACTION OF THE JUDGMENT DOES NOT IMPAIR ANY RIGHT OF CONTRIBUTION.

(6) THE JUDGMENT OF THE COURT IN DETERMINING THE LIABILITY OF THE SEVERAL DEFENDANTS TO THE CLAIMANT FOR AN INJURY OR WRONGFUL DEATH SHALL BE BINDING AS AMONG SUCH DEFENDANTS IN DETERMINING THEIR RIGHT TO CONTRIBUTION.

SEC. 2925d. WHEN A RELEASE OR A COVENANT NOT TO SUE OR NOT TO ENFORCE JUDGMENT IS GIVEN IN GOOD FAITH TO ONE OF TWO OR MORE PERSONS LIABLE IN TORT FOR THE SAME INJURY OR THE SAME WRONGFUL DEATH:

(1) IT DOES NOT DISCHARGE ANY OF THE OTHER TORTFEASORS FROM LIABILITY FOR THE INJURY OR WRONGFUL DEATH UNLESS ITS TERMS SO PROVIDE; BUT IT REDUCES THE CLAIM AGAINST THE OTHERS TO THE EXTENT OF ANY AMOUNT STIPULATED BY THE RELEASE OR THE COVENANT, OR IN THE AMOUNT OF THE CONSIDERATION PAID FOR IT, WHICHEVER IS THE GREATER; AND

(2) IT DISCHARGES THE TORTFEASOR TO WHOM IT IS GIVEN FROM ALL LIABILITY FOR CONTRIBUTION TO ANY OTHER TORTFEASOR.

Section 2. Section 2925 of Act No. 236 of the Public Acts of 1961, being section 600.2925 of the Compiled Laws of 1948, is hereby repealed.