Michigan
Law Revision Commission

Third Annual Report
1968

MICHIGAN LAW REVISION COMMISSION

Term Members:

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

Ex-Officio Members:

Senators:
Basil W. Brown
Robert L. Richardson

Representatives:
Donald E. Holbrook, Jr.
Daniel S. Cooper

Director, Legislative Service Bureau
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MICHIGAN LAW REVISION COMMISSION
Third Annual Report to the Legislature

To the Members of the Michigan Legislature:

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

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

The members of the Commission during 1968 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, Director of the Legislative Service Bureau, as ex-officio members; Tom Downs, Jason L. Honigman, David Lebenbom, and Harold S. Sawyer, as appointed members. The Legislative Council appointed Jason L. Honigman Chairman and Tom Downs Vice Chairman of the Commission. Professor 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 third 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. The Commission welcomes suggestions from members of the Legislature and any other interested individuals or groups. From the available topics the Commission selected the following for immediate study and report:

(1) Condemnation Procedures Act
(2) Venue Act
(3) Access to Adjoining Property Act
(4) Attachment Fees Act
(5) Antenuptial Agreement Act
(6) Notice of Tax Assessment Act
(7) Appeals from Probate Court Act
(8) Uniform Single Publications Act
(9) Uniform Anatomical Gift Act
(10) Uniform Reciprocal Enforcement of Support Act
(11) Uniform Recognition of Acknowledgments Act

Recommendations and proposed statutes have been prepared on the above eleven subjects and accompany this report.

In addition to the foregoing, the Commission recommends resubmission of the following prior recommendations upon which no action was taken by the Legislature:

(1) Multiple Party Bank Deposits--See Recommendations of 1966 Annual Report, p. 18.

(2) Qualifications of Fiduciaries--See Recommendations of 1966 Annual Report, p. 32.

(3) Recrimination and Other Conduct in Divorce Actions--See Recommendations of 1967 Annual Report, p. 40.

(4) Foreclosure of Land Contracts--See Recommendations of 1967 Annual Report, p. 55.

(5) Contribution Among Joint Tortfeasors--See Recommendations of 1967 Annual Report, p. 57.

Topics on the current study agenda of the Commission are:

(1) Corporation Code
(2) Local Administrative Procedures Act
(3) Joint Estates in Real and Personal Property
(4) Interspousal and Parental Immunity From Torts
(5) Partial Subrogation in Accident Cases
(6) Mechanics' Liens
(7) Court Costs
(8) Art Forgeries
(9) Dower
(10) Doctor-Patient Communication Privilege

Topics on the future study calendar of the Commission are:

(1) Evidence Code
(2) Probate Code
(3) Tax Refund Procedures
(4) Disposition of Automobile Accident Cases

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 court decisions during the last fifteen years and the Commission continues to welcome the advice and assistance of the justices and judges of the courts of this state. The Commission has also reviewed decisions since 1964 in order to ascertain what laws, if any, have been declared unconstitutional by the courts for the purpose of recommending the repeal or revision of any unconstitutional acts. The Commission intends to review decisions prior to 1964 in the same fashion.

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.

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

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

1967 Legislative Session

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

1968 Legislative Session

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

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

Respectfully submitted,

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

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

Date: December 14, 1968

RECOMMENDATION RELATING TO CONDEMNATION PROCEDURES

Under Michigan law, hundreds of state and local governmental units and agencies, as well as various private individuals and businesses, are authorized to utilize the power of eminent domain to obtain property. Moreover, hundreds of sections of Michigan statutes describe the various procedures which may be utilized in the condemnation of property. With this confusing array of statutes, even the most experienced lawyer has difficulty in individual situations because the condemning authority often has a choice as to which procedural steps may be taken in the condemnation processes. Obviously, this situation is even more confusing to the individual property owner whose property may be taken by the exercise of the eminent domain power. In view of the current situation, the Law Revision Commission recommends the adoption of a single statute governing the procedures to be followed in condemnation proceedings regardless of the nature of the condemning authority or the purpose for which the power of eminent domain is exercised.

The 1963 Michigan Constitution, Article X, Section 2, provides: "Private property shall not be taken for public use without just compensation therefor being first made or secured in a manner prescribed by law. Compensation shall be determined in proceedings in a court of record." The new Michigan Constitution thereby eliminated the procedural limitation contained in the 1908 Constitution and empowered the Michigan Legislature to provide by law for the procedures to be followed in determining and securing the payment of just compensation. The proceedings under the 1963 Constitution must be conducted in a court of record, and the Law Revision Commission believes that the appropriate court for this purpose is the circuit court of the county in which the property is located.

The Law Revision Commission recommends the enactment of legislation which would supersede all other laws governing the judicial procedures for condemnation of property. Laws governing procedure prior to the initiation of suit or granting the power of eminent domain to various state and local agencies, instrumentalities and governmental units would not be affected. Actions in the circuit courts would be in the nature of in rem proceedings, all laws and court rules applicable to comparable civil actions would apply to condemnation proceedings. Actions for condemnation would be initiated by complaint, and the complaint would identify the condemning authority, describe the property to be taken, give the names of the owners, and include a statement of the authority under which the property is condemned.

The complaint additionally would include a statement of the sum which the agency estimates to be just compensation and indicate the manner by which an owner could obtain a copy of the appraisal supporting the estimate.

The purpose of this procedure is to give the owner as early as possible a reliable estimate so that he can elect to accept the just compensation in lieu of trial. The Law Revision Commission recommends that the owner be allowed to obtain the amount of just compensation estimated by the agency without waiving his right to contest the amount. The purpose of this provision is to give the owner the opportunity of finding a substitute location without being forced to accept an unreasonably low sum because of financial distress.

The Law Revision Commission further recommends that quick-taking procedures be available to all condemning authorities. Quick-taking is currently available to the federal government and to certain condemning authorities, such as the State Highway Department under existing law. In many other cases, however, quick-taking procedures are essential if long delays in the public projects, such as water and sewerage treatment facilities,are to be avoided. The condemning authority would be authorized to request immediate possession on order of the court if it deposited the amount of the estimated just compensation with the county clerk. The deposited sum would be available for payment to the property owner on order of the court. If the right to possession is thereafter overruled upon appeal, the condemning authority would be liable for damages sustained by the owner.

In order to assure that the condemning authority reasonably estimates the amount of just compensation, the condemning authority would be required to pay the owner all trial expenses, including reasonable attorneys' fees, as determined by the court if the judgment exceeds the estimate by more than 10%. Attorneys' fees could not exceed the amount by which the judgment exceeds 110% of the condemning authority's estimate.

The Law Revision Commission also recommends that the condemning agency be required to reimburse the owner for the expense of an appraisal of his property whether or not he contests the issue of just compensation. In the opinion of the Commission the owner should not have the burden of that additional expense when public necessity is the reason for his sale of the property. The proposed bill also provides that the owner be able to recover reasonable moving expenses, but if other laws provide for such recovery, an additional reward therefor would not be available in the condemnation proceeding.

The Law Revision Commission believes that the just compensation award should take into account any benefits which will accrue to the remaining property of the owner as a result of the condemnation. However, if the benefit does not accrue because of the failure of the condemning agency to make the proposed improvement within a reasonable period of time or within the period reasonably anticipated at the time of the award, the owner should be entitled to seek damages from the agency by court

action. Finally, voluntary discontinuance or dismissal of an action by the condemning agency would not be permitted without the consent of the owner. This provision is designed to prevent a condemning agency from imposing upon a property owner the serious consequences of nonsaleability during pendency of condemnation and then deciding to abandon the litigation.

In preparing its proposal, the Law Revision Commission has examined all existing Michigan legislation governing condemnation procedures as well as the latest views on condemnation proceedings throughout the country. The Commission believes that condemnation procedures should parallel other civil litigation procedures as closely as possible. By so doing, the whole area of statutory and decisional procedural law in civil litigation is made applicable. The need of bench and bar to familiarize themselves with special procedural laws for condemnation is thereby obviated. So, too, is the need for additional litigation to formulate the meaning of new procedural provisions. The proposed bill therefore relies upon provisions of the Revised Judicature Act and the General Court Rules and reduces to a minimal level special procedural provisions applicable only to condemnation. The proposed bill would give to Michigan the most up-to-date thinking of the country in the field of sound condemnation procedures.

The proposed bill follows:

PROPOSED BILL

A bill to provide for the procedures for condemnation of property by public and private agencies; to provide for condemnation proceedings in the circuit courts; to provide for transfer of title and right to possession upon court order and rights of the owner; to provide moving expenses; to provide for determination of just compensation; to provide for payment of taxes; and to provide for entry and for payment of damages, if any.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

(1) "agency" means any public agency or private agency;

(2) "court" means the circuit court of any county in which the property sought to be appropriated is located in whole or in part;

(3) "owner" means any individual, fiduciary, partnership, association, corporation, or any governmental unit or agency having any estate, title or interest, including beneficial, possessory and security interest, in any property sought to be appropriated;

(4) "private property" means any person, partnership, association, corporation or entity, other than a public agency, authorized by law to appropriate property under the power of eminent domain;

(5) "public agency" means any governmental corporation, unit, organization, entity or officer authorized by law to appropriate property under the power of eminent domain;

(6) "property" means land and buildings and the tenements and hereditaments thereof and easements or any other interest therein and tangible and intangible property, whether real, personal or mixed;

(7) "condemnation proceeding" means all acts incident to the process of taking property under the power of eminent domain both before and after commencement of suit under the provisions of this act.

Sec. 2. All appropriations of property by an agency under the power of eminent domain shall be made in accordance with the procedures provided by this act. The provisions of this act shall supersede the provisions of any other laws governing procedures for the condemnation of property except that provisions of law setting forth action to be taken prior to the filing of suit shall not be superseded.

Sec. 3. Property shall be acquired under condemnation proceedings by a suit in court by the agency as plaintiff in a civil action in which personal jurisdiction over a defendant is not required. All owners known to plaintiffs shall be named as defendants. All laws and court rules applicable to such civil actions shall apply to suits in condemnation proceedings except as otherwise clearly indicated in this act or in such laws or court rules.

Sec. 4. (a) An agency may include in the same complaint one or more separate parcels of property whether in the same or different ownership if the property is to be taken for the same or a related use. The court on its own motion or the motion of any party in furtherance of convenience or to avoid prejudice may order a severance and a separate trial of any claim or issue, or may consolidate the trial of separate actions or any claim or issue therein. Any plaintiff or defendant may demand or waive a trial by jury as to the issue of just compensation in accordance with applicable law and court rules. All laws applicable to juries in circuit court civil actions shall apply to condemnation proceedings, except that the jurors shall be freeholders.

(b) The complaint shall set forth:

(1) the name and address of the agency;

(2) a statement of the authority under which and the public use for

which the property is to be taken and shall attach a copy of the public agency's finding of public necessity for the taking or in an action by a private agency, a copy of any certificate of public necessity issued by the public service commission or other public agency as provided by law;

(3) a statement of the estate or interest and legal description of the property to be taken, the names of the owners thereof so far as is known and a map or drawing showing the location and dimensions of the land to be taken;

(4) a statement of (i) the sum of money which the agency estimates to be just compensation for the property to be taken, (ii) the manner in which an owner may secure without cost a copy of the appraisal of the property made in behalf of the agency which supports its judgment as to such just compensation, (iii) that the owner may receive payment of such sum without waiving his right to contest the amount of just compensation, and (iv) a statement of the claims of the agency as to enhancement in value, if any, of a defendant's property not taken;

(5) a statement setting forth the manner in which an owner may contest the public necessity for the taking of the property, the jurisdiction over the defendant or his property, or the validity of the condemnation proceeding;

(6) such other allegations as are required by law.

Sec. 5. A defendant's answer to a complaint shall describe the right, title or interest which he claims in the property to be taken and whether he accepts as adequate or rejects as inadequate the just compensation for his property stated in the complaint. A defendant contesting just compensation need not state in his initial answer the amount he claims as just compensation, but shall include such statement by amendment to his answer at any time before trial. If defendant claims damages other than those for just compensation for the fair market value of the property to be taken, the answer shall set forth the nature and amount of such damages.

Sec. 6. (1) Before filing a complaint in a condemnation proceeding, a public agency shall make a finding of public necessity by its own official action in the manner provided by law. Before filing a complaint in a condemnation proceeding, a private agency shall secure a certificate of public necessity from the Michigan public service commission or other public agency, if so provided by law.

(2) The issue of lack of public necessity or of jurisdiction over the person or property, or invalidity of the condemnation proceeding shall be raised for decision by the judge upon special motion filed by the defendant

within 20 days after service of the complaint and in the absence thereof, shall be deemed waived. Oral proofs or proofs by deposition may be submitted at the hearing of such motion. The determination of public necessity by a public agency or by the Michigan public service commission or other public authority after reasonable notice to all known parties in interest of a public hearing thereon shall be binding on the court in the absence of a showing of fraud, error of law or abuse of discretion. Absent such determination, the determination of public necessity shall be made by the court. An order upholding the finding of public necessity or validity of the condemnation proceeding shall be appealable to the court of appeals only by leave of that court in accordance with rules of court. In the absence of appeal of such order timely filed, no appeal therefrom may be had and such order shall not be appealable as part of an appeal from a judgment as to just compensation.

Sec. 7. (1) No agency shall file a complaint in a condemnation proceeding unless it has available for distribution to the owners upon demand the amount it alleges to be just compensation for the taking of the property and a copy of the appraisal by a competent expert which supports its judgment as to just compensation for the property to be taken. An owner may demand and receive the sum alleged by the agency to be just compensation without prejudice to any claim that such compensation is inadequate. As a condition to payment of just compensation for the property, the agency may require transfer of title by good and sufficient conveyance, along with proof of marketable title or in lieu thereof, a policy of title insurance in an amount equal to the payment, or the court may transfer title to the property by its order.

(2) The date of valuation of the property to be taken shall be the date of the public agency's finding of necessity or the date of issuance of the certificate of public necessity by the Michigan public service commission or other agency as provided by law. Any change in fair market value due to the imminence of the taking of the property shall be disregarded in fixing just compensation.

(3) In the event the agency seeks transfer of title or possession through order of the court prior to the determination of just compensation in the absence of conveyance by the owner, the court may order such action upon showing of reasonable need therefor and the deposit with the county clerk of the money representing just compensation as claimed by plaintiff. Such funds shall be held in a separate trust account at a bank or trust company and shall be invested in interest bearing bank accounts or certificates of deposit, or securities issued by the United States government. Such funds, including principal and interest, shall be distributed to the owner upon order of the court. The pendency of an appeal from an order granting possession shall not preclude the agency from the taking of possession unless otherwise ordered by the court. The agency shall be liable for damages caused by such

possession in the event its right to possession is reversed on appeal.

(4) The plaintiff shall be entitled to possession of the property simultaneously with the transfer of title except that the court, upon special motion, may permit earlier possession or may delay the granting of possession for such period and on such terms as shall fairly protect the interest of both parties.

(5) If the judgment for just compensation exceeds the sum of just compensation set forth in the complaint, such excess sum shall be distributed to the owner within 20 days after final judgment along with interest at 6% per year for the period from the date of transfer of title to the agency to the date of payment. If the judgment exceeds the just compensation set forth in the complaint or any amendment thereof, by a sum which is in excess of 10%, the agency shall pay to the owner all expenses of the trial including a reasonable attorney fee in an amount to be determined by the court. The attorney fee shall not exceed the amount by which the award exceeds 110% of the agency determination.

(6) The reasonable expense incurred by the defendant for an appraisal of the property to be made by an expert of his choice shall be paid by the plaintiff, whether or not the issue of just compensation was contested in court. In the absence of agreement by the parties, the amount of such reimbursement shall be determined by the court.

(7) The reasonable expense of moving and relocating personal property from the property to be taken to a place within the same county shall be recoverable as just compensation. Tenants in possession shall be entitled to such award even though not entitled to any award for the property to be taken. To the extent that relocation or removal expenses are payable by other agencies of government or payment therefor is otherwise provided by law, no award therefor shall be allowed hereunder.

(8) In event of default of a defendant for failure to answer or for other cause, judgment shall be entered for plaintiff which shall entitle plaintiff to the taking of the property upon payment of the sum set forth in the complaint as just compensation.

(9) Amendments in form or substance of any pleading, process, record, order or judgment, or extensions of time to plead or to take any action required by law, may be granted by the court on special motion under rules of court applicable to a civil action when such amendments or extensions of time will not unfairly deprive a party of a material right.

(10) Any dispute between the parties shall be resolved by hearing before the court, except as to any issues of just compensation which are to be tried by the jury.

Sec. 8. (1) In determining just compensation, a court or jury may take into account benefits resulting to the remaining property of the owner if such claim has been made in the complaint. Detriment to the remaining property of the owner may be claimed as an element of damage if set forth in defendant's answer.

(2) If enhancement in value of the owner's remaining property has been claimed in plaintiff's complaint, defendant may file suit within 5 years after the award and recover against the agency any damages arising out of the failure to complete the proposed improvement which would enhance the value of the property within a reasonable period or period reasonably contemplated at the time of the award.

(3) If real property is acquired by any agency, all general property taxes, but not penalties, levied during the 12 months immediately preceding, but not including, the day title passes to the agency shall be prorated. The owner is responsible for the portion of taxes from the day on which the taxes become due and payable to, but not including, the day title passes and the agency is responsible for the remainder of the taxes. If the day that title will pass cannot be ascertained definitely and an agreement to prorate is desirable, an estimated day for the passage of title may be agreed to. The proration of taxes shall be determined by the court but shall not be considered in determining just compensation.

Sec. 9. Any owner may intervene in the action as a party defendant and upon granting of intervention, he shall have like rights as a defendant named in plaintiff's complaint.

Sec. 10. The court or jury in its verdict shall award just compensation for each parcel and the court may at any time determine the apportionment thereof among the parties in interest or determine title to the property. Oral proofs or proofs by deposition may be submitted to the court for such purpose.

Sec. 11. In addition to other lawful remedies, the court shall have power to enforce by contempt the violation of any order or judgment in a condemnation proceeding.

Sec. 12. After filing of its complaint, plaintiff shall be precluded from voluntary discontinuance or dismissal of the action as to any owner who objects thereto.

Sec. 13. Before or after filing complaint, an agency may enter in a reasonable manner upon any lands, waters and premises for the purpose of making surveys, soundings, drillings and appraisals. Such entry shall not constitute a trespass. Written notice of the proposed entry shall be given personally or by mail to an owner of record and to persons in possession

not less than 10 days prior to the date of such entry. The agency shall make restitution for any actual damage resulting from the entry which may be recovered by special motion before the court or by separate action if an action for condemnation has not theretofore been filed.

RECOMMENDATION RELATING TO PROPER VENUE FOR CIVIL ACTIONS

In Michigan Bell Telephone Company v. Aid-U Secretarial Bureau, Inc., 7 Mich. App. 13, 151 N.W.2d 234 (1967), the Michigan Court of Appeals was confronted with the task of interpreting the provisions of sections 1621 and 1625 of the Revised Judicature Act of 1961. Both plaintiff and defendant had their principal places of business and their registered offices in Wayne County, but both were doing business in Oakland County. Suit was initiated in Oakland County. In reversing the trial court's dismissal of the defendant's motion for a change of venue, Judge Gillis stated, after citing the current statutory provisions:

> "This provision is ambiguous. The precise definition of 'established' is not given in the statute. It loosely defines a defendant corporation as being established in a county if it has a place of business or is doing business within the county, provided the plaintiff is established therein. This circuity can only be avoided by ruling that plaintiff is established only if it meets one of the unqualified provisions of RJA §1625(b)(i) or RJA §1625(b)(ii)."

Clarification of the existing venue provisions appears desirable to avoid additional litigation. The Law Revision Commission therefore recommends amendments to the venue provisions which will achieve the same result as the recent decision of the Michigan Court of Appeals and preserve the intent of the present statute. Thus, it is made clear that in suits between corporate parties, a plaintiff can sue the defendant in the county in which the defendant's principal place of business is located or in the county where the plaintiff's principal place of business is located, if defendant is doing business in that county. In the case of individual parties, the plaintiff can sue the defendant in the county of defendant's residence or in the county where the plaintiff resides, if defendant is doing business in that county.

The proposed statutory amendment follows:

PROPOSED BILL

A bill to amend sections 1621 and 1625 of Act No. 236 of the Public Acts of 1961, entitled "revised judicature act of 1961," being sections 600.1621 and 600.1625 of the Compiled Laws of 1948.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. Sections 1621 and 1625 of Act No. 236 of the Public Acts of

1961, being sections 600.1621 and 600.1625 of the Compiled Laws of 1948, are amended to read as follows:

Sec. 1621. Except for the actions listed in sections 1605, 1611 and 1615, the county in which any defendant is established OR LOCATED, or if no defendant is established in the state, the county in which the plaintiff is established, is a proper county in which to commence and try an action.

Sec. 1625. For purposes of all matters pertaining to venue

(a) a person is established in any county in which he ~~(i)~~ has a dwelling place but not at his transient or temporary lodging~~,~~ ~~(ii) has a place of business if a plaintiff is established therein, or (iii) is doing business if a plaintiff is established therein~~;

(b) both domestic and foreign corporations are established in any county in which the corporation (i) has its principal place of business~~,~~ OR (ii) has its registered office~~,~~ ~~(iii) has a place of business if a plaintiff is established therein, or (iv) is doing business if a plaintiff is established therein~~;

(c) partnerships, limited partnerships, partnership associations, and unincorporated voluntary associations, composed of residents, nonresidents, or both, are established in any county in which they ~~(i)~~ have their principal place of business~~,~~ ~~(ii) have a place of business if a plaintiff is established therein, or (iii) are doing business if a plaintiff is established therein~~;

(d) fiduciaries appointed by court order, including but not limited to executors, administrators, trustees, and receivers, are established in the county of their appointment, as well as the county of their dwelling place.

(E) PERSONS, DOMESTIC AND FOREIGN CORPORATIONS, AND PARTNERSHIPS, LIMITED PARTNERSHIPS, PARTNERSHIP ASSOCIATIONS, AND UNINCORPORATED VOLUNTARY ASSOCIATIONS, COMPOSED OF RESIDENTS, NONRESIDENTS, OR BOTH, ARE LOCATED IN ANY COUNTY IN WHICH THEY (i) HAVE A PLACE OF BUSINESS IF A PLAINTIFF IS ESTABLISHED THEREIN OR (ii) ARE DOING BUSINESS IF A PLAINTIFF IS ESTABLISHED THEREIN.

RECOMMENDATION RELATING TO ACCESS TO NEIGHBORS' PROPERTY TO MAKE REPAIRS AND IMPROVEMENTS ON OWN PROPERTY

The proposed statute allows a landowner access to adjoining land when needed to make repairs on his own land. The landowner desiring access will be referred to as the "repairer" and the owner of the property to which access is sought, "the adjoining owner."

The only case dealing with this problem in Michigan is Dickel v. State Land Office Board, 308 Mich. 614; 14 N.W.2d 515 (1944). In Dickel, the adjoining owner's building was a one-story structure, built along the north property line. The repairer owned a two-story brick veneer building built flush against the adjoining owner's building. The brick veneer of the repairer's building began falling, causing damage to the adjoining owner's roof. The repairer requested permission to enter the premises of the adjoining owner in order to repair the repairer's building wall. The adjoining owner refused to permit it unless the repairer would pay for damages caused to the adjoining owner's roof. The adjoining owner brought suit to enjoin repairer from entering into plaintiff's property. The court held for plaintiff and said: "When an adjoining owner builds a wall immediately up to the property line, he assumes, in general, the difficulties incident to his own construction and repairs entirely from his own side of the line." (308 Mich. at 617.) The Dickel decision denies access to a neighbor wishing to make repairs.

Statutes dealing with excavation have some relevance to the problem. This type of statute requires that any landowner excavating to more than a set depth must protect adjoining premises from damage. The typical statute imposes this duty without any corresponding right to go onto the adjoining land. An Illinois court has dealt with this problem and has held that the excavator has a right to enter adjoining property to shore it up if "destruction or serious harm" would otherwise result. (Exchange National Bank v. Code, 23 Ill. App. 2d 382, 389; 163 N.E.2d 554 (1959).)

Michigan's statute says any person excavating 12 feet or more below the surface must furnish lateral support to adjoining landowners. (Comp. Laws 1948, §§554.251-54 at §554.251.) Equitable relief is granted to adjoining owners to restrain an excavator who fails to take reasonable precautions. (Comp.Laws 1948, §554.253.) In Tillotson v. Consumers Power Co. 269 Mich. 53, 256 N.W. 801 (1934), the court said that this statute allows the excavator to appeal to the court for an injunction enabling him to enter the adjoining land to prevent damage. The court went on to hold the statute enforceable even though it placed a duty on the excavator

while saying nothing about any right to enter the adjoining land to shore it up. Thus, under that statute a landowner is allowed to enter adjoining property without permission of the adjoining landowner. However, that statute is designed to protect the adjoining landowner from harm; it is quite unlike a statute designed to allow access for purposes of repair to the repairer's own property.

It would seem an adjoining owner is not seriously injured or threatened by a repairer being given license to enter the land to repair his own property. If the adjoining owner refuses to grant such permission to enter, it is proposed that the repairer should be able to receive such permission by this statute. The proposed statute empowers the court to grant to the repairer a license entitling him to enter the adjoining land in order to repair his own property upon a showing of reasonable need therefor. By this statute, the repairer is permitted to enter for a designated period to make specified repairs with such conditions and protection, including bond, as the court deems fair to the adjoining owner.

The proposed statute follows:

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 a new section 2944.

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, by adding a new section 2944 to read as follows:

SEC. 2944. WHEN AN OWNER OR LESSEE SEEKS TO MAKE IMPROVEMENTS OR REPAIRS TO REAL PROPERTY SO SITUATED THAT THE IMPROVEMENTS OR REPAIRS CANNOT REASONABLY BE MADE BY THE OWNER OR LESSEE WITHOUT ENTERING THE PREMISES OF AN ADJOINING OWNER OR HIS LESSEE, AND PERMISSION SO TO ENTER HAS BEEN REFUSED, THE OWNER OR LESSEE SEEKING TO MAKE THE IMPROVEMENTS OR REPAIRS MAY COMMENCE A CIVIL ACTION IN THE CIRCUIT COURT OF THE COUNTY IN WHICH THE PROPERTY IS LOCATED. THE COMPLAINT SHALL STATE THE FACTS MAKING THE ENTRY NECESSARY AND THE DATE ON WHICH ENTRY IS SOUGHT AND THE METHOD PROPOSED FOR PROTECTING THE DEFENDANT'S PROPERTY AGAINST DAMAGE AS WELL AS FOR PAYMENT OF ANY DAMAGE WHICH MAY RESULT FROM SUCH ENTRY. THE COURT MAY

GRANT A LIMITED LICENSE FOR ENTRY UPON SUCH TERMS AS JUSTICE AND EQUITY REQUIRE. THE OWNER OR LESSEE TO WHOM THE LIMITED LICENSE TO ENTER IS GRANTED SHALL BE LIABLE TO THE ADJOINING OWNER OR HIS LESSEE FOR DAMAGES OCCURRING AS A RESULT OF THE ENTRY AND SHALL FILE SUCH BOND AS SHALL BE REQUIRED BY THE COURT.

RECOMMENDATION RELATING TO SHERIFF'S FEES FOR PROPERTY ATTACHMENTS AND COLLECTIONS

The fees received by sheriffs for the attachment of property and for collections under executions are currently governed by the provisions of Section 2558 of the Revised Judicature Act (Comp. Laws 1948, §600.2558). The pertinent paragraphs read as follows:

> The fees of the sheriff shall be as provided in this section.
>
> (1) For serving a summons, or other process for which no fee is specified elsewhere, and for serving a writ of garnishment, $3.00, and for the service on each additional defendant, $1.50.
>
> * * * * *
>
> (5) For serving an attachment for the payment of money, or an execution for the payment of money, or a warrant issued for the same purpose and delivered to him by the county treasurer or any supervisor, for collecting the sum of $1,000.00 or less, 5%, and for any sum more than $1,000.00, 2%.

These provisions are ambiguous with respect to the sheriff's fee charged for serving an attachment and therefore have caused some difficulty in their application. Furthermore, the fees for collection seem to be unreasonably high in relation to the cost of performing the service. Also, the present schedule causes some distortion as the fee for collecting $1.000 is $50.00 and the fee for collecting $1,100 is $22.00, if a literal interpretation of the provisions is followed.

In view of these difficulties, the Law Revision Commission recommends that paragraph (5) be amended so as to confine its applicability exclusively to actual collections by the sheriff in connection with attachment, execution, or warrant procedures, and relying solely upon paragraph (1) as the provision establishing the fee for mere service of a writ of attachment. The service fee would therefore be $3.00, the fee presently charged. With respect to fees for collections, the Commission recommends a $10.00 fee if the amount collected is under $1,000.00 and a $25.00 fee if the amount collected is $1,000.00 or over. In addition, the sheriff would be entitled to charge for the actual expenses incurred by him in taking possession of and preserving any property, such as may be entailed in the attachment, moving and custody of heavy equipment or other personal property.

A copy of the proposed bill follows:

PROPOSED BILL

A bill to amend section 2558 of Act No. 236 of the Public Acts of 1961, entitled "revised judicature act of 1961," as amended, being section 600.2558 of the Compiled Laws of 1948.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. Section 2558 of Act No. 236 of the Public Acts of 1961, being section 600.2558 of the Compiled Laws of 1948, is amended to read as follows:

Sec. 2558. The fees of the sheriff shall be as provided in this section.

(1) For serving a summons, or other process for which no fee is specified elsewhere, and for serving a writ of garnishment, $3.00, and for the service on each additional defendant, $1.50.

(2) For traveling in making such service, on the usual traveled route, 15 cents per mile for going only.

(3) For taking a bond in cases where he is authorized to take the same, $1.50; for a certified copy of such bond when requested, $1.00.

(4) For a copy of every summons, writ, or other process, $1.50, not taxable as costs.

(5) ~~For serving an attachment for the payment of money, or an execution for the payment of money, or a warrant issued for the same purpose and delivered to him by the county treasurer or any supervisor, for collecting the sum of $1,000.00 or less, 5%, and for any sum more than $1,000.00, 2%.~~ FOR COLLECTING MONEY UNDER AN ATTACHMENT OR EXECUTION FOR THE PAYMENT OF MONEY, OR UNDER A WARRANT ISSUED BY THE COUNTY TREASURER OR ANY SUPERVISOR, $10.00 IF THE AMOUNT COLLECTED IS LESS THAN $1,000.00 OR $25.00 IF THE AMOUNT COLLECTED IS $1,000.00 OR MORE. IN ADDITION, HE SHALL BE PAID THE ACTUAL EXPENSES INCURRED IN TAKING POSSESSION AND PRESERVING ANY PROPERTY.

(6) For advertising goods or chattels, lands or tenements for sale, on any execution, if a sale is made, $5.00; and if the execution is stayed or settled after advertising and before sale, $3.00.

(7) When more than 1 paper in the same cause of action is served at the same time, the fee for each additional paper shall be $1.50, such additional paper to be counted as 1 unit, regardless of the number of pages therein.

(8) The fees allowed by law and paid to any printer by such sheriff for publishing an advertisement of the sale of real estate for not longer than required by law and for the publishing of the postponement of any such sale, the expense shall be paid by the party requiring the same.

(9) The fees herein allowed for the service of an execution and for advertising therein shall be collected by virtue of such execution, in the same manner as the sum therein directed to be levied; but when there are several executions against the defendant, at the time of advertising his property, in the hands of the same sheriff, there shall be but 1 advertising fee charged on the whole, and the sheriff shall elect upon which execution he will receive same.

(10) For every certificate on the sale of real estate, $1.50, and for each copy thereof, $1.50, which, together with the register's fee for filing the same, shall be collected as other fees on execution.

(11) For drawing and executing a deed pursuant to a sale of real estate, $1.50.

(12) For serving a writ of possession or of restitution, putting any person into possession of the premises and removing the occupant, $10.00.

(13) For taking a bond for the liberties of the jail, $1.50.

(14) For summoning a jury upon a writ of inquiry, attending such jury, and making and returning the inquisition, $5.00.

(15) For summoning a jury pursuant to any precept or summons of any officer in any special proceeding, $5.00, and for attending such jury when required, $5.00.

(16) For bringing up a prisoner upon habeas corpus, $3.00, and for traveling each mile from the jail, 15 cents; for attending any court with such prisoner, $5.00 per day, besides actual necessary expenses.

(17) For attending before any officer with a prisoner for the purpose of having him surrendered in exoneration of his bail, or attending to receive a prisoner so surrendered, who was not committed at the time, and receiving such prisoner into his custody in either case, $15.00.

(18) For attending a view, when ordered by the court, $15.00 per day, including the time occupied in going and returning.

(19) For serving an attachment upon any ship, boat or vessel, in proceedings to enforce any lien thereon, created by law, $5.00, with such

additional compensation for his trouble and expenses in taking possession of and preserving the same as the officer issuing the warrant shall certify to be reasonable.

(20) For making and returning an inventory and appraisal to the appraisers, $10.00 for each day actually employed, and $5.00 for each half day; further, the court, by rule, may adjust a schedule fixing amount of appraisal fees where the statutory fee is deemed by said court to be inadequate; and for drafting the inventory, $1.25 for each page and for copying the same, 10 cents for each page.

(21) For selling any ship, boat, or vessel, or the tackle, apparel or furniture thereof, so attached, and for advertising such sale, the same fees as for sales on executions.

(22) For giving notice for general or special election to the inspectors of the different townships and wards of his county, $1.00 for each township or ward, and the expenses of publishing such notices required by law, such fees and expenses to be paid by the county, as other contingent expenses thereof.

(23) For any services which may be rendered by a constable, the same fees as are allowed by law for such services to a constable.

(24) For attending the supreme court by the order of the court, $10.00 for each day, to be allowed by the auditor general on the certificate of the clerks, and paid out of the state treasury, not taxable as costs.

(25) For attending a circuit court, by the order of the court, $15.00 for each day, except in the county of Wayne; not taxable as costs.

(26) In the county of Wayne there shall be paid to the deputy sheriffs in actual attendance on the circuit court in the said county such compensation as shall be fixed by the board of supervisors in accordance with the county uniform salary plan to be allowed and paid as other contingent charges of the county are paid. The number of said deputies shall not exceed 2 for each judge of said circuit.

(27) For summoning grand or petit jurors to attend a circuit court, $2.00 for each juror summoned, not taxable as costs.

(28) For serving a subpoena for witnesses, $2.00 for each witness summoned and 15 cents for each mile actually traveled, in going only, but when 2 or more witnesses live in the same direction, traveling fees shall be charged only from the farthest.

(29) For keeping and providing for debtor in jail in all cases where the debtor is unable to support himself, $1.00 for each day or such sum as shall be fixed by the board of supervisors, to be paid by the creditor each week, in advance, and which sum the creditor shall be entitled to recover from the debtor.

(30) For mileage on every execution collected, 15 cents per mile for going only, to be computed from the court house of his county.

(31) For selling lands on the foreclosure of a mortgage by advertisement; and executing a deed to the purchaser and for all services required on such sale, $10.00.

(32) Any sheriff or other officer who shall demand or receive any greater fees or compensation for performing any of the services hereinbefore mentioned than as hereinbefore allowed, shall, in addition to all other liabilities now provided by law, be liable to the party injured, for paying such illegal fees, in 3 times the amount so demanded, received or paid, together with all costs of suit or prosecution.

(33) Any sheriff or other officer neglecting or refusing any of the services required by law, after the fees specified have been tendered, shall be liable to the party injured for all damages which he may sustain by reason of such neglect or refusal.

RECOMMENDATION RELATING TO ANTENUPTIAL AND MARITAL AGREEMENTS

The typical antenuptial agreement is entered into before marriage by the man and woman for the purpose of settling the rights of the prospective spouses to their respective estates upon death. With an increasing segment of the population being older citizens, these agreements are used more frequently as the prospective spouses in marriages during the later years of life do not wish ordinary principles to be applied, especially in connection with the rights of children of their first marriages, to the devolution of property upon death. Most states, including Michigan, give some effect to these agreements if principles of public policy are not violated. In upholding these agreements the courts consider a number of factors, including the purpose to be achieved by the agreement, the adequacy of consideration, the adequacy of the disclosure of the spouses concerning their estates, the form of the agreement, the reality of consent, and the competency of the parties.

The 1963 Michigan Constitution, Article X, Section 1 provides:

> "The disabilities of coverture as to property are abolished. The real and personal estate of every woman acquired before marriage and all real and personal property to which she may afterwards become entitled shall be and remain the estate and property of such woman, and shall not be liable for the debts, obligations or engagements of her husband, and may be dealt with and disposed of by her as if she were unmarried. Dower may be relinquished or conveyed as provided by law."

This provision eliminated the common-law doctrine that a marriage resulted in a merger of the wife's identity with that of the husband so that no enforceable contract could exist between husband and wife. Furthermore, Michigan has recognized antenuptial contracts by legislation since 1855. Act No. 167 of the Public Acts of 1855, Mich. Comp. Laws 1948, §557.5, provides: "All contracts made between persons in contemplation of marriage, shall remain in full force after marriage takes place." Antenuptial agreements have been upheld by the courts, but Michigan legislation does not make it clear that an agreement waiving certain rights to property upon death may be made after marriage. For example, Section 14 of Chapter 66 of the Revised Statutes of 1846, Mich. Comp. Laws 1948, §558.14 makes it possible for a woman to be barred of her dower by a jointure settled on her before marriage if the jointure consists of a freehold estate for life at least, but the statute does not validate an agreement made during the marriage. In addition, questions arise as to the effect of an antenuptial

settlement waiving all rights upon statutes giving the surviving spouse such rights as dower, election against the will, homestead allowance, or family allowance. We believe it desirable to allow waiver of rights of a surviving spouse on death by an agreement, before or after marriage, after fair disclosure and in the absence of fraud or duress. The agreement should be in writing as required by Michigan law for antenuptial agreements.

Problems also arise when a property settlement is agreed to between spouses in anticipation of divorce. One troublesome question is the effect of the property settlement on previously executed wills which are not revoked before death. Another question is the effect of the property settlement upon the rights of the parties if one dies before the separation or divorce is final.

We believe that legislation should provide for the right before or after marriage to enter into an agreement to waive all rights or interests in the estate or property of each spouse. Such waiver should, however, be enforceable only if there has been a fair disclosure of the assets of each party. Nor should such an agreement be enforceable in the event of fraud or duress.

We believe, too, that there is no sound reason of public policy which should preclude a property settlement or support agreement between married persons in anticipation of divorce if (1) they have already separated, (2) there has been fair disclosure as to the assets of each of the parties, and (3) the agreement was not executed under fraud or duress. Such agreement should not, however, release a parent from a legal obligation to support his or her minor children. Such agreements are presently enforced pursuant to judicial decision although presumably they are not binding on the courts until approved in the divorce action. With the limitations proposed, however, there seems no sound reason of public policy which should preclude the validity of such agreements.

The proposed bill follows:

PROPOSED BILL

A bill to amend Chapter 2 of Act No. 288 of the Public Acts of 1939 entitled "the probate code," as amended, being sections 702.1 to 702.117 of the Compiled Laws of 1948, by adding a new section 74a.

THE PROPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. Chapter 2 of Act No. 288 of the Public Acts of 1939, as amended, being sections 702.1 to 702.117 of the Compiled Laws of 1948, is amended by adding a new section 74a to read as follows:

SEC. 74A. (1) THE RIGHT OF ELECTION OF A SURVIVING SPOUSE TO INHERIT IN AN INTESTATE ESTATE, OR TO ELECT TO TAKE AGAINST A WILL, THE RIGHT TO DOWER, AND THE RIGHTS OF THE SURVIVING SPOUSE TO HOMESTEAD ALLOWANCE, EXEMPT PROPERTY AND FAMILY ALLOWANCE, OR ANY OF THEM, MAY BE WAIVED, WHOLLY OR PARTIALLY, BEFORE OR AFTER MARRIAGE, BY A WRITTEN CONTRACT, AGREEMENT OR WAIVER SIGNED BY THE PARTY WAIVING AFTER FAIR DISCLOSURE AND IN THE ABSENCE OF FRAUD OR DURESS. UNLESS AN AGREEMENT PROVIDES TO THE CONTRARY, A WRITTEN WAIVER OF ALL RIGHTS IN THE PROPERTY OR ESTATE OF A PRESENT OR PROSPECTIVE SPOUSE IS A WAIVER OF ALL RIGHTS TO AN ELECTIVE SHARE, DOWER, HOMESTEAD ALLOWANCE, EXEMPT PROPERTY AND FAMILY ALLOWANCE BY EACH SPOUSE IN THE PROPERTY OF THE OTHER AND AN IRREVOCABLE RENUNCIATION BY EACH OF ALL BENEFITS WHICH WOULD OTHERWISE PASS TO HIM FROM THE OTHER BY INTESTATE SUCCESSION OR BY VIRTUE OF THE PROVISIONS OF ANY WILL EXECUTED BEFORE THE AGREEMENT OR WAIVER.

A BINDING CONTRACT AS TO SUPPORT OR PROPERTY SETTLEMENT OR BOTH MAY BE ENTERED INTO BY A HUSBAND AND WIFE AFTER MARRIAGE BUT IN ANTICIPATION OF DIVORCE, PROVIDED THAT (1) THE PARTIES HAVE THERETOFORE SEPARATED, (2) THERE HAS BEEN FAIR DISCLOSURE AND (3) THE AGREEMENT WAS NOT EXECUTED UNDER FRAUD OR DURESS. SUCH AGREEMENT SHALL NOT RELEASE EITHER PARTY OF A LEGAL DUTY TO SUPPORT THEIR MINOR CHILDREN. UNLESS SAID AGREEMENT PROVIDES TO THE CONTRARY, IT SHALL HAVE THE SAME EFFECT AS AN AGREEMENT OF WAIVER HEREIN PROVIDED FOR.

RECOMMENDATION RELATING TO NOTICE OF CHANGE IN TAX ASSESSMENT

The duty of assessing property in Michigan is placed upon assessors or township supervisors. The supervisor or assessor is to complete the assessment roll by the first Monday in March of each year. Michigan law does not require the supervisor or assessor to notify the property owner of any change in the assessment made by the assessing officer. Before an owner may obtain judicial review of the assessment, however, he must exhaust the remedies available administratively. The only notice the taxpayer receives under the property tax law is the notice provided by publication of notices of the meetings of the Board of Review. Thus actual notice of a change in assessment is not received generally until the receipt of the tax statement which may come too late for the taxpayer to utilize normal administrative review procedures unless the taxpayer takes the trouble to check the assessor's records within the requisite time.

Several city charters, however, do contain provisions requiring actual notice of change in assessment and some assessing officials give notice although it is not required by law. For example, the Ann Arbor Charter requires the city assessor to give notice by first class mail of any change in the assessment at least 10 days before the convening of the Board of Review. Also other states require that assessors give notice of any change in assessment.

The Commission recommends that the assessing officer be required by law to give notice of a change in assessment. It is unrealistic to expect taxpayers to examine the assessment rolls, and it is generally impossible for the taxpayer to obtain relief from an unfair valuation for assessment purposes if the taxpayer's first actual notice of the change is received at the time of the tax statement. For protection of the revenues, however, the failure of the assessing official to give notice or failure of the owner to receive the notice should not invalidate the assessment roll or the assessment.

The proposed bill follows:

PROPOSED BILL

A bill to amend Act No. 206 of the Public Acts of 1893, entitled as amended "An act to provide for the assessment of property and the levy and collection of taxes thereon, and for the collection of taxes heretofore and hereafter levied; making such taxes a lien on the lands taxed, establishing and continuing such lien, providing for the sale and conveyance of lands delinquent for taxes and for the inspection and disposition of lands bid off to the state and not redeemed or purchased; to define and limit the jurisdiction of the courts in proceedings in connection therewith; to limit the time

within which actions may be brought; to prescribe certain limitations with respect to rates of taxation; to provide penalties for the violation of this act; and to repeal all acts and parts of acts in anywise contravening any of the provisions of this act, being sections 211.1 through 211.137 of the Compiled Laws of 1948, by adding a new section to stand as section 24c.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. Act No. 206 of the Public Acts of 1893, as amended, being sections 211.1 through 211.157 of the Compiled Laws of 1948, is amended by adding a new section 24c to read as follows:

SEC. 24C. THE SUPERVISOR OR ASSESSOR SHALL GIVE TO EACH OWNER OF PROPERTY A NOTICE BY FIRST CLASS MAIL OF ANY CHANGE IN THE ASSESSMENT FOR THE YEAR. THE NOTICE SHALL SPECIFY EACH PARCEL OF PROPERTY, THE ASSESSED VALUATION FOR THE YEAR AND THE PREVIOUS YEAR, THE NET CHANGE IN ASSESSMENT AND THE TIME AND PLACE OF THE MEETING OF THE BOARD OF REVIEW. THE NOTICE SHALL BE ADDRESSED TO THE OWNER ACCORDING TO THE RECORDS OF THE SUPERVISOR OR ASSESSOR AND MAILED NOT LESS THAN 10 DAYS BEFORE THE MEETING OF THE BOARD OF REVIEW. NEITHER THE FAILURE OF THE SUPERVISOR OR ASSESSOR TO GIVE NOTICE NOR THE FAILURE OF THE PROPERTY OWNER TO RECEIVE NOTICE SHALL INVALIDATE ANY ASSESSMENT ROLL OR ANY ASSESSMENT ON PROPERTY.

RECOMMENDATION RELATING TO APPEALS FROM PROBATE COURT

Appeals from the probate court are under present law taken to the circuit court to be tried de novo. This practice is a carryover from the days when probate judges were not required to be lawyers, their proceedings were informal and no record or an inadequate record was made of the proceedings in the probate court. Today the probate court is a court of record, staffed by full-time lawyer judges, except for non-attorney judges in office when the Constitution was enacted,with a complete record of all proceedings held before the court.

In adopting the legislation establishing the district court, the Legislature provided that appeals shall be taken to the circuit court on the written transcript of the record made in the district court. Similarly, several years ago, the Legislature changed the practice on appeals from common pleas court whereby trial de novo in the circuit court was eliminated and appeal was taken to the circuit court only on the record. There appears to be no sound reason why appeals for probate court should not be similarly handled, and there appears no justification for two de novo trials in probate court matters.

The present practice as to certification of will contests from the probate court to the circuit court is retained in view of the general importance of a trial involving a will contest.

The present provisions of section 37 of chapter 1 of the Probate Code are re-enacted in a different form as new section 45b. The provisions of the present section 37 which permit no appeal from the designated classification of order of the probate court have been construed by the Michigan Supreme Court to mean that there is still a right of appeal in issues of law by way of mandamus. In the new provision, the right to appeal such orders is recognized except that provision is made that such orders shall not be stayed pending appeal in the absence of a specific order of the court for good cause shown.

In its 1966 Annual Report, the Law Revision Commission recommended that trials de novo on appeal be eliminated and that appeals be taken to the Court of Appeals. The Court of Appeals, however, has opposed such appeal because of its already burdensome volume of appellate work. Therefore, the Law Revision Commission now recommends that appeals from probate court be heard originally in the circuit court but on

the basis of the record.

The proposed bill follows:

PROPOSED BILL

A bill to amend section 26 of chapter 5 and section 22 of chapter 12A of Act No. 288 of the Public Acts of 1939, entitled "The probate code," section 22 of chapter 12A as amended by Act No. 181 of the Public Acts of 1966, being sections 705.26, 709.53 and 712A.22 of the Compiled Laws of 1948; to add 3 new sections to chapter 1 to stand as sections 45a, 45b and 45c; and to repeal certain acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. Section 26 of chapter 5 and section 22 of chapter 12A of Act No. 288 of the Public Acts of 1939, section 22 of chapter 12A as amended by Act No. 181 of the Public Acts of 1966, being sections 705.26, 709.53 and 712A.22 of the Compiled Laws of 1948, are amended and 3 new sections are added to chapter 1 to stand as sections 45a, 45b and 45c, the amended and added sections to read as follows:

CHAPTER I

SEC. 45A. (1) IN ALL CASES NOT SPECIFICALLY PROHIBITED BY STATUTE, ANY PERSON AGGRIEVED BY ANY ORDER, SENTENCE OR JUDGMENT OF A JUDGE OF THE PROBATE COURT MAY APPEAL THEREFROM TO THE CIRCUIT COURT FOR THE COUNTY IN WHICH THE ORDER, SENTENCE OR JUDGMENT IS RENDERED.

(2) NOTICE OF APPEAL SHALL BE GIVEN TO ALL INTERESTED PARTIES AS PROVIDED BY RULES OF THE SUPREME COURT. APPEALS FROM THE PROBATE COURT SHALL BE ON A WRITTEN TRANSCRIPT OF THE RECORD MADE IN THE PROBATE COURT OR ON A RECORD SETTLED AND AGREED TO BY THE PARTIES AND APPROVED BY THE COURT. THE APPEALS SHALL NOT BE TRIED DE NOVO.

(3) ALL APPEALS TO THE COURT OF APPEALS FROM JUDGMENTS ENTERED BY THE CIRCUIT COURT ON APPEALS FROM THE PROBATE COURT SHALL BE BY APPLICATION.

(4) THE SUPREME COURT, THE COURT OF APPEALS, AND THE CIRCUIT COURT SHALL HAVE SUPERINTENDING CONTROL OVER THE PROBATE COURTS AS PROVIDED BY RULES OF THE SUPREME COURT.

SEC. 45B. AN ORDER OF THE PROBATE COURT REMOVING A FIDUCIARY FOR FAILURE TO GIVE A BOND OR TO RENDER AN ACCOUNTING, APPOINTING SPECIAL ADMINISTRATORS OR SPECIAL GUARDIANS, GRANTING A NEW TRIAL OR REHEARING, GRANTING AN ALLOWANCE TO THE WIDOW OR CHILDREN OF A DECEDENT, OR GRANTING PERMISSION TO SUE ON A FIDUCIARY'S BOND, SHALL NOT BE STAYED PENDING APPEAL UNLESS ORDERED BY THE COURT ON MOTION FOR GOOD CAUSE SHOWN.

SEC. 45C. IN ALL CONTESTS OVER THE ALLOWANCE OR DISALLOWANCE OF WILLS, THE PROBATE JUDGE AT THE REQUEST OF ANY INTERESTED PARTY BEFORE TRIAL IN THE PROBATE COURT, SHALL CERTIFY SUCH CONTEST FOR TRIAL IN THE CIRCUIT COURT FOR THE SAME COUNTY AS PROVIDED BY RULES OF THE SUPREME COURT.

CHAPTER 5

Sec. 26. Appeals may be had to the circuit court as in the case of such appeals in matters relating to the estates of deceased persons ~~and the judgments of the circuit court may in like manner be reviewed in the supreme court on appeal~~, in the following cases:

(a) By any person interested, as apparent beneficiary, in the estate of any absent person, as defined in this act, from an order appointing an administrator of such estate or denying such appointment; or from an order admitting a will of such absent person to probate or denying such admission.

(b) By any person adversely affected, from an order of sale, mortgage, or other disposition prior to an order of assignment and distribution of property of an absent person, as defined in this act.

(c) By any person adversely affected, from the allowance or disallowance in whole or in part of any claim against the estate of an absent person, as defined in this act.

(d) By any person adversely affected, from an order affirming or denying any claimant to be the absent person, whose estate is being administered.

(e) By any person adversely affected, from an order affirming the right of any claimant as successor of the absent person, whose estate is being administered.

(f) By any person adversely affected, from an order allowing or refusing to allow in whole or in part the account of any administrator or executor.

(g) By any person adversely affected, from any order of assignment and distribution.

(h) By any person adversely affected, from any order where a like appeal or review would lie, in case the absent person were actually dead.

(i) By any person interested as beneficiary, from an order finding or refusing to find the existence of an apparent beneficiary, who has been absent as defined in this act.

(j) By any person adversely affected, from an order affirming or denying any claimant to be the absent person or as having succeeded to the rights of an absent person interested in the estate of a deceased person being administered.

CHAPTER 12A

Sec. 22. Appeal may be taken to the circuit court by the prosecuting attorney or any person aggrieved by any order of the juvenile division of the probate court, in the SAME manner ~~provided by sections 36 to 52 of chapter 1, insofar as applicable, except that the provisions of section 39 of chapter 1 do not apply and no such appeal bond shall be required.~~ AS FROM OTHER ORDERS OR JUDGMENTS OF THE PROBATE COURT. The pendency of an appeal shall not suspend the order unless the circuit court shall specifically so order. ~~A petition~~ AN APPLICATION for a delayed appeal FROM ANY ORDER OR JUDGMENT shall be filed within 6 months ~~after the making of the judgment or order complained of.~~ AFTER ENTRY THEREOF.

Section 2. Sections 36 to 45, 49 and 50 of chapter 1 of Act No. 288 of the Public Acts of 1939, as amended, being sections 701.36 to 701.45, 701.49 and 701.50 of the Compiled Laws of 1948, are repealed.

RECOMMENDATION RELATING TO THE UNIFORM SINGLE PUBLICATION ACT

The Uniform Single Publication Act is intended to make uniform the law as to causes of action for any tort arising out of a single publication. The common-law rule, which originated in 1849 with Duke of Brunswick v. Harmer, 14 Q.B. 185, 117 Eng. Rep. 72, was that each sale or delivery of a single copy of a newspaper or magazine was a distinct and separate publication of a libel therein contained. This rule is still followed by several American jurisdictions. It means that when defamation is published in a magazine with national circulation, the person defamed may have as many as several million possible causes of action for separate torts, based on the publication to each individual reader. The sum total of the causes of action so arising would be more than three times the estimated number of all reported decisions in the English language, and the lifetime of one generation would not suffice to try them. Some American jurisdictions have adopted the single publication rule by judicial decision, under which any single integrated publication, such as one edition of a newspaper or magazine, or one broadcast, is treated as a unit, giving rise to only one cause of action. The difference in the two rules leads to further difficulties when a publication involves the crossing of state lines. A case which illustrates this problem is Hartmann v. Time, Inc., 166 F.2d 127 (3d Cir. 1948), where the action was returned to the trial court with directions to ascertain the law of each of the states and apply one rule or the other according to the jurisdiction in which the magazine was read.

The Michigan case law on the problem of single and multiple publications either by publications through the printed word or by radio or television is almost nonexistent. A federal district court case, Tocco v. Time, Inc., 195 F. Supp. 410 (1961), held that the single publication doctrine applied to Michigan libel actions. The decision, however, was not based upon any existing state judicial authority and other issues in the case predominated. A decision of the Michigan Court of Appeals, Grist v. Upjohn Co., 1 Mich. App. 72, 134 N.W.2d 358 (1965), indicates that the Michigan court may follow the general rule that each act of slander is the basis for a separate cause of action. The present statutory law in Michigan does not clarify the existing confusion in the case law authority. Therefore, the Law Revision Commission recommends the adoption of the Uniform Single Publication Act in Michigan, promulgated by the National Conference of Commissioners on Uniform State Laws.

This Act adopts the single publication rule for defamation, invasion of privacy, or any other tort such as slander of title, disparagement of goods, injurious falsehood or the like, which is founded upon a single integrated publication. By this Act, the publication of a libel, slander, or other tort in a

single edition of a newspaper or in a single broadcast gives rise to a single cause of action rather than multiple causes of action. The injured party is allowed to claim all his damages in a single action. Judgment in that single cause of action bars other actions for damages by the same plaintiff against the same defendant founded upon the same publication.

The intention of the Act is to adopt the rule as it has been developed at common law in a number of states. The Act is not intended to have any application to causes of action by two or more separate plaintiffs who are defamed in the same publication, or to the causes of action of one plaintiff against two or more separate defendants, each of whom has published the same statement or taken part in the same publication.

The proposed bill follows:

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 29 to stand as section 2911a.

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 29 to stand as section 2911a, the added section to read as follows:

SEC. 2911a. (1) NO PERSON SHALL HAVE MORE THAN ONE CAUSE OF ACTION FOR DAMAGES FOR LIBEL OR SLANDER OR INVASION OF PRIVACY OR ANY OTHER TORT FOUNDED UPON ANY SINGLE PUBLICATION OR EXHIBITION OR UTTERANCE, SUCH AS ANY ONE EDITION OF A NEWSPAPER OR BOOK OR MAGAZINE OR ANY ONE PRESENTATION TO AN AUDIENCE OR ANY ONE BROADCAST OVER RADIO OR TELEVISION OR ANY ONE EXHIBITION OF A MOTION PICTURE. RECOVERY IN ANY ACTION SHALL INCLUDE ALL DAMAGES FOR ANY SUCH TORT SUFFERED BY THE PLAINTIFF IN ALL JURISDICTIONS.

(2) A JUDGMENT IN ANY JURISDICTION FOR OR AGAINST THE PLAINTIFF UPON THE SUBSTANTIVE MERITS OF ANY ACTION FOR DAMAGES FOUNDED UPON A SINGLE PUBLICATION OR EXHIBITION OR UTTERANCE AS DESCRIBED IN SECTION 1 SHALL BAR ANY OTHER ACTION FOR DAMAGES BY THE SAME PLAINTIFF AGAINST THE SAME DEFENDANT FOUNDED UPON THE SAME PUBLICATION OR EXHIBITION OR UTTERANCE.

(3) THIS SECTION SHALL BE SO INTERPRETED AS TO EFFECTUATE ITS PURPOSE TO MAKE UNIFORM THE LAW OF THOSE STATES OR JURISDICTIONS WHICH ENACT IT.

Section 2. This act shall not be retroactive as to causes of action existing on its effective date.

RECOMMENDATION RELATING TO THE UNIFORM ANATOMICAL GIFT ACT

Human bodies and parts thereof are used in many aspects of medical science, including teaching, research, therapy, and transplantation. It is a rapidly expanding branch of medical technology. Transplantation of parts involves skin grafts, bones, blood, corneas, kidneys, livers, arteries, and hearts. The recent transplantations in Michigan and other parts of the United States have given rise to a great deal of public interest in heart transplantation. It has been stated that from 6,000 to 10,000 lives could be saved each year by kidney transplants if a sufficient supply of kidneys were available.

Transplantation in certain areas may be effected from one living person to another. In these cases, all that is required is an appropriate informed consent authorizing the surgical removal by the donor on the one hand, and the implantation in the donee on the other. Tissues and organs from the dead can also be used to bring health and years of life to the living. The potential supply of tissues and organs from the dead is plentiful, but if utilization of bodies and parts of bodies is to be effectuated, a number of competing interests in the dead body must be resolved.

The principal competing interests are: (1) the wishes of the deceased during his lifetime concerning the disposition of his body; (2) the desires of the surviving spouse or other relatives; (3) the interest of the state determining by autopsy the cause of death in cases involving crime or violence; (4) the need of autopsy to determine the cause of death when private legal rights are dependent upon the cause; (5) the need of society for bodies, tissues, and organs for medical education, research, therapy, and transplantation.

The principal legal questions arising from these competing interests are: (1) who may during his lifetime make a legally effective gift of his body or part thereof; (2) what is the right of next of kin, either to set aside the deceased's express wishes or themselves to make the anatomical gift; (3) who may legally become donees of anatomical gifts; (4) for what purposes may such gifts be made; (5) how may gifts be made, including by will, by writing, by a card carried on the person, or by telegraphic or recorded telephonic communication; (6) how may a gift be revoked by the donor during his lifetime; (7) what are the rights of survivors in the body after the removal of donated parts; (8) what protection from legal liability should be afforded to physicians and others in carrying out anatomical gifts; (9) should any such protection be afforded regardless of the state in which the document of gift is executed; (10) what should the effect of an anatomical gift be

in the case of conflict of laws concerning autopsies; (11) should the time of death be defined by law in any way; (12) should the interest in preserving life by the physician in charge of a decedent preclude him from participating in the transplant procedure. The principal legal questions described are covered by the Uniform Anatomical Gift Act, and the Law Revision Commission recommends its adoption in Michigan.

Under existing Michigan law a person may by written instrument give all or part of his anatomy to any medical or educational institution or to any person. The written instrument is to be signed by two competent witnesses, and the donee is to keep the written instrument on file. Upon death of the donor, the donee is permitted under the act to claim the body and cause the removal of the portions of the anatomy given by the donor. The Michigan statute also provides revocation of the gift, and the statute relieves the medical practitioner or institution from liability for damages in any civil suit because of the removal of the part. The Michigan statute, Act No. 82 of the Public Acts of 1958, Comp. Laws 1948, §§328.251 to 328.257, contains many of the provisions of the Uniform Act, but it is deficient in some respects.

Furthermore, in the United States the statutes in the several states are confusing and fail to provide adequate answers. Because of the mobile nature of the population, it would be desirable to have uniform legislation in effect in all of the states and the District of Columbia. For example, an Illinois resident may be killed in an automobile accident in northern Ohio and it may be desirable that parts of his body be used in a transplant operation in Michigan. If the laws of the state vary, it will be extremely difficult to have the part available before it becomes useless to the prospective donee. Therefore, the need of a comprehensive act and an act applicable in all states is apparent.

The Uniform Anatomical Gift Act promulgated by the National Conference of Commissioners on Uniform State Laws is a carefully drafted act and weighs the numerous conflicting interests. Wherever adopted it will encourage the making of an anatomical gift, thus facilitating therapy involving those procedures. When it is generally adopted, it will remove uncertainty as to the applicable law and all parties will be protected. At the same time, the Uniform Act serves the needs of the several conflicting interests in a manner consistent with prevailing customs and desires in this country respecting dignified disposition of dead bodies. The act provides a useful and uniform legal environment throughout the country for this new frontier of modern medicine.

The proposed bill follows:

PROPOSED BILL

A bill authorizing the gift of all or part of a human body after death for specified purposes; to prescribe the procedure therefor and the rights duties and liabilities of the parties to the gifts; and to repeal certain acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1. (1) "Bank or storage facility" means a facility licensed, accredited, or approved under the laws of any state for storage of human bodies or parts thereof.

(2) "Decedent" means a deceased individual and includes a stillborn infant or fetus.

(3) "Donor" means an individual who makes a gift of all or part of his body.

(4) "Hospital" means a hospital licensed, accredited, or approved under the laws of any state; includes a hospital operated by the United States government, a state, or a subdivision thereof, although not required to be licensed under state laws.

(5) "Part" means organs, tissues, eyes, bones, arteries, blood, other fluids and any other portions of a human body.

(6) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association or any other legal entity.

(7) "Physician" or "surgeon" means a physician or surgeon licensed or authorized to practice under the laws of any state.

(8) "State" includes any state, district, commonwealth, territory, insular possession, and any other area subject to the legislative authority of the United States of America.

[Note: This section defines terms used in the act. "Bank or storage" facility includes facility licensed, accredited, or approved under the laws of any state for storage of human bodies or parts. Similarly, the definition of "hospital" and "physician" or "surgeon" recognize institutions and persons licensed under the laws of any state. The purpose is to provide the maximum flexibility because of the mobile nature of the population in movements across state lines.]

Sec. 2. (1) Any individual of sound mind and 18 years of age or more may give all or any part of his body for any purpose specified in section 3, the gift to take effect upon death.

(2) Any of the following persons, in order of priority state, when persons in prior classes are not available at the time of death, and in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by a member of the same or a prior class, may give all or any part of the decedent's body for any purpose specified in section 3:

(a) the spouse,

(b) an adult son or daughter,

(c) either parent,

(d) an adult brother or sister,

(e) a guardian of the person of the decedent at the time of his death,

(f) any other person authorized or under obligation to dispose of the body.

(3) If the donee has actual notice of contrary indications by the decedent or that a gift by a member of a class is opposed by a member of the same or a prior class, the donee shall not accept the gift. The persons authorized by subsection (2) may make the gift after or immediately before death.

(4) A gift of all or part of a body authorizes any examination necessary to assure medical acceptability of the gift for the purposes intended.

(5) The rights of the donee created by the gift are paramount to the rights of others except as provided by section 7(4).

[Note: This section authorizes an 18-year-old individual to make a gift to take effect on death. The present Michigan law, section 1 of Act No. 82 of the Public Acts of 1958, Comp. Laws 1948, §328.251, requires that the donor be 21 years old. Subsection (2) gives survivors the right to make the gift. Because of the limited time available following death for the successful removal of certain tissues, the rights of and priorities among survivors for making the gift are spelled out. Subsection (3) states the effect of notice of contrary intentions by the decedent or a member of the same in a prior class of survivors. Also, survivors may make the gift immediately before death. Subsection (4) is regarded as essential by the medical profession to assure that diseased parts are not used. Subsection (5)

recognizes the right of the individual to dispose of his own body without subsequent veto by others. Michigan law does not contain provisions comparable to subsections (2), (3), (4), and (5).]

Sec. 3. The following persons may become donees of gifts of bodies or parts thereof for the purposes stated:

(a) any hospital, surgeon, or physician, for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation; or

(b) any accredited medical or dental school, college or university for education, research, advancement of medical or dental science, or therapy; or

(c) any bank or storage facility, for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation; or

(d) any specified individual for therapy or transplantation needed by him.

[Note: This section designates permissible donees of bodies or parts thereof under this act. The maximum flexibility as to purposes and persons or organizations who may be donees is prescribed. Present Michigan law, section 1 of Act No. 82 of the Public Acts of 1958, Comp. Laws 1948, §328.251, authorizes gifts to any medical or educational institution or to any person.]

Sec. 4. (1) A gift of all or part of the body under section 2(1) may be made by will. The gift becomes effective upon the death of the testator without waiting for probate. If the will is not probated, or if it is declared invalid for testamentary purposes, the gift, to the extent that it has been acted upon in good faith, is nevertheless valid and effective.

(2) A gift of all or part of the body under section 2(1) may also be made by document other than a will. The gift becomes effective upon the death of the donor. The document, which may be a card designed to be carried on the person, must be signed by the donor in the presence of 2 witnesses who must sign the document in his presence. If the donor cannot sign, the document may be signed for him at his direction and in his presence in the presence of 2 witnesses who must sign the document in his presence. Delivery of the document of gift during the donor's lifetime is not necessary to make the gift valid.

(3) The gift may be made to a specified donee or without specifying a donee. If the latter, the gift may be accepted by the attending physician as donee upon or following death. If the gift is made to a specified donee who is not available at the time and place of death, the attending physician upon or following death, in the absence of any expressed indication that the donor desired otherwise, may accept the gift as donee. The physician who becomes a donee under this subsection shall not participate in the procedures for removing or transplanting a part.

(4) Notwithstanding section 7(2), the donor may designate in his will, card, or other document of gift the surgeon or physician to carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the gift may employ or authorize any surgeon or physician for the purpose.

(5) Any gift by a person designated in section 2(2) shall be made by a document signed by him or made by his telegraphic,recorded telephonic, or other recorded message.

[Note: This section authorizes gifts by will or by another document signed by the donor in the presence of 2 witnesses who must sign the document in his presence. If the gift is made by will, probate is unnecessary for the purpose of making the gift effective. If the will is subsequently declared invalid, the gift is valid to the extent that it has been relied upon in good faith. Subsection (3) indicates that the donee need not be specified in which case it may be accepted by the attending physician upon or following death. If the attending physician becomes the donee, subsection (3) precludes his becoming a part of a transplant procedure. Subsection (4) authorizes a donee or a person authorized to accept the gift to make arrangements for carrying out the gift. Subsection (5) allows a survivor to make a gift by a signed document or by a telegram, recorded telephone, or other recorded message. Under present Michigan law a written instrument signed by the donor and 2 witnesses is required by section 2 of Act No. 82 of the Public Acts of 1958, Comp. Laws 1948, §328.252.]

Sec 5. If the gift is made by the donor to a specified donee, the will, card, or other document, or an executed copy thereof, may be delivered to the donee to expedite the appropriate procedures immediately after death. Delivery is not necessary to the validity of the gift. The will, card, or other document, or an executed copy thereof, may be deposited in any hospital, bank or storage facility or registry office that accepts it for safekeeping or for facilitation of procedures after death. On request of any interested party upon or after the donor's death, the person in possession shall produce the document for examination.

[Note: This section permits delivery of the document of gift but does not require delivery. The document must be produced for examination by an interested party upon or after death. Section 3 of Act No. 82 of the Public Acts of 1958, Comp. Laws 1948, §328.253, contains comparable provisions but requires that the document be delivered to and filed by the donee.]

Sec. 6. (1) If the will, card, or other document or executed copy thereof, has been delivered to a specified donee, the donor may amend or revoke the gift by:

(a) the execution and delivery to the donee of a signed statement, or

(b) an oral statement made in the presence of 2 persons and communicated to the donee, or

(c) a statement during a terminal illness or injury addressed to an attending physician and communicated to the donee, or

(d) a signed card or document found on his person or in his effects.

(2) Any document of gift which has not been delivered to the donee may be revoked by the donor in the manner set out in subsection (1) or by destruction, cancellation, or mutilation of the document and all executed copies thereof.

(3) Any gift made by a will may also be amended or revoked in the manner provided for amendment or revocation of wills, or as provided in subsection (1).

[Note: This section prescribes the methods by which a gift may be amended or revoked. These methods are quite simple and easily accomplished. Under present Michigan law, section 5 of Act No. 82 of the Public Acts of 1958, as amended, Comp. Laws 1948, §328.255, the gift may be revoked only by demanding return of the written instrument of gift.]

Sec. 7. (1) The donee may accept or reject the gift. If the donee accepts a gift of the entire body, he may, subject to the terms of the gift, authorize embalming and the use of the body in funeral services. If the gift is a part of the body, the donee, upon the death of the donor and prior to embalming, shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the surviving spouse, next of kin, or other persons under obligation to dispose of the body.

(2) The time of death shall be determined by a physician who tends the donor at his death, or, if none, the physician who certifies the death. The physician shall not participate in the procedures for removing or transplanting a part.

(3) A person who acts in good faith in accordance with the terms of this act or with the anatomical gift laws of another state or a foreign county is not liable for damages in any civil action or subject to prosecution in any criminal proceeding for his act.

(4) The provisions of this act are subject to the laws of this state prescribing powers and duties with respect to autopsies.

[Note: Subsection (1) gives the donee the power to accept or reject the gift. The donee may authorize use of the body in funeral services or remove parts and give the custody of the remainder of the body to survivors. The current Michigan statute does not specifically provide that the donee may reject the gift. Also, if the entire body is given, it is not to be delivered to the donee until after the survivors have an opportunity for a funeral, section 4 of Act No. 82 of the Public Acts of 1958, Comp. Laws 1948, §328.254. Subsection (2) states that the time of death shall be determined by a physician attending the donor and that the attending physician shall not participate in transplant procedures. No comparable provision is in the present Michigan statute.]

Sec. 8. This act may be cited as the "uniform anatomical gift act."

Sec. 9. Act No. 82 of the Public Acts of 1958, as amended, being sections 328.251 to 328.257 of the Compiled Laws of 1948, is repealed.

RECOMMENDATION RELATING TO THE REVISED UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT

In the 17 years since the original Uniform Act was adopted, experiences have indicated that some improvements in the Reciprocal Enforcement of Support Act would be desirable. The organization of officials responsible for administration of the Act therefore requested the National Conference of Commissioners on Uniform State Laws to prepare amendments or a revised act. After consultation, the Revised Act was approved by the Commissionerson Uniform State Laws in 1968. The Law Revision Commission recommends that the Revised Act be adopted in Michigan.

Since the adoption of the Act thousands of persons have benefited from its provisions and the taxpayers have benefited from the relief thereby afforded by diminution of public welfare payments. The Revised Act continues the original act by providing a two-court procedure where the person entitled to support can initiate a proceeding in his own state which is continued in the state where the person required by law to provide support is found or where his property is located. The Revised Act with respect to these proceedings merely clarifies language that caused difficulty in the past.

The Revised Act also includes an additional procedure not included in the original Uniform Act. The procedure is a registration procedure which allows registration of a foreign support order in much the same manner as a foreign money judgment can be registered for enforcement. The obligor is given notice of the registration and is afforded an opportunity to contest the registration in a hearing before the court. The new procedure will be beneficial in those instances where one state has already adjudicated the issues of liability and amount because it eliminates the necessity of a new hearing on those issues. The registration procedure contains adequate safeguards to prevent enforcement of an order issued by the court of another state which did not have jurisdiction or which failed to provide due process of law.

The proposed bill follows:

PROPOSED BILL

A bill relative to the extradition of persons charged with failure to provide support for dependents and to provide for the enforcement by circuit courts in this state of the duty of such persons to support their dependents in accordance with the requirements of the laws of other states or any foreign state having reciprocal legislation, and to grant to such courts power

to enforce such obligations by procedures including contempt; and to prescribe the procedure to be followed by such courts in case of proceedings to require enforcement of the duty to support residents of this state by those obligated to furnish support through proceedings in courts of other states or any foreign state having reciprocal legislation; and to prescribe rules of evidence in such proceedings; and to provide for the registration of foreign support orders and enforcement thereof; and to repeal certain acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1. This act shall be known and may be cited as the "revised uniform reciprocal enforcement of support act."

Sec. 2. The purposes of this act are to improve and extend by reciprocal legislation the enforcement of duties of support and to make uniform the law with respect thereto.

[Note: This section is identical with section 2 of Act No. 8 of the Public Acts of 1952, Comp. Laws 1948, §780.152.]

Sec. 3. As used in this act, unless the context requires otherwise;

(1) "Court" means the circuit court of this state in the exercise of its equity powers and when the context requires means the court of any other state as defined in a substantially similar reciprocal law.

(2) "Duty of support" means a duty of support whether imposed or imposable by law or by order, decree, or judgment of any court, whether interlocutory or final or whether incidental to an action for divorce, separation, separate maintenance, or otherwise and includes the duty to pay arrearages of support past due and unpaid.

(3) "Governor" includes any person performing the functions of governor or the executive authority of any state covered by this act.

(4) "Initiating state" means a state in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced. "Initiating court" means the court in which a proceeding is commenced.

(5) "Law" includes both common and statutory law.

(6) "Obligee" means a person including a state or political subdivision to whom a duty of support is owed or a person including a state or political subdivision that has commenced a proceeding for enforcement of an alleged duty of support or for registration of a support order. It is immaterial if the person to whom a duty of support is owed is a recipient of public assistance.

(7) "Obligor" means any person owing a duty of support or against whom a proceeding for the enforcement of a duty of support or registration of a support order is commenced.

(8) "Prosecuting attorney" means the public official in the appropriate place who has the duty to enforce criminal laws relating to the failure to provide for the support of any person.

(9) "Register" means to file in the registry of foreign support orders.

(10) "Registering court" means any court of this state in which a support order of a rendering state is registered.

(11) "Rendering state" means a state in which the court has issued a support order for which registration is sought or granted in the court of another state.

(12) "Responding state" means a state in which any responsive proceeding pursuant to the proceeding in the initiating state is commenced. "Responding court" means the court in which the responsive proceeding is commenced.

(13) "State" includes a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any foreign jurisdiction in which this or a substantially similar reciprocal law is in effect.

(14) "Support order" means any judgment, decree, or order of support in favor of an obligee whether temporary or final, or subject to modification, revocation, or remission, regardless of the kind of action or proceeding in which it is entered.

[Note: This section adds definitions for the following terms which were not defined in Act No. 8 of the Public Acts of 1952: "Governor," "Initiating court," "Prosecuting attorney," "Register," "Registering court," "Rendering state," "Responding state," and "Support order." The definition of "Duty of support" contained in section 3 of Act No. 8 of the Public Acts of 1952 is expanded to make it clear that the "duty of support" includes the duty to pay arrearages of support which are past due and remain unpaid. The definition of obligee is extended over that contained in the present Michigan law to include the state or a political subdivision. The definition of state is clarified by specifically including the Commonwealth of Puerto Rico.]

Sec. 4. The remedies herein provided are in addition to and not in substitution for any other remedies.

[Note: This section is identical to section 4 of Act No. 8 of the Public Acts of 1952, Comp. Laws. 1948, §780.154.]

Sec. 5. Duties of support arising under the law of this state, when applicable under section 7, bind the obligor present in this state regardless of the presence or residence of the obligee.

[Note: This section states the same principle regarding the applicability of the law of this state as provided in section 5 of Act No. 8 of the Public Acts of 1952, Comp. Laws 1948, §780.155, but eliminates the applicability of the law of the state where the obligee was present which conflicts with the provisions of section 8 of the present Michigan law.]

Sec. 6. The governor of this state may:

(1) demand of the governor of another state the surrender of a person found in that state who is charged criminally in this state with failing to provide for the support of any person; or

(2) surrender on demand by the governor of another state a person found in this state who is charged criminally in that state with failing to provide for the support of any person. Provisions for extradition of criminals not inconsistent with this act apply to the demand even if the person whose surrender is demanded was not in the demanding state at the time of the commission of the crime and has not fled therefrom. The demand, the oath, and any proceedings for extradition pursuant to this section need not state or show that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding state.

[Note: This section is substantially similar to section 6 of Act No. 8 of the Public Acts of 1952, Comp. Laws 1948, §780.156.]

Sec. 7. (1) Before making the demand upon the governor of another state for the surrender of a person charged criminally in this state with failing to provide for the support of a person, the governor of this state may require any prosecuting attorney of this state to satisfy him that at least 60 days prior thereto the obligee initiated proceedings for support under this act or that any proceeding would be of no avail.

(2) If, under a substantially similar act, the governor of another state makes a demand upon the governor of this state for the surrender of a person charged criminally in that state with failure to provide for the support

of a person, the governor may require any prosecuting attorney to investigate the demand and to report to him whether proceedings for support have been initiated or would be effective. If it appears to the governor that a proceeding would be effective but has not been initiated he may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(3) If proceedings have been initiated and the person demanded has prevailed therein the governor may decline to honor the demand. If the obligee prevailed and the person demanded is subject to a support order, the governor may decline to honor the demand if the person demanded is complying with the support order.

[Note: Section 7 of Act No. 8 of the Public Acts of 1952, Comp. Laws 1948, §780.157 currently provides that an obligor shall be relieved of extradition if the obligor submits to the jurisdiction of the courts of another state and complies with the support order. This section expands the discretion of the governor by making it possible for him to request a prosecuting attorney to ascertain whether or not support proceedings have been initiated and whether or not such proceedings would be useful. Similarly, if the governor obtains an extradition request, he may delay honoring the demand for a reasonable period of time and request a prosecuting attorney to investigate. Finally, if support proceedings were initiated and the person demanded prevailed, or if the person demanded is complying with the support order, the governor may decline to honor the demand.]

Sec. 8. Duties of support applicable under this act are those imposed under the laws of any state where the obligor was present for the period during which support is sought. The obligor is presumed to have been present in the responding state during the period for which support is sought until otherwise shown.

[Note: This section is substantially similar to section 8 of Act No. 8 of the Public Acts of 1952, as amended, Comp. Laws 1948, §780.158.]

Sec. 9. If a state or a political subdivision furnishes support to an individual obligee, it has the same right to initiate a proceeding under this act as the individual obligee for the purpose of securing reimbursement for support furnished and of obtaining continuing support.

[Note: This section is substantially similar to section 9 of Act No. 8 of the Public Acts of 1952, as amended, Comp. Laws 1948, §780.159.]

Sec. 10. All duties of support, including the duty to pay arrearages, are enforceable by a proceeding under this act including a proceeding for civil contempt. The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor.

[Note: This section makes it clear that all duties of support, including the duty to pay arrearages are enforceable under the act. The obligor is denied the use of an immunity defense based on the husband-wife or parent-child relationship. The present Michigan law does not contain a comparable provision.]

Sec. 11. Jurisdiction of any proceeding under this act is vested in the circuit court.

[Note: This section establishes that judicial proceedings under the act are in circuit court as present Michigan law provides in section 10 of Act No. 8 of the Public Acts of 1952, as amended, Comp. Laws 1948, §780.160. Present section 10 also includes venue provisions which are covered by sections 12 and 15 of the revised act.]

Sec. 12. (1) The complaint shall be verified and shall state the name and, so far as known to the obligee, the address and circumstances of the obligor and the persons for whom support is sought, and all other pertinent information. The obligee may include in or attach to the complaint any information which may help in locating or identifying the obligor including a photograph of the obligor, a description of any distinguishing marks on his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, and his social security number.

(2) The complaint may be filed in the appropriate court of any state in which the obligee resides. The court shall not decline or refuse to accept and forward the complaint on the ground that it should be filed with some other court of this or any other state where there is pending another action for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody between the same parties or where another court has already issued a support order in some other proceeding and has retained jurisdiction for its enforcement. A complaint filed under this act shall be filed by the clerk of the court as a miscellaneous matter.

[Note: This section is substantially identical with section 11 of Act No. 8 of the Public Acts of 1952, as amended, Comp. Laws 1948, §780.161, but contains provisions concerning limitations on a court's discretion to refuse to accept a complaint similar to those found in section 10 of the present law, Comp. Laws 1948, §780.160.]

Sec. 13. If this state is acting as an initiating state, the prosecuting attorney upon the request of the court, the state department of social services, or a county or local department or officer shall represent the obligee in any proceeding under this act. If the prosecuting attorney neglects or refuses to represent the obligee, the attorney general may undertake the representation. The obligee may be represented in any proceedings by private counsel at his own expense.

[Note: This section is similar to section 10a of Act No. 8 of the Public Acts of 1952, as amended, Comp. Laws 1948, §780.160a. The present law, however, makes it the duty of the prosecuting attorney to represent the obligee only when a public support burden has been incurred or is threatened. The present law also does not authorize specifically any action by the attorney general if the prosecuting attorney fails to represent the obligee.]

Sec. 14. A complaint on behalf of a minor obligee may be executed and filed by a person having legal custody of the minor without appointment as guardian ad litem or next friend.

[Note: This section is substantially similar to section 11a of Act No. 8 of the Public Acts of 1952, as amended.]

Sec. 15. If the initiating court finds that the complaint sets forth facts from which it may be determined that the obligor owes a duty of support and the a court of the responding state may obtain jurisdiction of the obligor or his property, it shall so certify and cause 3 copies of the complaint and its certificate and one copy of this act to be sent to the responding court. Certification shall be in accordance with the requirements of the initiating state. If the name and address of the responding court is unknown and the responding state has an information agency comparable to that established in the initiating state, it shall cause the copies to be sent to the state information agency or other proper official of the responding state, with a request that the agency or official forward them to the proper court and that the court of the responding state acknowledge their receipt to the initiating court.

[Note: This section is substantially similar to section 12 of Act No. 8 of the Public Acts of 1952, as amended, Comp. Laws 1948, §780. The present section does not specify that certification is in accordance with the requirements of the initiating state. The present law does not clearly indicate that the complaint may be sent to a responding state where the basis of jurisdiction is the property of the obligor.]

Sec. 16. An initiating court shall not require payment of either a filing fee or other costs from the obligee but may request the responding court to collect fees and costs from the obligor. A responding court shall not require payment of a filing fee or other costs from the obligee but it may direct that all fees and costs requested by the initiating court and incurred in this state when acting as a responding state, including fees for filing of pleadings, service of process, seizure of property, stenographic or duplication service, or other service supplied to the obligor, be paid in whole or in part by the obligor or from the county treasury as a county charge. These costs or fees do not have priority over amounts due to the obligee.

[Note: Expenses and costs in proceedings under the act are a county charge, but the court, in its discretion, requires the obligor or obligee or other party to make that reimbursement which is equitable

under section 20 of Act No. 8 of the Public Acts of 1952, as amended, Comp. Laws 1948, §780.170. If the action is brought by the state, no filing fee is charged under present law. The new section does not allow the imposition by the initiating court of a filing fee or costs on the obligee but the court may request their collection from the obligor by the responding court. The new section also directs that the respond- court not require fees from the obligee, but they may be imposed on the obligor or made a county charge in the responding court.]

Sec. 17. If the court of this state believes that the obligor may flee it may

(1) as an initiating court, request in its certificate that the responding court obtain the body of the obligor by appropriate process; or

(2) as a responding court, obtain the body of the obligor by appropriate process. Thereupon it may release him upon his own recognizance or upon his giving a bond in an amount set by the court to assure his appearance at the hearing.

[Note: This section is substantially similar to section 12a of Act No. 8 of the Public Acts of 1952, as amended, Comp. Laws 1948, §780.162a, but the new section permits the court to release the obligor upon his own recognizance or upon posting bond.]

Sec. 18. (1) The state department of social services is designated as the state information agency under this act. It shall

(a) compile a list of the courts and their addresses in this state having jurisdiction under this act and transmit it to the state information agency of every other state which has adopted this or a substantially similar act. Upon the adjournment of each session of the legislature the agency shall distribute copies of any amendments to the act and a statement of their effective date to all other state information agencies;

(b) maintain a register of lists of courts received from other states and transmit copies thereof promptly to every court in this state having jurisdiction under this act; and

(c) forward to the court in this state which has jurisdiction over the obligor or his property petitions, certificates and copies of the act it receives from courts or information agencies of other states.

(2) If the state information agency does not know the location of the obligor or his property in the state and no state location service is available, it

shall use all means at its disposal to obtain this information, including the examination of official records in the state and other sources such as telephone directories, real property records, vital statistics records, police records, requests for the name and address from employers who are able or willing to cooperate, records of motor vehicle license offices, requests made to the tax offices both state and federal where such offices are able to cooperate, and requests made to the social security administration as permitted by the federal social security act as amended.

(3) After the deposit of 3 copies of the complaint and certificate and one copy of the act of the initiating state with the clerk of the appropriate court, if the state information agency knows or believes that the prosecuting attorney is not prosecuting the case diligently, it shall inform the attorney general who may undertake the representation.

[Note: This section is substantially similar to section 12b of Act No. 8 of the Public Acts of 1952, as amended, Comp. Laws 1948, § 780.162b. The new section, however, authorizes the information agency to use all means at its disposal to locate obligors or their property. Furthermore the information agency may notify the attorney general if it believes a prosecuting attorney is not prosecuting a proceeding diligently. The provision in present Michigan law directing the information agency to act as a clearing center and to maintain liaison with the Council of State Governments, law enforcement agencies, the Legislature, and the public is omitted as being unnecessary.]

Sec. 19. (1) After the responding court receives copies of the complaint, certificate, and act from the initiating court the clerk of the court shall docket the case and notify the prosecuting attorney of his action.

(2) The prosecuting attorney shall prosecute the case diligently. He shall take all action necessary in accordance with the laws of this state to enable the court to obtain jurisdiction over the obligor or his property and shall request the court to set a time and place for a hearing and give notice thereof to the obligor in accordance with law.

[Note: This section is substantially similar to section 13 of Act No. 8 of the Public Acts of 1952, as amended, Comp. Laws 1948, §780.163. The section clarifies the responsibilities of the prosecuting attorney in obtaining jurisdiction. Present Michigan law literally places the burden of taking action to obtain jurisdiction over the obligor on the court rather than upon the representative of the obligee.]

Sec. 20. (1) The prosecuting attorney on his own initiative shall use all means at his disposal to locate the obligor or his property, and if because of

inaccuracies in the complaint or otherwise the court cannot obtain jurisdiction, the prosecuting attorney shall inform the court of what he has done and request the court to continue the case pending receipt of more accurate information or an amended complaint from the initiating court.

(2) If the obligor or his property is not found in the county, and the prosecuting attorney discovers that the obligor or his property may be found in another county of this state or in another state, he shall so inform the court. Thereupon the clerk of the court shall forward the documents received from the court in the initiating state to a court in the other county or to a court in the other state or to the information agency or other proper official of the other state with a request that the documents be forwarded to the proper court. All powers and duties provided by this act apply to the recipient of the documents so forwarded. If the clerk of a court of this state forwards documents to another court he shall forthwith notify the initiating court.

(3) If the prosecuting attorney has no information as to the location of the obligor or his property, he shall so inform the initiating court.

[Note: This section describes action to be taken by the prosecuting attorney if he is unable to obtain jurisdiction over the obligor or his property. The prosecuting attorney may request continuance of the case pending the availability of additional information or an amended complaint. If the obligor or his property are not found within the county, the clerk of the court may forward the documents to an appropriate court in another county in Michigan or another state. If the prosecuting attorney has no information concerning the location of the obligor or his property, he must notify the initiating court. The section is similar to section 13a of Act No. 8 of the Public Acts of 1952, as amended, Comp. Laws 1948, §780.163a.]

Sec. 21. If the obligee is not present at the hearing and the obligor denies owing the duty of support alleged in the petition or offers evidence constituting a defense, the court, upon request of either party, may continue the hearing to permit evidence relative to the duty to be adduced by either party by deposition or by appearing in person before the court. The court may designate the judge of the initiating court as a person before whom a deposition may be taken.

[Note: This section authorizes the court to continue a hearing if the obligor denies the duty or support or offers another defense to the action to permit the taking of additional testimony. The court may request the initiating court to take the deposition of the obligee. The present Michigan statute does not contain a comparable provision.]

Sec. 22. If at the hearing the obligor is called for examination as an adverse party and he declines to answer upon the ground that his testimony may

tend to incriminate him, the court may require him to answer, in which event he is immune from criminal prosecution with respect to matters revealed by his testimony, except for perjury committed in this testimony.

[Note: This section authorizes the court to grant immunity to the obligor if he refuses to testify on the ground that his testimony may tend to incriminate him. The immunity does not extend to perjury committed in the testimony. No comparable legislation exists in Michigan.]

Sec. 23. Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this act. Husband and wife are competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage.

[Note: This section is substantially similar to section 19 of Act No. 8 of the Public Acts of 1952, Comp. Laws 1948, §780.169, but the section specifically provides that laws concerning the privilege of communications between husband and wife do not apply in proceedings under the act.]

Sec. 24. In any hearing for the civil enforcement of this act the court is governed by the rules of evidence applicable in a civil court action in the circuit court. If the action is based on a support order issued by another court, a certified copy of the order shall be received as evidence of the duty of support, subject only to any defenses available to an obligor with respect to paternity (section 28) or to a defendant in an action or a proceeding to enforce a foreign money judgment. The determination or enforcement of a duty of support owed to one obligee is unaffected by any interference by another obligee with rights of custody or visitation granted by a court.

[Note: This section specifies that the rules of evidence to be followed are those applicable in civil actions in circuit courts. If the action is based on a support order of another court, the order may be received as evidence of the duty of support but is subject to defenses with respect to paternity or any defense available to a person subject to a proceeding to enforce a foreign money judgment, such as lack of jurisdiction. The current Michigan law does not include a comparable provision.]

Sec. 25. If the responding court finds a duty of support, it may order the obligor to furnish support or reimbursement therefor and subject the property of the obligor to the order. Support orders made pursuant to this act shall require that payments be made to the clerk of the court or the friend of the court as specified in the order of the responding state.

[Note: This section is comparable to section 14 of Act No. 8 of the Public Acts of 1952, Comp. Laws 1948, §780.164, but also specifies that payments be made to the friend of the court as apparently is the practice in Michigan.]

Sec. 26. The responding court shall cause a copy of all support orders to be sent to the initiating court.

[Note: This section is substantially similar to section 15 of Act No. 8 of the Public Acts of 1952, Comp. Laws 1948, §780.165.]

Sec. 27. In addition to the foregoing powers a responding court may subject the obligor to any terms and conditions proper to assure compliance with its orders and in particular to:

(a) require the obligor to furnish a cash deposit or a bond of a character and amount to assure payment of any amount due;

(b) require the obligor to report personally and to make payments at specified intervals to the clerk of the court or the friend of the court as specified in the order; and

(c) punish the obligor who fails and refuses to obey and comply with the order of the court, having sufficient ability to comply, such punishment to be imposed by the court as a contempt of court, placing the obligor on probation or committing the obligor to the county jail of the county in which such person was convicted, or in Wayne County to the Detroit house of correction, for such period as said obligor shall continue to be in contempt, not to exceed 1 year. The court may also order an assignment to the friend of the court of of the salary, wages or other income of the person responsible for the payment of support and maintenance, which assignment shall continue until further order of the court. The order of assignment shall be effective 1 week after service upon the employer of a true copy of the order by personal service or by certified mail. Thereafter, the employer shall withhold from the earnings due the employee the amount specified in the order of assignment for transmittal to the friend of the court until further order of the court. The person ordered to pay the support and maintenance shall inform the friend of the court immediately of any change which would affect the assignment or the disbursement thereof. An employer shall not use the assignment as a basis, in whole or in part, for the discharge of an employee or for any other disciplinary action against the employee. Compliance by an employer with the order of assignment operates as a discharge of the employer's liability to the employee as to that portion of the employee's earnings so affected. The term employer as used in this section includes the state and any political subdivision thereof.

[Note: This section is substantially similar to section 16 of Act No. 8 of the Public Acts of 1952, as amended, Comp. Laws 1948, §780.166.]

Sec. 28. If the obligor asserts as a defense that he is not the father of the

child for whom support is sought and it appears to the court that the defense is not frivolous, and if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue. Otherwise the court may adjourn the hearing until the paternity issue has been adjudicated.

[Note: This section authorizes the responding court to adjudicate the issue of paternity under certain circumstances if the obligor denies that he is the father of a child for whom support is sought. No comparable provision is contained in the present Michigan law.]

Sec. 29. A responding court has the following duties which may be carried out through the clerk of the court or the friend of the court in counties having a friend of the court:

(1) to transmit to the initiating court any payment made by the obligor pursuant to any order of the court or otherwise; and

(2) to furnish to the initiating court upon request a certified statement of all payments made by the obligor.

[Note: This section is substantially similar to section 17 of Act No. 8 of the Public Acts of 1952, Comp. Laws 1948, §780.167.]

Sec. 30. An initiating court shall receive and disburse forthwith all payments made by the obligor or sent by the responding court. This duty may be carried out through the clerk of the court or by the friend of the court in counties having a friend of the court.

[Note: This section is substantially similar to section 18 of Act No. 8 of the Public Acts of 1952, Comp. Laws 1948, §780.168.]

Sec. 31. A responding court shall not stay the proceeding or refuse a hearing under this act because of any pending or prior action or proceeding for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody in this or any other state. The court shall hold a hearing and may issue a support order pendente lite. In aid thereof it may require the obligor to give a bond for the prompt prosecution of the pending proceeding. If the other action or proceeding is concluded before the hearing in the instant proceeding, and the judgment therein provides for the support demanded in the complaint being heard, the court must conform its support order to the amount allowed in the other action or proceeding. Thereafter the court shall not stay enforcement of its support order because of the retention of jurisdiction for enforcement purposes by the court in the other action or proceeding.

[Note: This section directs the responding court to not stay a proceeding under the act because an action for divorce, separation, annulment, adoption, custody, or habeas corpus is pending in the courts of this

or another state. If the other action provides for support, the responding court is to conform its order to that allowed in the other action. Retention of jurisdiction by another court does not stay enforcement of the support order. No comparable provision is contained in the present Michigan law.]

Sec. 32. A support order made by a court of this state pursuant to this act does not nullify and is not nullified by a support order made by a court of this state pursuant to any other law or by a support order made by a court of any other state pursuant to a substantially similar act or any other law, regardless of priority of issuance, unless otherwise specifically provided by the court. Amounts paid for a particular period pursuant to any support order made by the court of another state shall be credited against the amounts accruing or accrued for the same period under any support order made by the court of this state.

[Note: This section is similar to section 21 of Act No. 8 of the Public Acts of 1952, as amended, Comp. Laws 1948, §780.171, but makes it clear that a subsequent order by another court does not affect the order unless the court specifically provides otherwise.]

Sec. 33. Participation in any proceeding under this act does not confer jurisdiction upon any court over any of the parties thereto in any other proceeding.

[Note: This section is substantially identical with section 22 of Act No. 8 of the Public Acts of 1952, as amended, Comp. Laws 1948, §780.172.]

Sec. 34. To reimburse the county for the cost of handling support payments under this act, the court shall order the payment of $1.50 per month payable semi-annually on January 2 and July 2 thereafter, to the friend of the court or county clerk. The fees shall be paid by the person ordered to pay any support money for a child or other persons whom the court finds he has a duty to support. The fee shall be computed from the beginning date of the support order and shall continue while the order is operative. The service charges shall be paid 6 months in advance on each due date, except for the first payment, which shall be paid at the same time the support order is filed, and shall cover the period of time from that month until the next calendar due date above mentioned. Every order or judgment for the payment of temporary or permanent alimony or support money shall provide for the payment of the fees. All fees paid to the office of the friend of the court or county clerk shall be turned over to the county treasurer and credited to the general fund.

[Note: This section is substantially similar to section 23 of Act No. 8 of the Public Acts of 1952, as amended, Comp. Laws 1948, §780.173.]

Sec. 35. This act applies if both the obligee and the obligor are in this state but in different counties. If the court of the county in which the complaint is filed finds that the complaint sets forth facts from which it may be determined that the obligor owes a duty of support and finds that a court of another county in this state may obtain jurisdiction over the obligor or his property, the clerk of the court shall send the complaint and a certification of the findings to the court of the county in which the obligor or his property is found. The clerk of the court of the county receiving these documents shall notify the prosecuting attorney of their receipt. The prosecuting attorney and the court in the county to which the copies are forwarded then shall have duties corresponding to those imposed upon them when acting for this state as a responding state.

[Note: This section authorizes use of the principles and procedures of the act in intrastate situations. No comparable provision is contained in the present Michigan law.]

Sec. 36. If the attorney general is of the opinion that a support order is erroneous and presents a question of law warranting an appeal in the public interest, he may

(a) perfect an appeal to the proper appellate court if the support order was issued by a court of this state, or

(b) if the support was issued in another state, cause the appeal to be taken in the other state. In either case expenses of appeal may be paid on his order from funds appropriated for his office.

[Note: This section is designed to permit the attorney general to appeal cases presenting questions of law affecting the public interest. The present Michigan act does not contain such a provision, but presumably the attorney general could use his general powers to bring appeals in the public interest.]

Sec. 37. If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in sections 38 to 42.

[Note: This section is new and provides for an additional remedy for an obligee who has already obtained a support order in another state.]

Sec. 38. The obligee may register the foreign support order in a court of this state in the manner, with the effect, and for the purposes herein provided.

[Note: This section is new and provides for the registration in a court of this state of a foreign support order.]

Sec. 39. The clerk of the court shall maintain a registry of foreign support orders in which he shall file foreign support orders.

[Note: This section is new and directs the clerk of the court to maintain a registry of foreign support orders.]

Sec. 40. If this state is acting either as a rendering or a registering state, the prosecuting attorney upon the request of the court, the state department of social services, or a county or local department or officer shall represent the obligee in proceedings under sections 37 to 42.

[Note: This section is new and authorized the court of the state or a local department of social services to request the prosecuting attorney to represent an obligee in a registration proceeding.]

Sec. 41. (1) An obligee seeking to register a foreign support order in a court of this state shall transmit to the clerk of the court (1) three certified copies of the order with all modifications thereof, (2) one copy of the reciprocal enforcement of support act of the state in which the order was made, and (3) a statement verified and signed by the obligee, showing the post office address of the obligee, the last known place of residence and post office address of the obligor, the amount of support remaining unpaid, a description and the location of any property of the obligor available upon execution, and a list of the states in which the order is registered. Upon receipt of these documents the clerk of the court, without payment of a filing fee or other cost to the obligee, shall file them in the registry of foreign support orders. The filing constitutes registration under this act.

(2) Promptly upon registration the clerk of the court shall send by certified or registered mail to the obligor at the address given a notice of the registration with a copy of the registered support order and the post office address of the obligee. He shall also docket the case and notify the prosecuting attorney of his action. The prosecuting attorney shall proceed diligently to enforce the order.

[Note: This section is new and prescribes the documents which an obligee must provide in seeking registration of a foreign support order. The section also directs the clerk to give notice by registered or certified mail of the registration. The case is to be docketed and the prosecuting attorney is to be notified.]

Sec. 42. (1) Upon registration the registered foreign support order shall be treated in the same manner as a support order issued by a court of this state. It has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a support order of this state and may be enforced and satisfied in like manner.

(2) The obligor has 20 days after the mailing of notice of the registration in which to petition the court to vacate the registration or for other relief. If he does not so petition, the registered support order is confirmed.

(3) At the hearing to enforce the registered support order the obligor may present only matters that would be available to him as defenses in an action to enforce a foreign money judgment. If he shows to the court that an appeal from the order is pending or will be taken or that a stay of execution has been granted, the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired, or the order is vacated, upon satisfactory proof that the obligor has furnished security for payment of the support ordered as required by the rendering state. If he shows to the court any ground upon which enforcement of a support order of this state may be stayed, the court shall stay enforcement of the order for an appropriate period if the obligor furnishes the same security for payment of the support ordered that is required for a support order of this state.

[Note: This section is new and provides that a registered foreign support order is to be treated in the same manner as a support order issued by a circuit court of Michigan. The obligor has 20 days in which to contest the registration. Defenses available to an obligor are those available in an action to enforce a foreign money judgment. If the foreign order is being appealed or has been stayed, the court shall stay enforcement of the foreign support order if security for payment was provided as required in the state rendering the support order. If the order is stayed under Michigan law, the court shall stay enforcement if security for payment is furnished as required by Michigan law.]

Sec. 43. This act applies to proceedings commencing after the effective date of this act, but the court may apply the procedural provisions of this act to proceedings commenced under Act No. 8 of the Public Acts of 1952, as amended, being sections 780.151 to 780.174 of the Compiled Laws of 1948, prior to the effective date of this act.

[Note: This section continues the prior law as to proceedings commenced prior to the effective date of the act. The court, however, may utilize the procedural provisions of this act in the conduct of those proceedings.]

Sec. 44. Act No. 8 of the Public Acts of 1952, as amended, being sections 780.151 to 780.174 of the Compiled Laws of 1948, is repealed.

RECOMMENDATIONS RELATING TO RECOGNITION OF ACKNOWLEDGMENTS

A comprehensive statute on the subject of recognition of acknowledgments is becoming increasingly imperative as more and more citizens of the United States are employed away from their domiciliary states by American industry and the federal government, including the armed services. The federal government has designated various officials to serve their employees and others by authorizing them to take acknowledgments. This service can be performed efficiently and certainly only if the federal official has a simple method of taking an acknowledgment which will be recognized by the several states in the United States. Therefore, the National Conference of Commissioners on Uniform State Laws has prepared a Uniform Recognition of Acknowledgments Act which the Law Revision Commission recommends be adopted in Michigan. The enactment of the Uniform Act would substantially aid the citizens and residents of Michigan whenever they must conduct business outside the state of Michigan.

The major need for uniformity is in the qualifications of persons acceptable as notaries to notarize documents. Currently, the personnel regulations of the Foreign Service of the United States have more than ten pages of instructions to consuls and others admonishing them that if the acknowledgment is to be used in State X only a vice-consul may take the acknowledgment, but if it is used in State Y either a consul or a consul general may take an acknowledgment. The major use outside the enacting state is by personnel of the Armed Forces of the United States who are asked by persons connected with the Armed Forces installation to perform a notarial act for use elsewhere. Furthermore, existing Michigan legislation refers to officers within the Foreign Service who no longer exist, and additional federal legislation has authorized other personnel, such as wardens of federal prisons and officers of the weather service to make acknowledgments. These are not currently recognized by the laws of Michigan and other states.

The Uniform Recognition of Acknowledgments Act is an act governing recognition in the enacting state of acknowledgments and other notarial acts performed elsewhere for use in the enacting state. The act describes the persons whose notarial acts will be recognized in the enacting state. The act does not specify what instruments must be acknowledged or when proof of execution of an instrument is required. This act provides that whenever the laws of Michigan require an act of acknowledgment to be performed and whenever they authorize a notary public of Michigan to perform the act, then the officers designated in the Uniform Act may perform that act and it is to be recognized in Michigan. The Uniform Act lists the officers whose performance of notarial acts will be recognized in Michigan; it

prescribes for authentication of the power of the officers necessary for recognition of the acknowledgment; it states what the officer performing notarial acts shall certify; it states what certificates used by the officer taking the acknowledgment will be recognized in Michigan. The act also prescribes the short form of acknowledgment which will be recognized if used, but the short form does not prohibit the use of any other form.

The act does not require the amendment or repeal of any existing legislation in Michigan but the old Uniform Act adopted in 1895 in Michigan should be repealed as no longer necessary. The new act covers the material contained in the older act and persons using procedures under the 1895 legislation will still be in compliance with the requirements of the new act.

The proposed bill follows:

PROPOSED BILL

A bill to establish the recognition to be given in this state to acknowledgments and notarial acts outside this state and to repeal certain acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1. For the purposes of this act, "notarial acts" means acts which the laws of this state authorize notaries public of this state to perform, including the administering of oaths and affirmations, taking proof of execution and acknowledgments of instruments, and attesting documents. Notarial acts may be performed outside this state for use in this state with the same effect as if performed by a notary public of this state by the following persons authorized pursuant to the laws and regulations of other governments in addition to any other person authorized by the laws of this state:

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

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

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

(d) a commissioned officer in active service with the armed forces of the United States and any other person authorized by regulation of the armed forces to perform notarial acts if the notarial act is performed

for one of the following or his dependents: a merchant seaman of the United States, a member of the armed forces of the United States, or any other person serving with or accompanying the armed forces of the United States; or

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

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

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

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

(b) the official seal of the person performing the notarial act is affixed to the document; or

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

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

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

Sec. 3. The person taking an acknowledgment shall certify that:

(a) the person acknowledging appeared before him and acknowledged he executed the instrument; and

(b) the person acknowledging was known to the person taking the acknowledgment or that the person taking the acknowledgment had satisfactory evidence that the person acknowledging was the person described in and who executed the instrument.

Sec. 4. The form of a certificate of acknowledgement used by a person whose authority is recognized under section 1 shall be accepted in this state if:

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

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

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

Sec. 5. The words "acknowledged before me" means

(a) that the person acknowledging appeared before the person taking the acknowledgment,

(b) that he acknowledged he executed the instrument,

(c) that, in the case of:

(1) a natural person, he executed the instrument for the purposes therein stated;

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

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

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

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

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

Sec. 6. The forms of acknowledgment set forth in this section may be used and are sufficient for their respective purposes under any law of this state. The forms shall be known as "statutory short forms of acknowledgment" and may be referred to by that name. The authorization of the forms in this section does not preclude the use of other forms.

(a) For an individual acting in his own right:

State of _____

County of _____

The foregoing instrument was acknowledged before me this (date) by (name of person acknowledged.)

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

(b) For a corporation:

State of _____

County of _____

The foregoing instrument was acknowledged before me this (date) by (name of officer or agent, title or officer or agent) of (name of corporation acknowledging) a (state or place of incorporation) corporation, on behalf of the corporation.

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

(c) For a partnership:

State of _____

County of _____

The foregoing instrument was acknowledged before me this (date) by (name of acknowledging partner or agent), partner (or agent) on behalf of (name of partnership), a partnership.

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

(d) For an individual acting as principal by an attorney in fact:

State of _____

County of _____

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

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

(e) By any public officer, trustee, or personal representative:

State of _____

County of _____

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

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

Sec. 7. A notarial act performed prior to the effective date of this act is not affected by this act. This act provides an additional method of proving notarial acts. Nothing in this act diminishes or invalidates the recognition accorded to notarial acts by other laws of this state.

Sec. 8. This act shall be so interpreted as to make uniform the laws of those states which enact it.

Sec. 9. This act may be cited as the "uniform recognition of acknowledgments act."

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