Michigan

Law Revision Commission

Fourth Annual Report

1969

MICHIGAN LAW REVISION COMMISSION

Term Members:

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

Ex-Officio Members:

Senators:
Robert L. Richardson
Basil W. Brown

Representatives:
J. Robert Traxler
Donald E. Holbrook, Jr.

Director, Legislative Service Bureau
A. E. Reyhons, Secretary
Box 240
Lansing, Michigan 48902

Executive Secretary:
William J. Pierce
University of Michigan Law School
Hutchins Hall
Ann Arbor, Michigan 48104

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MICHIGAN LAW REVISION COMMISSION
Fourth Annual Report to the Legislature

To the Members of the Michigan Legislature:

The Law Revision Commission hereby presents its fourth 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 1969 were Senator Robert L. Richardson of Saginaw, Senator Basil W. Brown of Highland Park, Representative J. Robert Traxler of Bay City, Representative Donald E. Holbrook, Jr. of Clare, 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 continued to serve as Executive Secretary of the Commission. Effective December 31, 1969, Professor Pierce resigned as Executive Secretary to assume additional duties as Executive Director of the National Conference of Commissioners of Uniform State Laws. The members of the Law Revision Commission wish to acknowledge their deep gratitude for the excellent work performed by him in serving as the initial Executive Secretary of this Commission and setting the pattern for future gainful work by the Commission. It is with deep regret that we accept his resignation.

Effective January 1, 1970, Professor Carl S. Hawkins of the University of Michigan Law School will assume the duties of 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 fourth 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) Local Administrative Procedures Act
(2) Uniform Child Custody Jurisdiction Act
(3) Personal Service Contracts of Minors Act
(4) Artist-Art Dealer Relationships Act
(5) Warranties in Sales of Art Act
(6) Minor Students Capacity to Borrow Act
(7) Doctor-Psychologist Patient Privilege Act
(8) Wayne Circuit Court Commissioners Powers Act
(9) Insurance Policy in Lieu of Bond Act
(10) Appeals from Municipal Courts Act
(11) Circuit Court Commissioner Powers of Magistrate Act
(12) Interest on Judgments Act
(13) Constitutional Amendment re Juries of 12

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

In addition to the foregoing, the Commission recommends favorable consideration of the following prior recommendations upon which no final

action was taken by the Legislature in 1969:

(1) Condemnation Procedures Act -- S.B. 258 passed by Senate -- presently before House Judiciary Committee. See Recommendations of 1968 Annual Report, p. 11.

(2) Attachment Fees Act -- S.B. 158, H.B. 2279. See Recommendations of 1968 Annual Report, p. 23.

(3) Appeals from Probate Court Act -- S.B. 152 passed by Senate -- presently before House Judiciary Committee. See Recommendations of 1968 Annual Report, p. 32.

(4) Uniform Single Publications Act -- See Recommendations of 1968 Annual Report, p. 36.

(5) Revised Uniform Reciprocal Enforcement of Support Act -- S.B. 161, H.B. 2237. See Recommendations of 1968 Annual Report, p. 46.

(6) Recrimination in Divorce Act -- H.B. 2226 passed by House -- presently before Senate Judiciary Committee. See Recommendations of 1967 Annual Report, p. 40.

(7) Quo Warranto Act -- H.B. 3327 -- presently before House Judiciary Committee. See Recommendations of 1967 Annual Report, p. 43.

(8) Contribution Among Joint Tortfeasors Act -- S.B. 155, H.B. 2263. See Recommendations of 1967 Annual Report, p. 57.

(9) Qualifications of Fiduciaries Act -- H.B. 2278 passed by House -- presently before Senate Judiciary Committee. See Recommendations of 1966 Annual Report, p. 32.

(10) Land Contract Foreclosures -- S.B. 3159, H.B. 2269. See Recommendations of 1967 Annual Report, p. 55.

Topics on the current study agenda of the Commission are:

(1) Corporation Code
(2) Court Costs
(3) Interspousal and Parental Immunity From Torts
(4) Joint Estates in Real and Personal Property
(5) Automobile Accident Medical Payments Protection
(6) Uniform Choice of Forum Act
(7) Uniform Adoption Act

(8) Ombudsman Act
(9) Summary Proceedings for Possession of Real Property Act
(10) District Court Venue
(11) Medical Privilege Waiver
(12) Small Claims Revision Act
(13) Combination of Wayne County Courts
(14) Technical Amendments to Revised Judicature Act
(15) Tax Refund Procedures

Topics on the future study calendar of the Commission are:

(1) Evidence Code
(2) Divorce Laws
(3) Landlord Tenant Relations
(4) Disposition of Automobile Accident Cases
(5) Mechanics Liens

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 continues to welcome the advice and assistance of the justices and judges of the courts of this state. The Commission has also reviewed court decisions 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 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

1969 Legislative Session

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

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

Respectfully submitted,

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

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

Date: December 15, 1969

RECOMMENDATION RELATING TO LOCAL ADMINISTRATIVE PROCEDURES

One of the most significant developments in government during the last fifty years has been the increasing utilization of the administrative agency having quasi-legislative and quasi-judicial powers. This phenomenon has occurred at all levels of government, including local units. Because of the extraordinary combination of powers exercised by administrative agencies, their operations have been carefully studied at both federal and state levels, but little attention has been afforded the operations of local agencies. Local agencies, such as county, municipal, and township boards and agencies and local school boards, however, appear to be no less subject to opportunities for abuse of powers than the larger federal or state agencies.

Michigan was one of the first states to adopt legislation dealing with administrative rules, administrative procedures, and judicial review at the state level. On recommendation of the Law Revision Commission, the earlier basic statutes were completely revised during the 1969 session of the Michigan Legislature when Public Act 306 was enacted. See Law Revision Commission Recommendation, 1967 Annual Report, p. 11. At the time the Law Revision Commission undertook its comprehensive review of state administrative procedures, it also carefully examined the desirability of developing additional legislation governing local administrative procedures. Local agencies often have as much impact upon the affairs of our citizens as state and federal agencies.

As a result of this study, the Law Revision Commission has concluded that new comprehensive legislation dealing with rule-making, administrative procedures, and decisions of local agencies is necessary in Michigan. The reason for this conclusion is that no adequate statutory provisions exist and the lack of statutory direction causes confusion and unduly interferes with the conduct of the business of the citizens with these agencies. Reliance upon judicial decisions is an unsatisfactory substitute for a sound legislative scheme.

The proposed bill governs rule-making, the rights of the public in administrative procedures before local governmental agencies, the hearing of contested cases, and judicial review of local agency orders and decisions. The proposed legislation closely parallels the provisions of law recently made applicable to state administrative agencies (Public Acts of 1969, Act No. 306), but eliminates the more sophisticated mechanisms not appropriate to local action.

The proposed bill follows:

PROPOSED BILL

A bill relating to rule-making, the rights of the public in administrative procedures before local governmental administrative agencies; the hearing of contested cases; and the decisions and orders of local administrative agencies and the judicial review thereof.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER 1. GENERAL PROVISIONS

Sec. 1. This act shall be known and may be cited as the "local administrative procedures act of 1970."

Sec. 3. (1) "Adoption of a rule" means that step in the processing of a rule consisting of the formal action of an agency establishing a rule before its promulgation.

(2) "Local agency" means an agency, bureau, division, section, board, commission, trustee, authority or officer, or any combination thereof, of subdivisions of government, other than state agencies, including counties, cities, villages and townships, created by law and authorized or directed by law to promulgate rules or to make final decisions in contested cases. It does not include local legislative bodies or courts, the chief executive officer of a subdivision of government, or a local civil service commission.

(3) "Contested case" means a proceeding, including but not limited to rate-making, price-fixing and licensing, in which a determination of the legal rights, duties or privileges of a named party is required by law to be made by a local agency only after an opportunity for an evidentiary hearing.

(4) "Court" means the circuit court.

Sec. 5. (1) "License" includes the whole or part of a local agency permit, certificate, approval, registration, charter or similar form of permission required by law, but does not include a license required solely for revenue purposes.

(2) "Licensing" includes local agency activity involving the grant, denial, renewal, suspension, revocation, annulment, withdrawal, recall, cancellation or amendment of a license.

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

(4) "Person" means an individual, partnership, association, corporation, governmental subdivision or public or private organization of any kind other than the local agency engaged in the particular processing of a rule, declaratory ruling or contested case.

(5) "Processing of a rule" means all action required or authorized by this act as to a rule which is to be promulgated, including its adoption, and ending with its promulgation.

(6) "Promulgation of a rule" means that step in the processing of a rule consisting of the filing of a rule as provided in section 46 of this act.

Sec. 7. "Rule" means a local agency regulation, statement, standard, policy, ruling or instruction of general applicability, which implements or applies law enforced or administered by the local agency, or which prescribes the organization, procedure or practice of the local agency, including the amendment, suspension or rescission thereof, but does not include the following:

(a) An opinion of the attorney of the local government subdivision.

(b) A rule or order establishing or fixing rates or tariffs.

(c) A rule relating to use of streets or highways the substance of which is indicated to the public by means of signs or signals.

(d) A determination, decision, or order in a contested case.

(e) Intergovernmental, interagency, or intra-agency memorandum, directive or communication which does not affect the rights of, or procedures and practices available to, the public.

(f) A form with instructions, an interpretative statement, a guideline, an informational pamphlet or other material which in itself does not have the force and effect of law but is merely explanatory.

(g) A declaratory ruling or other disposition of a particular matter as applied to a specific set of facts involved.

(h) A decision by a local agency to exercise or not to exercise a permissive statutory, charter or ordinance power, although private rights or interests are affected thereby.

Sec. 11. This act shall not be construed to limit or repeal additional requirements imposed by statute, ordinance, charter, or otherwise, or to

change existing agency procedures, which are equivalent to or exceed the standards of administrative procedure prescribed in this act.

CHAPTER 2. PUBLIC INSPECTION

Sec. 21. (1) A local agency whether or not authorized or directed by law to promulgate rules shall make available for public inspection and copying during its business hours:

(a) Final orders or decisions in contested cases and the records on which they were made.

(b) Promulgated rules.

(c) Other written statements which implement or interpret law, rules or policy, including but not limited to guidelines, manuals, and forms with instructions, adopted or used by the local agency in the discharge of its functions.

(2) To the extent required to prevent an unwarranted invasion of personal privacy, a local agency may delete details when it makes available a matter required to be made available for public inspection.

(3) If the local agency publishes the material required to be made available for public inspection, the local agency may charge not more than cost for each copy of the publication unless otherwise provided by law.

Sec. 22. (1) This chapter does not apply to:

(a) Material exempted from disclosure by law.

(b) Interagency or intra-agency letters, memoranda or statements which would not be available by law to a party other than an agency in litigation with the local agency and which, if disclosed, would impede the local agency in the discharge of its functions.

(c) Material obtained in confidence from a person, matter privileged by law and trade secrets.

(d) Financial and commercial information relating to a specific regulated person prepared by or for the use of a local agency responsible for the regulation or supervision of the person.

(e) Investigatory materials compiled or used for regulatory or law enforcement purposes except to the extent available by law to a party to

a contested case.

(f) Material, the disclosure of which would constitute an unwarranted invasion of privacy.

(2) This chapter does not authorize the withholding of information otherwise required by law to be made available to the public or to a party in a contested case.

Sec. 23. (1) Except to the extent that a person has actual and timely notice of the terms thereof, a person shall not in any manner be required to resort to, or be adversely affected by, a matter required to be published and made available and not so published and made available.

(2) The circuit court for the county in which the local agency records are situated may order, on petition of any person, the production of any identifiable material improperly withheld from public inspection and copying.

CHAPTER 3. PROCEDURES FOR PROCESSING RULES

Sec. 31. (1) Rules which became effective before the effective date of this act continue in effect until amended or rescinded.

(2) When a law authorizing or directing a local agency to promulgate rules is repealed and substantially the same rule-making power or duty is vested in the same or a successor local agency by a new provision of law or the function of the local agency to which the rules are related is transferred to another local agency, the existing rules of the original local agency relating thereto continue in effect until amended or rescinded.

(3) The rescission of a rule does not revive a rule which was previously rescinded.

(4) The amendement or rescission of a valid rule does not defeat or impair a right accrued, or affect a penalty incurred, under the rule.

(5) A rule may be amended or rescinded by another rule which constitutes the whole or a part of a filing of rules or as a result of an act of the legislature or the local legislative body.

Sec. 32. (1) A rule or exception to a rule shall not discriminate in favor of or against any person, and a person affected by a rule is entitled to the same benefits as any other person under the same or similar circumstances.

(2) The violation of a rule is a crime when so provided by law. A rule shall not make an act or omission to act a crime or prescribe a criminal penalty for violation of a rule.

(3) A local agency may adopt, by reference in its rule and without repeating the adopted matter in full, all or any part of a code, standard or regulation which has been adopted by an agency of the United States, the state of Michigan or by a nationally recognized organization or association. The reference shall fully identify the adopted matter by date and otherwise. The reference shall not cover any later amendments and editions of the adopted matter, but if the local agency wishes to incorporate them in its rule it shall amend the rule or promulgate a new rule therefor. The agency shall have available copies of the adopted matter for distribution to the public at cost and the rules shall state where copies of the adopted matter are available and the cost thereof as of the time the rule is adopted.

Sec. 33. (1) A local agency may adopt rules when expressly authorized to do so by statute or ordinance or when there is no expressed or implied prohibition of law against adoption of rules.

(2) A local agency may promulgate rules describing its organization and stating the general course and method of its operations and may include therein forms with instructions. Sections 41 and 42 do not apply to such rules.

(3) A local agency may promulgate rules prescribing its procedures available to the public and the methods by which the public may obtain information and submit requests.

(4) A local agency may promulgate rules, not inconsistent with this act or other applicable law, prescribing procedures for contested cases.

Sec. 41. (1) Before the adoption of a rule a local agency shall give notice of a public hearing and offer any person an opportunity to present data, views and arguments. The notice shall be given within the time prescribed by any applicable statute, charter, or ordinance, or if none then at least 10 days before the public hearing and at least 20 days before the adoption of the rule. The notice shall include:

(a) A reference to the authority under which the action is proposed.

(b) The time and place of the public hearing and a statement of the manner in which data, views and arguments may be submitted to the local agency at other times by any person.

(c) A statement of the terms or substance of the proposed rule or a description of the subjects and issues involved, and the proposed effective date of the rule.

(2) The local agency shall transmit copies of the notice to all persons who requested the local agency in writing for advance notice of proposed action which may affect them. A notice shall be sent by mail or otherwise in writing to the last address specified by the person. Requests for notices shall be renewed annually.

(3) The public hearing shall comply with any applicable statute or other laws but is not subject to the provisions of this act governing contested cases, unless a rule is required by law to be adopted pursuant to adjudicatory procedures.

Sec. 42. The local agency shall publish the notice as prescribed in any applicable law, or if none then in a manner selected by the local agency as best calculated to give notice to persons likely to be affected by the proposed rule. Methods that may be employed by the local agency, depending upon the circumstances, include publication of the notice in a newspaper of general circulation or, when appropriate, in trade, industry, governmental or professional publications.

Sec. 43. (1) A rule hereafter promulgated is not valid unless processed in substantial compliance with sections 41 and 42. However, inadvertent failure to give the notice to any person as required by section 41 does not invalidate a rule processed thereunder.

(2) A proceeding to contest a rule on the ground of noncompliance with the procedural requirements of sections 41 and 42 shall be commenced within 2 years after the effective date of the rule.

Sec. 44. Sections 41 and 42 do not apply to an amendment or rescission of a rule which is obsolete or superseded, or which is required to make obviously needed corrections to make the rule conform to an amended or new law or to accomplish any other solely formal purpose, if a statement to such effect is included in the rule at the time it was filed.

Sec. 46. (1) To promulgate a rule a local agency shall file a certified copy of the rule in the office of the clerk or similar official of the local government subdivision within which the local agency operates. No rule shall be effective until so filed.

(2) The clerk or similar official shall keep a permanent register of rules open to public inspection.

Sec. 47. (1) Except as provided in section 48, each rule hereafter adopted becomes effective 20 days after promulgation, except if a later date is required by law, or specified in the rule, the later date shall be the effective date.

(2) A local agency may withdraw a promulgated rule which has not become effective by giving written notice of the withdrawal to the clerk or similar official with whom the rule was filed.

Sec. 48. (1) If a local agency finds that preservation of the public health, safety or welfare requires promulgation of an emergency rule without following the notice and participation procedures required by sections 41 and 42 and states in the rule its reasons for that finding, the agency may dispense with all or part of such procedures and file in the office of the clerk or similar official of the local governmental subdivision within which the agency operates a copy of the rule endorsed as an emergency rule. The emergency rule is effective on filing and remains in effect until a date fixed therein or 6 months after the date of its promulgation, whichever is earlier. The rule may be extended once for not more than 6 months by filing with the clerk or similar official of a certificate by the local agency of the need for such extension.

(2) If the local agency desires to promulgate an identical or similar rule with an effectiveness beyond the final effective date of an emergency rule, it shall comply with procedures prescribed by this act for processing of a rule which is not an emergency rule.

Sec. 61. (1) The filing of a rule under this act raises a rebuttable presumption that the rule was duly adopted and made available for public inspection as required by this act.

(2) The courts shall take judicial notice of a rule which becomes effective under this act.

Sec. 64. Unless an exclusive procedure or remedy is provided by a statute governing the local agency, the validity or applicability of a rule may be determined in an action for declaratory judgment when the court finds that the rule or its threatened application interferes with or impairs, or imminently threatens to interfere with or impair, the legal rights or privileges of the plaintiff. The local agency shall be made a party to the action. A declaratory judgment may be rendered whether or not the plaintiff has requested a local agency to pass upon the validity or applicability of the rule in question. This section shall not be construed to prohibit the determination of the validity or applicability of the rule in any other action or proceeding in which its invalidity or inapplicability is asserted.

CHAPTER 4. PROCEDURES IN CONTESTED CASES

Sec. 71. In a contested case all parties will be afforded an opportunity for a full and fair hearing after reasonable notice, in conformity with all applicable requirements of law. The notice shall be in writing and shall state the time, place and nature of the hearing.

Sec. 72. Opportunity shall be afforded all parties to respond to and to present evidence on all issues involved.

Sec. 73. The evidence shall be heard by the officials of the local agency who are to render the final decision or by persons designated by them for that purpose. The decision shall be based exclusively on the evidence received at the hearing and on matters on which the courts of this state would take judicial notice. Evidence shall be admitted if it is of the type commonly relied upon by reasonably prudent men in the conduct of their affairs. Each party shall be notified by mail of the decision or order. Oral proceedings at which evidence is presented may be recorded, but need not be transcribed unless requested by a party who shall pay for the transcription of the portion requested except as otherwise provided by law.

Sec. 74. In cases where the evidence received at the hearing is not stenographically reported or otherwise recorded and in cases where the local agency's findings are based in whole or in part upon reports of physical tests or physical examinations not supported by proofs and evidence presented at the hearing, or on staff reports which were not made available for examination by the parties for a reasonable time prior to the hearing and in cases where for justifiable reasons a testimonial record made at the hearing is asserted to be inadequate for purposes of judicial review, the local agency shall, upon written request filed with it within 20 days after the mailing of the decision or order, grant a rehearing. At such rehearing, all evidence upon which the local agency or any other party wishes to rely shall be presented under oath and a complete stenographic record made of all testimony. Such record, together with the documentary evidence that may be received and matters in which the courts of this state would take judicial notice, shall constitute the sole basis of decision. Upon the completion of such rehearing, the local agency shall promptly issue and mail to the parties a decision on the rehearing.

Sec. 75. Except as otherwise provided by law, an agency may order a rehearing in a contested case on its own motion or on request of a party.

CHAPTER 5. LICENSES

Sec. 91. (1) When licensing is required to be preceded by notice and an opportunity for hearing, the provisions of this act governing a contested case apply.

(2) When a licensee makes timely and sufficient application for renewal of a license or a new license with reference to activity of a continuing nature, the existing license does not expire until a decision on the application is finally made by the local agency, and if the application is denied or the terms of the new license are limited, until the last day for applying for judicial review of the agency order or a later date fixed by order of the reviewing court. This subsection does not affect valid local agency action then in effect summarily suspending such license under section 92.

Sec. 92. Before the commencement of proceedings for suspension, revocation, annulment, withdrawal, recall, cancellation, or amendment of a license, a local agency shall give personally or by mail, to the licensee, notice of facts or conduct which warrant the intended action. The licensee shall be given an opportunity to show compliance with all lawful requirements for retention of the license. If the local agency finds that the public health, safety or welfare or the protection of the public treasury requires emergency action and incorporates this finding in its order, summary suspension of a license may be ordered effective on the date specified in the order or on service of a certified copy of the order on the licensee, whichever may be later, and effective during the proceedings. The proceedings shall be promptly commenced and determined.

CHAPTER 6. JUDICIAL REVIEW

Sec. 101. A party who has exhausted all administrative remedies available within a local agency, and who is aggrieved by a final decision or order in a contested case, whether such decision or order is affirmative or negative in form, is entitled as a matter of right to judicial review thereof. Exhaustion of administrative remedies does not require the filing of a motion or application for rehearing or reconsideration unless the agency rules require such filing before judicial review is sought. A preliminary, procedural or intermediate local agency action or ruling is not immediately reviewable, except that the court may grant leave for review of such action if review of the local agency's final decision or order would not provide an adequate remedy.

Sec. 102. Judicial review of a final decision or order in a contested case shall be by any applicable review proceeding in any court specified by law. In the absence or inadequacy thereof, judicial review shall be by any applicable form of action permitted by general court rules, or by a

petition for review filed as a complaint in accordance with sections 103 to 105.

Sec. 103. (1) A complaint setting forth a petition for review as a matter of venue shall be filed in the circuit court of the county in which the local agency has its principal office.

(2) A complaint shall contain a concise statement of:

(a) The nature of the proceedings as to which review is sought.

(b) The facts on which venue is based.

(c) The grounds on which relief is sought.

(d) The relief sought.

(3) The plaintiff shall attach to the complaint, as an exhibit, a copy of the agency decision or order of which review is sought.

Sec. 104. (1) A complaint shall be filed in the court within 30 days after the date of mailing notice of the final decision or order of the local agency, or if a written request for rehearing before the local agency is filed within 20 days after the mailing of the decision or order, then within 30 days after delivery or mailing notice of the decision or order thereon. The filing of the complaint does not stay enforcement of the local agency action but the local agency may grant, or the court may order, a stay upon appropriate terms.

(2) Within 30 days after service of the complaint, or within such further time as the court allows, the local agency shall transmit to the court the original or certified copy of the entire record of the proceedings, unless parties to the proceedings for judicial review stipulate that the record be shortened. The local agency may require of plaintiff payment or security for payment for any transcript of testimony prepared by reason of the complaint. A party unreasonably refusing to stipulate to a shortening of the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

Sec. 105. If timely application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court than an inadequate record was made at the hearing before the agency or that the additional evidence is material, and that there were good reasons for failing to record or present it in the proceeding before the agency, the court shall order the taking of additional evidence before the agency on such conditions as the court deems proper. The agency may modify its findings, decision or order because of the additional evidence and shall

file with the court the additional evidence and any new findings, decision or order, which shall become part of the record. The local agency may require of plaintiff payment or security for payment for any transcript of the additional testimony prepared by reason of the complaint.

Sec. 106. (1) Except when a statute or the constitution provides for a different scope of review, the court shall hold unlawful and set aside a decision or order of a local agency if substantial rights of the plaintiff have been prejudiced because the decision or order is any of the following:

(a) In violation of the constitution or a statute, charter or ordinance.

(b) In excess of the statutory authority or jurisdiction of the agency.

(c) Made upon unlawful procedure resulting in material prejudice to a party.

(d) Not supported by competent, material and substantial evidence on the whole record.

(e) Arbitrary, capricious or clearly an abuse or unwarranted exercise of discretion.

(f) Affected by other substantial and material error of law.

(2) The court, as appropriate, may affirm, reverse or modify the decision or order or remand the case for further proceedings.

CHAPTER 7. MISCELLANEOUS PROVISIONS

Sec. 113. This act is effective July 1, 1971, and except as to proceedings then pending applies to all local agencies and proceedings therein not expressly exempted.

RECOMMENDATION RELATING TO THE UNIFORM CHILD CUSTODY JURISDICTION ACT

The Uniform Child Custody Jurisdiction Act, promulgated by the National Conference of Commissioners on Uniform State Laws, is intended to bring a measure of stability to the chaos that now exists in interstate child custody jurisdiction matters. The public is increasingly concerned over the fact that thousands of children are shifted from state to state and from one family to another while parents or other persons battle over their custody in the courts of several states. Often children are snatched from one parent and taken across state lines where the court is petitioned for an award of custody. In some cases as many as three different parties may be fighting over the right to have custody to a particular child. It is also well known that those who lose court battles often are unwilling to accept the judgment of the court. Children are then removed in an unguarded moment to another state where the recalcitrant party hopes to find a more sympathetic ear for his plea of custody.

The harm done to children cannot be overestimated. This unfortunate condition has been aided and facilitated rather than discouraged by law. There is no statutory law in this area and the judicially created law is unsettled. In Michigan, a court may exercise jurisdiction "to the extent permitted by the constitution of the United States"(Mich. Comp. Laws1948, § 600.775). The judicial trend has been toward permitting custody claimants to sue in the courts of almost any state, no matter how fleeting the contact of the family and the child with that state. Under the present law, the courts of the various states have acted in isolation and at times in competition with each other, with disastrous consequences.

To remedy this intolerable situation, the Commissioners on Uniform State Laws developed the Uniform Child Custody Jurisdiction Act. The Act limits custody jurisdiction to the state where the child has his home or where there are other strong contacts with the child and his family. It also provides for recognition and enforcement of custody decrees of other states in many instances. Jurisdiction to modify decrees of other states is limited by giving a jurisdictional preference to the prior court in certain cases. Access to a court may be denied if the custody claimant has engaged in child snatching or other abusive practice. The Act further encourages interstate cooperation and communication to assist in bringing about interstate judicial assistance in custody cases.

The Law Revision Commission recommends enactment of the Uniform Act in Michigan as a part of the Revised Judicature Act. The Commission believes that the Uniform Act will assist in avoidance of jurisdictional

conflicts, thereby serving the best interests of a child.

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 600.9928 of the Compiled Laws of 1948, by adding 1 new chapter to stand as chapter 8.

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 600.9928 of the Compiled Laws of 1948, is amended by adding 1 new chapter to stand as chapter 8, to read as follows:

CHAPTER 8

SEC. 801. (1) THE GENERAL PURPOSES OF THIS CHAPTER ARE TO:

(A) AVOID JURISDICTIONAL COMPETITION AND CONFLICT WITH COURTS OF OTHER STATES IN MATTERS OF CHILD CUSTODY WHICH HAVE IN THE PAST RESULTED IN THE SHIFTING OF CHILDREN FROM STATE TO STATE WITH HARMFUL EFFECTS ON THEIR WELL-BEING;

(B) PROMOTE COOPERATION WITH THE COURTS OF OTHER STATES TO THE END THAT A CUSTODY JUDGMENT OR DECREE IS RENDERED IN THAT STATE WHICH CAN BEST DECIDE THE CASE IN THE INTEREST OF THE CHILD;

(C) ASSURE THAT LITIGATION CONCERNING THE CUSTODY OF A CHILD TAKE PLACE ORDINARILY IN THE STATE WITH WHICH THE CHILD AND HIS FAMILY HAVE THE CLOSEST CONNECTION AND WHERE SIGNIFICANT EVIDENCE CONCERNING HIS CARE, PROTECTION, TRAINING, AND PERSONAL RELATIONSHIPS IS MOST READILY AVAILABLE, AND THAT COURTS OF THIS STATE DECLINE THE EXERCISE OF JURISDICTION WHEN THE CHILD AND HIS FAMILY HAVE A CLOSER CONNECTION WITH ANOTHER STATE;

(D) DISCOURAGE CONTINUING CONTROVERSIES OVER CHILD CUSTODY IN THE INTEREST OF GREATER STABILITY OF HOME ENVIRONMENT AND OF SECURE FAMILY RELATIONSHIPS FOR THE CHILD;

(E) DETER ABDUCTIONS AND OTHER UNILATERAL REMOVALS OF CHILDREN UNDERTAKEN TO OBTAIN CUSTODY AWARDS;

(F) AVOID RE-LITIGATION OF CUSTODY DECISIONS OF OTHER STATES IN THIS STATE INSOFAR AS FEASIBLE;

(G) FACILITATE THE ENFORCEMENT OF CUSTODY JUDGMENTS OR DECREES OF OTHER STATES;

(H) PROMOTE AND EXPAND THE EXCHANGE OF INFORMATION AND OTHER FORMS OF MUTUAL ASSISTANCE BETWEEN THE COURTS OF THIS STATE AND THOSE OF OTHER STATES CONCERNED WITH THE SAME CHILD; AND

(I) MAKE UNIFORM THE LAW OF THOSE STATES WHICH ENACT IT.

(2) THIS CHAPTER SHALL BE CONSTRUED TO PROMOTE THE GENERAL PURPOSES STATED IN THIS SECTION.

SEC. 802. AS USED IN THIS CHAPTER:

(A) "CONTESTANT" MEANS A PERSON, INCLUDING A PARENT, WHO CLAIMS A RIGHT TO CUSTODY OR VISITATION RIGHTS WITH RESPECT TO A CHILD;

(B) "CUSTODY DETERMINATION" MEANS A COURT DECISION AND COURT ORDERS AND INSTRUCTIONS PROVIDING FOR THE CUSTODY OF A CHILD, INCLUDING VISITATION RIGHTS; IT DOES NOT INCLUDE A DECISION RELATING TO CHILD SUPPORT OR ANY OTHER MONETARY OBLIGATION OF ANY PERSON;

(C) "CUSTODY PROCEEDING" INCLUDES PROCEEDINGS IN WHICH A CUSTODY DETERMINATION IS ONE OF SEVERAL ISSUES, SUCH AS AN ACTION FOR DIVORCE OR SEPARATION, AND INCLUDES CHILD NEGLECT AND DEPENDENCY PROCEEDINGS;

(D) "JUDGMENT" OR "CUSTODY JUDGMENT" MEANS A CUSTODY JUDGMENT CONTAINED IN A JUDICIAL ORDER, DECREE OR JUDGMENT MADE IN A CUSTODY PROCEEDING, AND INCLUDES AN INITIAL ORDER, DECREE OR JUDGMENT AND A MODIFICATION ORDER, DECREE OR JUDGMENT;

(E) "HOME STATE" MEANS THE STATE IN WHICH THE CHILD IMMEDIATELY PRECEDING THE TIME INVOLVED LIVED WITH HIS PAR-

ENTS, A PARENT, OR A PERSON ACTING AS PARENT, FOR AT LEAST 6 CONSECUTIVE MONTHS, AND IN THE CASE OF A CHILD LESS THAN 6 MONTHS OLD THE STATE IN WHICH THE CHILD LIVED FROM BIRTH WITH ANY OF THE PERSONS MENTIONED. PERIODS OF TEMPORARY ABSENCE OF ANY OF THE NAMED PERSONS ARE COUNTED AS PART OF THE 6-MONTH OR OTHER PERIOD;

(F) "INITIAL JUDGMENT" MEANS THE FIRST CUSTODY ORDER, DECREE OR JUDGMENT CONCERNING A PARTICULAR CHILD;

(G) "MODIFICATION JUDGMENT" MEANS A CUSTODY ORDER, DECREE OR JUDGMENT WHICH MODIFIES OR REPLACES A PRIOR ORDER, DECREE OR JUDGMENT, WHETHER MADE BY THE COURT WHICH RENDERED THE PRIOR ORDER, DECREE OR JUDGMENT OR BY ANOTHER COURT;

(H) "PHYSICAL CUSTODY" MEANS ACTUAL POSSESSION, AND CONTROL OF A CHILD;

(I) "PERSON ACTING AS PARENT" MEANS A PERSON, OTHER THAN A PARENT, WHO HAS PHYSICAL CUSTODY OF A CHILD AND WHO HAS EITHER BEEN AWARDED CUSTODY BY A COURT OR CLAIMS A RIGHT TO CUSTODY; AND

(J) " STATE" MEANS ANY STATE, TERRITORY, OR POSSESSION OF THE UNITED STATES, THE COMMONWEALTH OF PUERTO RICO, AND THE DISTRICT OF COLUMBIA.

SEC. 803. A COURT OF THIS STATE WHICH IS COMPETENT TO DECIDE CHILD CUSTODY MATTERS HAS JURISDICTION TO MAKE A CHILD CUSTODY DETERMINATION BY INITIAL OR MODIFICATION DECREE OR JUDGMENT IF:

(A) THIS STATE (I) IS THE HOME STATE OF THE CHILD AT THE TIME OF COMMENCEMENT OF THE PROCEEDING, OR (II) HAD BEEN THE CHILD'S HOME STATE WITHIN 6 MONTHS BEFORE COMMENCEMENT OF THE PROCEEDING AND THE CHILD IS ABSENT FROM THIS STATE BECAUSE OF HIS REMOVAL OR RETENTION BY A PERSON CLAIMING HIS CUSTODY OR FOR OTHER REASONS, AND A PARENT OR PERSON ACTING AS PARENT CONTINUES TO LIVE IN THIS STATE; OR

(B) IT IS IN THE BEST INTEREST OF THE CHILD THAT A COURT OF THIS STATE ASSUME JURISDICTION BECAUSE (I) THE CHILD AND

HIS PARENTS, OR THE CHILD AND AT LEAST ONE CONTESTANT, HAVE A SIGNIFICANT CONNECTION WITH THIS STATE, AND (II) THERE IS AVAILABLE IN THIS STATE SUBSTANTIAL EVIDENCE CONCERNING THE CHILD'S PRESENT OR FUTURE CARE, PROTECTION, TRAINING, AND PERSONAL RELATIONSHIPS; OR

(C) THE CHILD IS PHYSICALLY PRESENT IN THIS STATE AND (I) THE CHILD HAS BEEN ABANDONED OR (II) IT IS NECESSARY IN AN EMERGENCY TO PROTECT THE CHILD BECAUSE HE HAS BEEN SUBJECTED TO OR THREATENED WITH MISTREATMENT OR ABUSE OR IS OTHERWISE NEGLECTED OR DEPENDENT; OR

(D) (I) IT APPEARS THAT NO OTHER STATE WOULD HAVE JURISDICTION UNDER PREREQUISITES SUBSTANTIALLY IN ACCORDANCE WITH PARAGRAPHS (A), (B), OR (C), OR ANOTHER STATE HAS DECLINED TO EXERCISE JURISDICTION ON THE GROUND THAT THIS STATE IS THE MORE APPROPRIATE FORUM TO DETERMINE THE CUSTODY OF THE CHILD, AND (II) IT IS IN THE BEST INTEREST OF THE CHILD THAT THIS COURT ASSUME JURISDICTION.

(2) EXCEPT UNDER PARAGRAPHS (C) AND (D) OF SUBSECTION (1), THE PHYSICAL PRESENCE IN THIS STATE OF THE CHILD, OR OF THE CHILD AND ONE OF THE CONTESTANTS, IS NOT ALONE SUFFICIENT TO CONFER JURISDICTION ON A COURT OF THIS STATE TO MAKE A CHILD CUSTODY DETERMINATION.

(3) PHYSICAL PRESENCE OF THE CHILD, WHILE DESIRABLE, IS NOT A PREREQUISITE FOR JURISIDCTION TO DETERMINE HIS CUSTODY.

SEC. 804. BEFORE ENTERING A CUSTODY JUDGMENT UNDER THIS CHAPTER, REASONABLE NOTICE AND OPPORTUNITY TO BE HEARD SHALL BE GIVEN TO THE CONTESTANTS, ANY PARENT WHOSE PARENTAL RIGHTS HAVE NOT BEEN PREVIOUSLY TERMINATED, AND ANY PERSON WHO HAS PHYSICAL CUSTODY OF THE CHILD. IF ANY OF THESE PERSONS IS OUTSIDE THIS STATE, NOTICE AND OPPORTUNITY TO BE HEARD SHALL BE GIVEN PURSUANT TO SECTION 805.

SEC. 805. (1) NOTICE REQUIRED FOR THE EXERCISE OF JURISDICTION OVER A PERSON OUTSIDE THIS STATE SHALL BE GIVEN IN A MANNER REASONABLY CALCULATED TO GIVE ACTUAL NOTICE, AND MAY BE:

(A) BY PERSONAL DELIVERY OUTSIDE THIS STATE IN THE MANNER PRESCRIBED FOR SERVICE OF PROCESS WITHIN THIS STATE;

(B) IN THE MANNER PRESCRIBED BY THE LAW OF THE PLACE IN WHICH THE SERVICE IS MADE FOR SERVICE OF PROCESS IN THAT PLACE IN AN ACTION IN ANY OF ITS COURTS OF GENERAL JURISDICTION;

(C) BY ANY FORM OF MAIL ADDRESSED TO THE PERSON TO BE SERVED AND REQUESTING A RECEIPT; OR

(D) AS DIRECTED BY THE COURT INCLUDING PUBLICATION, IF OTHER MEANS OF NOTIFICATION ARE INEFFECTIVE.

(2) NOTICE UNDER THIS SECTION SHALL BE SERVED, MAILED, OR DELIVERED, OR LAST PUBLISHED AT LEAST 20 DAYS BEFORE ANY HEARING IN THIS STATE.

SEC. 806. (1) A COURT OF THIS STATE SHALL NOT EXERCISE ITS JURISDICTION UNDER THIS CHAPTER IF AT THE TIME OF FILING THE COMPLAINT A PROCEEDING CONCERNING THE CUSTODY OF THE CHILD WAS PENDING IN A COURT OF ANOTHER STATE EXERCISING JURISDICTION SUBSTANTIALLY IN CONFORMITY WITH THIS CHAPTER, UNLESS THE PROCEEDING IS STAYED BY THE COURT OF THE OTHER STATE BECAUSE THIS STATE IS A MORE APPROPRIATE FORUM OR FOR OTHER REASONS.

(2) BEFORE ADJUDICATION IN A CUSTODY PROCEEDING THE COURT SHALL EXAMINE THE PLEADINGS AND OTHER INFORMATION SUPPLIED BY THE PARTIES UNDER SECTION 809 AND SHALL CONSULT THE CHILD CUSTODY REGISTRY ESTABLISHED UNDER SECTION 816 CONCERNING THE PENDENCY OF PROCEEDINGS WITH RESPECT TO THE CHILD IN OTHER STATES. IF THE COURT HAS REASON TO BELIEVE THAT PROCEEDINGS MAY BE PENDING IN ANOTHER STATE, IT SHALL DIRECT AN INQUIRY TO THE STATE COURT ADMINISTRATOR OR OTHER APPROPRIATE OFFICIAL OF THE OTHER STATE.

(3) IF THE COURT IS INFORMED DURING THE COURSE OF THE PROCEEDING THAT A PROCEEDING CONCERNING THE CUSTODY OF THE CHILD WAS PENDING IN ANOTHER STATE BEFORE THE COURT ASSUMED JURISDICTION, IT SHALL STAY THE PROCEEDING AND COMMUNICATE WITH THE COURT IN WHICH THE OTHER PROCEEDING IS PENDING TO THE END THAT THE ISSUE MAY BE LITIGATED IN THE MORE APPROPRIATE FORUM AND THAT INFORMATION BE EXCHANGED IN ACCORDANCE WITH SECTIONS 819 THROUGH 822. IF A COURT OF THIS STATE HAS ENTERED A CUSTODY JUDGMENT BEFORE BEING INFORMED OF A PENDING PROCEEDING IN A COURT OF ANOTHER STATE IT SHALL IMMEDIATELY INFORM THAT COURT OF THE FACT. IF THE COURT IS INFORMED THAT A PROCEEDING

WAS COMMENCED IN ANOTHER STATE AFTER IT ASSUMED JURISDICTION, IT SHALL LIKEWISE INFORM THE OTHER COURT TO THE END THAT THE ISSUES MAY BE LITIGATED IN THE MORE APPROPRIATE FORUM.

SEC. 807. (1) A COURT WHICH HAS JURISDICTION UNDER THIS CHAPTER TO MAKE AN INITIAL OR MODIFICATION JUDGMENT MAY DECLINE TO EXERCISE ITS JURISDICTION ANY TIME BEFORE MAKING A JUDGMENT IF IT FINDS THAT IT IS AN INCONVENIENT FORUM TO MAKE A CUSTODY DETERMINATION UNDER THE CIRCUMSTANCES OF THE CASE AND THAT A COURT OF ANOTHER STATE IS A MORE APPROPRIATE FORUM.

(2) A FINDING OF INCONVENIENT FORUM MAY BE MADE UPON THE COURT'S OWN MOTION OR UPON MOTION OF A PARTY OR A GUARDIAN AD LITEM OR OTHER REPRESENTATIVE OF THE CHILD.

(3) IN DETERMINING IF IT IS AN INCONVENIENT FORUM, THE COURT SHALL CONSIDER IF IT IS IN THE INTEREST OF THE CHILD THAT ANOTHER STATE ASSUME JURISDICTION. FOR THIS PURPOSE IT MAY TAKE INTO ACCOUNT THE FOLLOWING FACTORS, AMONG OTHERS:

(A) IF ANOTHER STATE IS OR RECENTLY WAS THE CHILD'S HOME STATE;

(B) IF ANOTHER STATE HAS A CLOSER CONNECTION WITH THE CHILD AND HIS FAMILY OR WITH THE CHILD AND ONE OR MORE OF THE CONTESTANTS;

(C) IF SUBSTANTIAL EVIDENCE CONCERNING THE CHILD'S PRESENT OR FUTURE CARE, PROTECTION, TRAINING, AND PERSONAL RELATIONSHIPS IS MORE READILY AVAILABLE IN ANOTHER STATE;

(D) IF THE PARTIES HAVE AGREED ON ANOTHER FORUM WHICH IS NO LESS APPROPRIATE; AND

(E) IF THE EXERCISE OF JURISDICTION BY A COURT OF THIS STATE WOULD CONTRAVENE ANY OF THE PURPOSES STATED IN SECTION 801.

(4) BEFORE DETERMINING WHETHER TO DECLINE OR RETAIN JURISDICTION THE COURT MAY COMMUNICATE WITH A COURT OF ANOTHER STATE AND EXCHANGE INFORMATION PERTINENT TO THE ASSUMPTION OF JURISDICTION BY EITHER COURT WITH A VIEW TO ASSURING THAT JURISDICTION WILL BE EXERCISED BY THE MORE

APPROPRIATE COURT AND THAT A FORUM WILL BE AVAILABLE TO THE PARTIES.

(5) IF THE COURT FINDS THAT IT IS AN INCONVENIENT FORUM AND THAT A COURT OF ANOTHER STATE IS A MORE APPROPRIATE FORUM, IT MAY DISMISS THE PROCEEDINGS, OR IT MAY STAY THE PROCEEDINGS UPON CONDITION THAT A CUSTODY PROCEEDING BE PROMPTLY COMMENCED IN ANOTHER NAMED STATE OR UPON ANY OTHER CONDITIONS WHICH MAY BE JUST AND PROPER, INCLUDING THE CONDITION THAT A MOVING PARTY STIPULATE HIS CONSENT AND SUBMISSION TO THE JURISDICTION OF THE OTHER FORUM.

(6) THE COURT MAY DECLINE TO EXERCISE ITS JURISDICTION UNDER THIS CHAPTER IF A CUSTODY DETERMINATION IS INCIDENTAL TO AN ACTION FOR DIVORCE OR ANOTHER PROCEEDING WHILE RETAINING JURISDICTION OVER THE DIVORCE OR OTHER PROCEEDING.

(7) IF IT APPEARS TO THE COURT THAT IT IS CLEARLY AN INAPPROPRIATE FORUM, IT MAY REQUIRE THE PARTY WHO COMMENCED THE PROCEEDINGS TO PAY, IN ADDITION TO THE COSTS OF THE PROCEEDINGS IN THIS STATE, NECESSARY TRAVEL AND OTHER EXPENSES, INCLUDING ATTORNEYS' FEES, INCURRED BY OTHER PARTIES OR THEIR WITNESSES. PAYMENT IS TO BE MADE TO THE CLERK OF THE COURT FOR REMITTANCE TO THE PROPER PARTY.

(8) UPON DISMISSAL OR STAY OF PROCEEDINGS UNDER THIS SECTION THE COURT SHALL INFORM THE COURT FOUND TO BE THE M ORE APPROPRIATE FORUM OF THIS FACT, OR IF THE COURT WHICH WOULD HAVE JURISDICTION IN THE OTHER STATE IS NOT CERTAINLY KNOWN, SHALL TRANSMIT THE INFORMATION TO THE COURT ADMINISTRATOR OR OTHER APPROPRIATE OFFICIAL FOR FORWARDING TO THE APPROPRIATE COURT.

(9) ANY COMMUNICATION RECEIVED FROM ANOTHER STATE INFORMING THIS STATE OF A FINDING OF INCONVENIENT FORUM BECAUSE A COURT OF THIS STATE IS THE MORE APPROPRIATE FORUM SHALL BE FILED IN THE CUSTODY REGISTRY OF THE APPROPRIATE COURT. UPON ASSUMING JURISDICTION THE COURT OF THIS STATE SHALL INFORM THE ORIGINAL COURT OF THIS FACT.

SEC. 808. (1) IF THE PETITIONER FOR AN INITIAL JUDGMENT HAS WRONGFULLY TAKEN THE CHILD FROM ANOTHER STATE OR HAS ENGAGED IN SIMILAR REPREHENSIBLE CONDUCT, THE COURT MAY DECLINE TO EXERCISE JURISDICTION IF THIS IS JUST AND

PROPER UNDER THE CIRCUMSTANCES.

(2) UNLESS REQUIRED IN THE INTEREST OF THE CHILD, THE COURT SHALL NOT EXERCISE ITS JURISDICTION TO MODIFY A CUSTODY JUDGMENT OF ANOTHER STATE IF THE PETITIONER, WITHOUT CONSENT OF THE PERSON ENTITLED TO CUSTODY, HAS IMPROPERLY REMOVED THE CHILD FROM THE PHYSICAL CUSTODY OF THE PERSON ENTITLED TO CUSTODY OR HAS IMPROPERLY RETAINED THE CHILD AFTER A VISIT OR OTHER TEMPORARY RELINQUISHMENT OF PHYSICAL CUSTODY. IF THE PETITIONER HAS VIOLATED ANY OTHER PROVISION OF A CUSTODY JUDGMENT OF ANOTHER STATE, THE COURT MAY DECLINE TO EXERCISE ITS JURISDICTION IF THIS IS JUST AND PROPER UNDER THE CIRCUMSTANCES.

(3) IN APPROPRIATE CASES A COURT DISMISSING A PETITION UNDER THIS SECTION MAY CHARGE THE PETITIONER WITH NECESSARY TRAVEL AND OTHER EXPENSES, INCLUDING ATTORNEYS' FEES, INCURRED BY OTHER PARTIES OR THEIR WITNESSES.

SEC. 809. (1) EVERY PARTY IN A CUSTODY PROCEEDING IN HIS FIRST COMPLAINT OR IN AN AFFIDAVIT ATTACHED TO THAT COMPLAINT SHALL GIVE INFORMATION UNDER OATH AS TO THE CHILD'S PRESENT ADDRESS, THE PLACES WHERE THE CHILD HAS LIVED WITHIN THE LAST 5 YEARS, AND THE NAMES AND PRESENT ADDRESSES OF THE PERSONS WITH WHOM THE CHILD HAS LIVED DURING THAT PERIOD. IN THIS COMPLAINT OR AFFIDAVIT EVERY PARTY SHALL FURTHER DECLARE UNDER OATH WHETHER:

(A) HE HAS PARTICIPATED AS A PARTY, WITNESS, OR IN ANY OTHER CAPACITY IN ANY OTHER LITIGATION CONCERNING THE CUSTODY OF THE SAME CHILD IN THIS STATE OR ANY OTHER STATE;

(B) HE HAS INFORMATION OF ANY CUSTODY PROCEEDING CONCERNING THE CHILD PENDING IN A COURT OF THIS OR ANY OTHER STATE; AND

(C) HE KNOWS OF ANY PERSON NOT A PARTY TO THE PROCEEDINGS WHO HAS PHYSICAL CUSTODY OF THE CHILD OR CLAIMS TO HAVE CUSTODY OR VISITATION RIGHTS WITH RESPECT TO THE CHILD.

(2) IF THE DECLARATION AS TO ANY OF THE ABOVE ITEMS IS IN THE AFFIRMATIVE THE DECLARANT SHALL GIVE ADDITIONAL INFORMATION UNDER OATH AS REQUIRED BY THE COURT. THE COURT MAY EXAMINE THE PARTIES UNDER OATH AS TO DETAILS OF THE INFORMATION FURNISHED AND AS TO OTHER MATTERS PERTINENT TO THE COURT'S JURISDICTION AND THE DISPOSITION OF THE CASE.

(3) EACH PARTY HAS A CONTINUING DUTY TO INFORM THE COURT OF ANY CUSTODY PROCEEDING CONCERNING THE CHILD IN THIS OR ANY OTHER STATE OF WHICH HE OBTAINED INFORMATION DURING THIS PROCEEDING.

SEC. 810. IF THE COURT LEARNS FROM INFORMATION FURNISHED BY THE PARTIES PURSUANT TO SECTION 809 OR FROM OTHER SOURCES THAT A PERSON NOT A PARTY TO THE CUSTODY PROCEEDING HAS PHYSICAL CUSTODY OF THE CHILD OR CLAIMS TO HAVE CUSTODY OR VISITATION RIGHTS WITH RESPECT TO THE CHILD, IT SHALL ORDER THAT PERSON TO BE JOINED AS A PARTY AND TO BE DULY NOTIFIED OF THE PENDENCY OF THE PROCEEDING AND OF HIS JOINDER AS A PARTY. IF THE PERSON JOINED AS A PARTY IS OUTSIDE THIS STATE HE SHALL BE SERVED WITH PROCESS OR OTHERWISE NOTIFIED IN ACCORDANCE WITH SECTION 805.

SEC. 811. (1) THE COURT MAY ORDER ANY PARTY TO THE PROCEEDING WHO IS IN THIS STATE TO APPEAR PERSONALLY BEFORE THE COURT. IF THAT PARTY HAS PHYSICAL CUSTODY OF THE CHILD THE COURT MAY ORDER THAT HE APPEAR PERSONALLY WITH THE CHILD.

(2) IF A PARTY TO THE PROCEEDING WHOSE PRESENCE IS DESIRED BY THE COURT IS OUTSIDE THIS STATE WITH OR WITHOUT THE CHILD, THE COURT MAY ORDER THAT THE NOTICE GIVEN UNDER SECTION 805 INCLUDE A STATEMENT DIRECTING THAT PARTY TO APPEAR PERSONALLY WITH OR WITHOUT THE CHILD AND DECLARING THAT FAILURE TO APPEAR MAY RESULT IN A DECISION ADVERSE TO THAT PARTY.

(3) IF A PARTY TO THE PROCEEDING WHO IS OUTSIDE THIS STATE IS DIRECTED TO APPEAR UNDER SUBSECTION (2) OR DESIRES TO APPEAR PERSONALLY BEFORE THE COURT WITH OR WITHOUT THE CHILD, THE COURT MAY REQUIRE ANOTHER PARTY TO PAY TO THE CLERK OF THE COURT TRAVEL AND OTHER NECESSARY EXPENSES OF THE PARTY SO APPEARING AND OF THE CHILD IF THIS IS JUST AND PROPER UNDER THE CIRCUMSTANCES.

SEC. 812. A CUSTODY JUDGMENT RENDERED BY A COURT OF THIS STATE WHICH HAD JURISDICTION UNDER SECTION 803 BINDS ALL PARTIES WHO HAVE BEEN SERVED IN THIS STATE OR NOTIFIED IN ACCORDANCE WITH SECTION 805 OR WHO HAVE SUBMITTED TO THE JURISDICTION OF THE COURT, AND WHO HAVE BEEN GIVEN AN OPPORTUNITY TO BE HEARD. AS TO THESE PARTIES THE CUSTODY JUDGMENT IS CONCLUSIVE AS TO ALL ISSUES OF LAW AND FACT DECIDED AND AS TO THE CUSTODY DETERMINATION MADE UNLESS

AND UNTIL THAT DETERMINATION IS MODIFIED PURSUANT TO LAW, INCLUDING THE PROVISIONS OF THIS CHAPTER.

SEC. 813. THE COURTS OF THIS STATE SHALL RECOGNIZE AND ENFORCE AN INITIAL OR MODIFICATION JUDGMENT OR A COURT OF ANOTHER STATE WHICH HAD ASSUMED JURISDICTION UNDER STATUTORY PROVISIONS SUBSTANTIALLY IN ACCORDANCE WITH THIS CHAPTER OR WHICH WAS MADE UNDER FACTUAL CIRCUMSTANCES MEETING THE JURISDICTIONAL STANDARDS OF THIS CHAPTER, SO LONG AS THIS JUDGMENT HAS NOT BEEN MODIFIED IN ACCORDANCE WITH JURISDICTIONAL STANDARDS SUBSTANTIALLY SIMILAR TO THOSE OF THIS CHAPTER.

SEC. 814. (1) IF A COURT OF ANOTHER STATE HAS MADE A CUSTODY JUDGMENT, A COURT OF THIS STATE SHALL NOT MODIFY THAT JUDGMENT UNLESS (A) IT APPEARS TO THE COURT OF THIS STATE THAT THE COURT WHICH RENDERED THE JUDGMENT DOES NOT NOW HAVE JURISDICTION UNDER JURISDICTIONAL PREREQUISITES SUBSTANTIALLY IN ACCORDANCE WITH THIS CHAPTER OR HAS DECLINED TO ASSUME JURISDICTION TO MODIFY THE JUDGMENT AND (B) THE COURT OF THIS STATE HAS JURISDICTION.

(2) IF A COURT OF THIS STATE IS AUTHORIZED UNDER SUBSECTION (1) AND SECTION 808 TO MODIFY A CUSTODY JUDGMENT OF ANOTHER STATE, IT SHALL GIVE DUE CONSIDERATION TO THE TRANSCRIPT OF THE RECORD AND OTHER DOCUMENTS OF ALL PREVIOUS PROCEEDINGS SUBMITTED TO IT IN ACCORDANCE WITH SECTION 822.

SEC. 815. (1) A CERTIFIED COPY OF A CUSTODY JUDGMENT OF ANOTHER STATE MAY BE FILED IN THE OFFICE OF THE CLERK OF ANY CIRCUIT COURT OF THIS STATE. THE CLERK SHALL TREAT THE JUDGMENT IN THE SAME MANNER AS A CUSTODY JUDGMENT OF THE CIRCUIT COURT OF THIS STATE. A CUSTODY JUDGMENT SO FILED HAS THE SAME EFFECT AND SHALL BE ENFORCED IN LIKE MANNER AS A CUSTODY JUDGMENT RENDERED BY A COURT OF THIS STATE.

(2) A PERSON VIOLATING A CUSTODY JUDGMENT OF ANOTHER STATE WHICH MAKES IT NECESSARY TO ENFORCE THE JUDGMENT IN THIS STATE MAY BE REQUIRED TO PAY NECESSARY TRAVEL AND OTHER EXPENSES, INCLUDING ATTORNEYS' FEES, INCURRED BY THE PARTY ENTITLED TO THE CUSTODY OR HIS WITNESSES.

SEC. 816. THE CLERK OF EACH CIRCUIT COURT SHALL MAINTAIN A REGISTRY IN WHICH HE SHALL ENTER THE FOLLOWING:

(A) CERTIFIED COPIES OF CUSTODY JUDGMENTS OF OTHER STATES RECEIVED FOR FILING;

(B) COMMUNICATIONS AS TO THE PENDENCY OF CUSTODY PROCEEDINGS IN OTHER STATES;

(C) COMMUNICATIONS CONCERNING A FINDING OF INCONVENIENT FORUM BY A COURT OF ANOTHER STATE; AND

(D) OTHER COMMUNICATIONS OR DOCUMENTS CONCERNING CUSTODY PROCEEDINGS IN ANOTHER STATE WHICH MAY AFFECT THE JURISDICTION OF A COURT OF THIS STATE OR THE DISPOSITION TO BE MADE BY IT IN A CUSTODY PROCEEDING.

SEC. 817. THE CLERK OF THE CIRCUIT COURT OF THIS STATE, AT THE REQUEST OF THE COURT OF ANOTHER STATE OR AT THE REQUEST OF ANY PERSON WHO IS AFFECTED BY OR HAS A LEGITIMATE INTEREST IN A CUSTODY JUDGMENT, SHALL CERTIFY AND FORWARD A COPY OF THE JUDGMENT TO THAT COURT OR PERSON.

SEC. 818. IN ADDITION TO OTHER PROCEDURAL DEVICES AVAILABLE TO A PARTY, ANY PARTY TO THE PROCEEDING OR A GUARDIAN AD LITEM OR OTHER REPRESENTATIVE OF THE CHILD MAY ADDUCE TESTIMONY OF WITNESSES, INCLUDING PARTIES AND THE CHILD, BY DEPOSITION OR OTHERWISE, IN ANOTHER STATE. THE COURT ON ITS OWN MOTION MAY DIRECT THAT THE TESTIMONY OF A PERSON BE TAKEN IN ANOTHER STATE AND MAY PRESCRIBE THE MANNER IN WHICH AND THE TERMS UPON WHICH THE TESTIMONY SHALL BE TAKEN.

SEC. 819. (1) A COURT OF THIS STATE MAY REQUEST THE APPROPRIATE COURT OF ANOTHER STATE TO HOLD A HEARING TO ADDUCE EVIDENCE, TO ORDER A PARTY TO PRODUCE OR GIVE EVIDENCE UNDER OTHER PROCEDURES OF THAT STATE, OR TO HAVE SOCIAL STUDIES MADE WITH RESPECT TO THE CUSTODY OF A CHILD INVOLVED IN PROCEEDINGS PENDING IN THE COURT OF THIS STATE; AND TO FORWARD TO THE COURT OF THIS STATE CERTIFIED COPIES OF THE TRANSCRIPT OF THE RECORD OF THE HEARING, THE EVIDENCE OTHERWISE ADDUCED, OR ANY SOCIAL STUDIES PREPARED IN COMPLIANCE WITH THE REQUEST. THE COST OF THE SERVICES MAY BE ASSESSED AGAINST THE PARTIES OR, IF NECESSARY, ORDERED PAID BY THE COUNTY.

(2) A COURT OF THIS STATE MAY REQUEST THE APPROPRIATE COURT OF ANOTHER STATE TO ORDER A PARTY TO CUSTODY PRO-

CEEDINGS PENDING IN THE COURT OF THIS STATE TO APPEAR IN THE PROCEEDINGS, AND IF THAT PARTY HAS PHYSICAL CUSTODY OF THE CHILD, TO APPEAR WITH THE CHILD. THE REQUEST MAY STATE THAT TRAVEL AND OTHER NECESSARY EXPENSES OF THE PARTY AND OF THE CHILD WHOSE APPEARANCE IS DESIRED WILL BE ASSESSED AGAINST ANOTHER PARTY OR WILL OTHERWISE BE PAID.

SEC. 820. (1) UPON REQUEST OF THE COURT OF ANOTHER STATE, THE COURTS OF THIS STATE WHICH ARE COMPETENT TO HEAR CUSTODY MATTERS MAY ORDER A PERSON IN THIS STATE TO APPEAR AT A HEARING TO ADDUCE EVIDENCE OR TO PRODUCE OR GIVE EVIDENCE UNDER OTHER PROCEDURES AVAILABLE IN THIS STATE OR MAY ORDER SOCIAL STUDIES TO BE MADE FOR USE IN A CUSTODY PROCEEDING IN ANOTHER STATE. A CERTIFIED COPY OF THE TRANSCRIPT OF THE RECORD OF THE HEARING OR THE EVIDENCE OTHERWISE ADDUCED AND ANY SOCIAL STUDIES PREPARED SHALL BE FORWARDED BY THE CLERK OF THE COURT TO THE REQUESTING COURT.

(2) A PERSON WITHIN THIS STATE MAY VOLUNTARILY GIVE HIS TESTIMONY OR STATEMENT IN THIS STATE FOR USE IN A CUSTODY PROCEEDING OUTSIDE THIS STATE.

(3) UPON REQUEST OF THE COURT OF ANOTHER STATE, A COMPETENT COURT OF THIS STATE MAY ORDER A PERSON IN THIS STATE TO APPEAR ALONE OR WITH THE CHILD IN A CUSTODY PROCEEDING IN ANOTHER STATE. THE COURT MAY CONDITION COMPLIANCE WITH THE REQUEST UPON ASSURANCE BY THE OTHER STATE THAT TRAVEL AND OTHER NECESSARY EXPENSES WILL BE ADVANCED OR REIMBURSED.

SEC. 821. IN ANY CUSTODY PROCEEDING IN THIS STATE THE COURT SHALL PRESERVE THE PLEADINGS, ORDERS AND JUDGMENTS, ANY RECORD THAT HAS BEEN MADE OF ITS HEARINGS, SOCIAL STUDIES, AND OTHER PERTINENT DOCUMENTS UNTIL THE CHILD REACHES 21 YEARS OF AGE. UPON APPROPRIATE REQUEST OF THE COURT OF ANOTHER STATE, THE COURT SHALL FORWARD TO THE OTHER COURT CERTIFIED COPIES OF ANY OR ALL OF SUCH DOCUMENTS.

SEC. 822. IF A CUSTODY JUDGMENT HAS BEEN RENDERED IN ANOTHER STATE CONCERNING A CHILD INVOLVED IN A CUSTODY PROCEEDING PENDING IN A COURT OF THIS STATE, THE COURT OF THIS STATE UPON TAKING JURISDICTION OF THE CASE SHALL REQUEST

OF THE COURT OF THE OTHER STATE A CERTIFIED COPY OF THE TRANSCRIPT OF ANY COURT RECORD AND OTHER DOCUMENTS MENTIONED IN SECTION 821.

SEC. 823. THE GENERAL POLICIES OF THIS CHAPTER EXTEND TO THE INTERNATIONAL AREA. THE PROVISIONS OF THIS CHAPTER RELATING TO THE RECOGNITION AND ENFORCEMENT OF CUSTODY JUDGMENTS OF OTHER STATES APPLY TO CUSTODY JUDGMENTS INVOLVING LEGAL INSTITUTIONS SIMILAR IN NATURE TO CUSTODY INSTITUTIONS RENDERED BY APPROPRIATE AUTHORITIES OF OTHER NATIONS IF REASONABLE NOTICE AND OPPORTUNITY TO BE HEARD WERE GIVEN TO ALL AFFECTED PERSONS.

RECOMMENDATION RELATING TO PERSONAL SERVICE CONTRACTS OF MINORS

The common law has traditionally given minors special protections in their contractual relations. Because most contracts of minors are voidable, the minor can normally adopt his contract and bind the other party, or avoid the contract by using infancy as a defense. In this manner the common law protected the minor from his own naivete as well as from others who sought to take advantage of him.

The Law Revision Commission believes that new legislation is needed to protect the interests of persons dealing with minors as well as to protect the minor himself. With the mergence of large recording companies within the state, and other enterprises which deal with minors frequently and on long term bases, the inadequacy of the present law has become apparent. The proposed statute protects the minor from making unreasonable contracts, while giving companies the ability to bind the minor to fair contracts.

Most of the present Michigan law regarding minors' ability to disaffirm their contracts is uncodified. There are scattered statutes dealing with specific situations where minors will be held to their contracts. Furthermore, juvenile employment is regulated under the Michigan Labor Code. But neither thecommon law nor the codes clarify what is to be done with minors' personal service contracts. The proposed legislation is designed to cover minors' personal service contracts with particular suitability to services as a performing artist and as a participant in professional sports. Under the proposal, the minor's capacity to disaffirm a contract is limited, but the minor is protected by requiring court approval of the contractual arrangements. All contracts for employment of juveniles must accord, of course, with other requirements of law relating to juvenile employment.

Michigan law also does not adequately deal with contracts of minors over 18 years of age who are engaged in business activities. The right to disaffirm a contract provided by the common law may be utilized unfairly by the minor who is conducting a business operation. Removal of the right to disaffirm, however, should be limited to business contracts which were provident when made. Under the proposed legislation, the burden of proof is placed on the party seeking to enforce the contract against the minor.

The proposed bills follow:

PROPOSED BILL NO. 1

A bill to regulate contracts of minors rendering services as a performing artist or participant in professional sports or other services; to provide court approval of such contracts; to limit the duration of such contracts; to establish court procedures for approval or disapproval of such contracts; and to prescribe the liability of minors and parent or guardian with respect to such contracts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1. A contract made by a minor or made by a parent or guardian of a minor, or a contract proposed to be so made, under which (a) the minor is to perform or render services as an actor, actress, dancer, musician, vocalist or other performing artist, or as a participant or player in professional sports, or any other services or (b) a person is employed to render services to the minor in connection with such services of the minor or in connection with contract therefor, may be approved by the probate court as provided in this act where the minor is a resident of this state or the services of the minor are to be performed or rendered in this state. If the contract is so approved the minor may not, either during his minority or upon reaching his majority, disaffirm the contract on the ground of infancy or assert that the parent or guardian lacked authority to make the contract.

Sec. 2. Approval of the contract pursuant to this act shall not exempt any person from the requirements of any law with respect to licenses, consents or authorizations required for any conduct, employment, use or exhibition of the minor in this state, nor limit in any manner the discretion of the licensing authority or other persons charged with the administration of such requirements, nor dispense with any other requirement of law relating to the minor.

Sec. 3. No contract shall be approved which provides for an employment, use or exhibition of the minor, within or without the state, which is prohibited by law and could not be licensed to take place in this state.

Sec. 4. No contract shall be approved unless (a) the written acquiescence to such contract of the parent or parents having custody, or other person having custody of the minor, is filed in the proceeding or (b) the court shall find that the minor is over eighteen years of age or is emancipated.

Sec. 5. No contract shall be approved if the term during which the minor is to perform or render services or during which a person is employed to render services to the minor, including any extensions thereof by option

or otherwise, extends for a period of more than 3 years from the date of approval of the contract. If the contract contains any other covenant or condition which extends beyond such 3 years, the same may be approved if found to be reasonable and for such period as the court may determine.

Sec. 6. If the court which has approved a contract pursuant to this act shall find that the well-being of the minor is being impaired by the performance thereof, it may, at any time during the term of the contract during which services are to be performed by the minor or rendered by or to the minor or during the term of any other covenant or condition of the contract, either revoke its approval of the contract, or declare such approval revoked unless a modification of the contract which the court finds to be appropriate in the circumstances is agreed upon by the parties and the contract as modified is approved by order of the court. Application for an order pursuant to this section may be made by the minor, or his parent or parents, or guardian, or his limited guardian appointed pursuant to this act, or by the person having the care and custody of the minor, or by a special guardian appointed for the purpose by the court on its own motion. The order granting or denying the application shall be made after hearing, upon notice to the parties to the proceeding in which the contract was approved, given in such manner as the court shall direct. Revocation of the approval of the contract shall not affect any right of action existing at the date of the revocation, except that the court may determine that a refusal to perform on the ground of impairment of the well-being of the minor was justified.

Sec. 7. The court may withhold its approval of the contract until the filing of consent by the parent or parents entitled to the earnings of the minor, or of the minor if he is entitled to his own earnings, that a part of the minor's net earnings for services performed or rendered during the term of the contract be set aside and saved for the minor pursuant to the order of the court and under guardianship as provided in this act, until he attains his majority or until further order of the court. Such consent shall not be deemed to constitute an emancipation of the minor.

Sec. 8. The court shall fix the amount or proportion of net earnings to be set aside as it deems for the best interests of the minor, and the amount or proportion so fixed may, upon subsequent application, be modified at the discretion of the court, within the limits of the consent given at the time the contract was approved. In fixing such amount or proportion, consideration shall be given to the financial circumstances of the parent or parents entitled to the earnings of the minor and to the needs of their other children, or if the minor is entitled to his own earnings and is married, to the needs of his family. Unless the minor is at the time thereof entitled to his own earnings and has no dependents, the court shall not con-

dition its approval of the contract upon consent to the setting aside of an amount or proportion in excess of one-half of the net earnings.

Sec. 9. For the purposes of this act, net earnings shall mean the gross earnings received for services performed or rendered by the minor during the term of the contract, less (a) all sums required by law to be paid as taxes to any government or subdivision thereof with respect to or by reason of such earnings; (b) reasonable sums to be expended for the support, care, education, training and professional management of the minor; and (c) reasonable fees and expenses paid or to be paid in connection with the proceeding, the contract and its performance.

Sec. 10. A proceeding for the approval of a contract shall be commenced by verified petition of the guardian of the minor's person or property, or of the minor, or of a parent, or of any interested person, or of any relative of the minor on his behalf. If a guardian of the minor's person or property has been appointed or qualified in this state, the petition shall be made to the court by which he was appointed or in which he qualified. If there is no such guardian, the petition shall be made to the probate court in the county in which the minor resides, or if he is not a resident of the state, in any county in which the minor is to be employed under the contract.

Sec. 11. The following persons, other than one who is the petitioner or joins in the petition, shall be served with an order or citation to show cause why the petition should not be granted: (a) the minor, if over the age of fourteen years, (b) his guardian or guardians, if any, whether or not appointed or qualified in this state; (c) each party to the contract; (d) the parent or parents of the minor; (e) any person having the care and custody of the minor; (f) the person with whom the minor resides; and (g) if it appears that the minor is married, his spouse. Service shall be made in such manner as the court shall direct, at least 10 days before the time at which the petition is noticed to be heard, unless the court shall fix a shorter time.

Sec. 12. The petition shall have annexed a complete copy of the contract or proposed contract and shall set forth:

(a) the full name, residence and date of birth of the minor;

(b) the name and residence of any living parent of the minor, the name and residence of the person who has care and custody of the minor, and the name and residence of the person with whom the minor resides;

(c) whether the minor has had at any time a guardian appointed by will

or deed or by a court of any jurisdiction;

(d) whether the minor is a resident of the state, or if he is not a resident, that the petition is for approval of a contract for performance or rendering of services by the minor and the place in the state where the services are to be performed or rendered;

(e) a brief statement as to the minor's employment and compensation under the contract or proposed contract;

(f) a statement that the term of the contract during which the minor is to perform or render services or during which a person is employed to render services to the minor can in no event extend for a period of more than 3 years from the date of approval of the contract, and an enumeration of any other covenants or conditions contained in the contract which extend beyond such 3 years or a statement that the contract contains no such other covenants or conditions;

(g) a statement as to who is entitled to the minor's earnings and, if the minor is not so entitled, facts regarding the property and financial circumstances of the parent or parents who are so entitled;

(h) the facts with respect to any previous application for the relief sought in the petition or similar relief with respect to the minor;

(i) a schedule showing the minor's gross earnings, estimated outlays and estimated net earnings;

(j) the interest of the petitioner in the contract or proposed contract or in the minor's performance under it;

(k) such other facts regarding the minor, his family and property, as show that the contract is reasonable and provident and for the best interests of the minor.

Sec. 13. If no guardian of the property of the minor has been appointed or qualified in this state, the petition shall also pray for the appointment of a limited guardian. The petition may nominate a person to be appointed as limited guardian, setting forth reasons why the person nominated would be a proper and suitable person to be appointed as a limited guardian and setting forth the interest of the person so nominated in the contract or proposed contract or in the minor's performance under it.

Sec. 14. At any time after the filing of the petition the court, if it deems it advisable, may appoint a special guardian to represent the inter-

ests of the minor.

Sec. 15. If a guardian of the property of the minor has been appointed or qualified in this state, he shall receive and hold any net earnings directed by the court to be set aside for the minor. In any other case a limited guardian shall be appointed for such purpose. A parent, guardian or other petitioner is not ineligible to be appointed as limited guardian by reason of his interest in any part of the minor's earnings under the contract or proposed contract or by reason of the fact that he is a party to or otherwise interested in the contract or in the minor's performance under the contract, provided such interest is disclosed.

Sec. 16. If the contract is approved and if the court shall direct that a portion of the net earnings be set aside, the limited guardian shall qualify in the manner provided with respect to a general guardian of the property of the minor appointed by the court in which the proceeding is had, and with respect to net earnings ordered to be set aside shall be subject to all provisions applicable to a general guardian so appointed.

Sec. 17. If a guardian of the property of the minor is appointed or qualifies after the appointment of a limited guardian, the limited guardian may continue to act with respect to earnings under the contract approved by the court until the termination of the contract. Upon such termination he shall transfer to the guardian of the minor's property the funds of the minor in his hands.

Sec. 18. The minor shall attend personally before the court upon the hearing of the petition. Upon such hearing, and upon such proof as it deems necessary and advisable, the court shall make such order as justice and the best interests of the minor require.

Sec. 19. The court at such hearing or on an adjournment thereof may, by order:

(a) determine any issue arising from the pleadings or proof and required to be determined for final disposition of the matter, including issues with respect to the age or emancipation of the minor or with respect to entitlement of any person to his earnings;

(b) disapprove the contract or proposed contract or approve it, or approve it upon such conditions, with respect to modification of the terms thereof or otherwise, as it shall determine;

(c) appoint a limited guardian.

Sec. 20. If the contract is approved upon condition of consent that a portion of the net earnings of the minor under the contract be set aside, the court shall fix the amount or proportion of net earnings to be set aside and if the court shall find that consent or consents thereto have been filed, shall give directions with respect to computation of and payment of sums to be set aside.

Sec. 21. No parent or guardian of the minor with respect to whose services the contract is made shall, unless the contract is approved under this act, be liable on the contract either as a party or as a guarantor of its performance:

(a) if the minor was a resident of the state at the time the contract was made or at the time of the event by reason of which liability is sought to be imposed, by reason of any disaffirmance, repudiation or breach of the contract or any term thereof, or any failure or refusal of the minor to perform; or

(b) in any other case, by reason of any failure or refusal of the minor to perform or render services required or permitted by the contract to be performed or rendered in this state or any failure or refusal of the parent or guardian to cause such services to be rendered or performed.

PROPOSED BILL NO. 2

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 600.9928 of the Compiled Laws of 1948, by adding 1 new section to stand as section 1402.

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 600.9928 of the Compiled Laws of 1948, is amended by adding 1 new section to stand as section 1402 to read as follows:

SEC. 1402. (1) A CONTRACT MADE BY A MINOR AFTER HE HAS ATTAINED THE AGE OF 18 YEARS MAY NOT BE DISAFFIRMED BY HIM ON THE GROUND OF INFANCY, WHERE THE CONTRACT WAS MADE IN CONNECTION WITH A BUSINESS IN WHICH THE MINOR WAS ENGAGED AND WAS REASONABLE AND PROVIDENT WHEN MADE.

(2) IN ANY ACTION OR PROCEEDING IN WHICH THE RIGHT TO DISAFFIRM ON THE GROUND OF INFANCY A CONTRACT MADE BY AN MI-

NOR AFTER HE HAS ATTAINED THE AGE OF 18 YEARS IS IN ISSUE, THE BURDEN OF PROOF ON THE QUESTION WHETHER THE CONTRACT WAS MADE IN CONNECTION WITH A BUSINESS IN WHICH THE MINOR WAS ENGAGED, AND ALSO ON THE QUESTION WHETHER THE CONTRACT WAS REASONABLE AND PROVIDENT WHEN MADE, SHALL BE UPON THE PERSON SEEKING TO ENFORCE THE CONTRACT AGAINST THE OBJECTIONS OF THE MINOR.

RECOMMENDATION RELATING TO ARTIST-ART DEALER RELATIONSHIPS

Artists are in need of protective legislation to regulate their business relationships with those art dealers who display and sell their work. The artist has a limited market and limited access to that market through art dealers. Reports indicate that many art dealers are taking advantage of the vulnerability of artists; they have been withholding and misappropriating monies received from sales, and selling works of art for prices far exceeding that which they report to the artists.

The proposed legislation, which is taken from recent New York legislation (N. Y. Gen. Bus. Law §§ 219, 219a), would effectively remedy the abuses that presently arise in many artist-art dealer transactions. All proceeds from the sale of an artist's work would go directly into a trust fund to prevent the dealer from commingling the sale proceeds with his own funds. The artist would be entitled to notice of the pertinent details of the sale and he would receive the remainder of the trust funds, after the dealer has withdrawn his commission. The proposed legislation would not affect arrangements entered into prior to the effective date of the act.

The proposed bill follows:

PROPOSED BILL

A bill relating to the relationship between artists and art dealers in sales of fine art; regulating consignment sales thereof; establishing trust property and trust funds; and limiting waivers of rights.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1. As used in this act:

(a) "Art dealer" means a person engaged in the business of selling works of fine art, other than a person exclusively engaged in the business of selling goods at public auction.

(b) "Artist" means the creator of a work of fine art or, if he be deceased, his heirs or personal representatives.

(c) "Fine art" means a painting, sculpture, drawing, or work of graphic art.

(d) "On consignment" means that no title to or estate in the goods or right to possession thereof superior to that of the consignor vests in the consignee, notwithstanding the consignee's power or authority to transfer and convey, to a third person, all of the right, title and interest of the consignor, in and to such goods.

(e) "Person" means an individual, partnership, corporation, association or other group, however organized.

Sec. 2. Any custom, practice or usage of the trade to the contrary notwithstanding:

(1) whenever an artist delivers or causes to be delivered a work of fine art of his own creation to an art dealer for the purpose of sale on a commission, fee or other basis of compensation, the delivery to and acceptance thereof by the art dealer is deemed to be "on consignment" and

(a) the art dealer shall thereafter, with respect to the work of fine art, be deemed to be the agent of the artist,

(b) the work of fine art is trust property in the hands of the consignee for the benefit of the consignor, and

(c) any proceeds from the sale of the work of fine art are trust funds in the hands of the consignee for the benefit of the consignor.

(2) A work of fine art initially received "on consignment" shall be deemed to remain trust property notwithstanding the subsequent purchase thereof by the consignee directly or indirectly for his own account until the price is paid in full to the consignor. If the work is thereafter resold to a bona fide third party before the consignor has been paid in full, the proceeds of the resale are trust funds in the hands of the consignee for the benefit of the consignor to the extent necessary to pay any balance still due to the consignor and the trusteeship shall continue until the fiduciary obligation of the consignee with respect to a transaction is discharged in full.

Sec. 3. Any provision of a contract or agreement whereby the consignor waives any provision of this act is absolutely void except as hereinafter provided. A consignor may lawfully waive that part of section 2 of this act which provides that any proceeds from the sale of the work of fine art are trust funds in the hands of the consignee for the benefit of the consignor, provided: (a) that the waiver is clear, conspicuous, in writing and subscribed by the consignor, and (b) that no waiver shall be valid with respect to the first 2500 dollars of gross proceeds of sales received in any

twelve-month period commencing with the date of the execution of the waiver, and (c) that no waiver shall be valid with respect to the proceeds of a work of fine art initially received "on consignment" but subsequently purchased by the consignee directly or indirectly for his own account.

Sec. 4. This act does not affect any written or oral contract or arrangement in existence prior ro the effective date of this act nor to any extensions or renewals thereof except by the mutual written consent of the parties.

RECOMMENDATION RELATING TO WARRANTIES IN SALES OF ART

In recent months several art curators and law enforcement officials have reported an "alarming increase" in sales of fraudulent works of art. Therefore, the inexperienced purchaser of art works may be defrauded. Often forgeries can be detected by experts, but the inexperienced purchaser is unable to protect himself. New York has recently enacted legislation which increases the scope of warranties of art dealers in dealing with non-merchant purchasers. (N. Y. Gen. Bus. Law §§ 221, 222-a, 222-b) The Law Revision Commission recommends the adoption of similar legislation in Michigan.

The proposed legislation recognizes that purchasers of art works pay more for works of "name" artists. Art merchants typically have greater expertise than the buyers, and the proposed legislation therefore makes the art merchant responsible for any statements relevant to the authorship of the art work even though the statements are based only upon opinion. The proposed legislation does not affect dealings between two art merchants which are adequately covered by provisions of the Uniform Commerical Code. The art merchant is able to protect himself by an express disclaimer of warranty, but disclaimers must be clear, specific, and in writing. Since in most sales of art works the ability of the artist is the main factor in determining the price of the art work, the proposed legislation protects the purchaser from paying unreasonable prices for fraudulent art works.

The proposed bill follows:

PROPOSED BILL

A bill to provide for the creation and negation of express warranties in the sales of works of fine art.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1. As used in this act:

(a) "Art merchant" means a person who deals in works of fine art or by his occupation holds himself out as having knowledge or skill peculiar to works of fine art or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill. The term "art merchant" includes an auctioneer who sells works of fine art

at public auction as well as the auctioneer's consignor or principal;

(b) "Author" or "authorship" refers to the creator of a work of fine art or to the period, culture, source or origin, as the case may be, with which the creation of such work is identified in the description of the work.

(c) "Counterfeit" means a work of fine art made or altered, with intent to deceive, in such manner that it appears to have an authorship which it does not in fact possess. The term "counterfeit" shall also be deemed to include any work of fine art made, altered or copied in such manner that it appears to have an authorship which it does not in fact possess even though such work may not have been made with intent to deceive.

(d) "Fine art" means a painting, sculpture, drawing or work of graphic art.

(e) "Person" means an individual, partnership, corporation, association or other group however organized.

(f) "Written instrument" means a written or printed agreement, bill of sale, or any other written or printed note or memorandum of the sale or exchange of a work of fine art by an art merchant and includes a written or printed catalogue or other prospectus of a forthcoming sale as well as any written or printed corrections or amendments thereof.

Sec. 2. Any provision in any other law to the contrary notwithstanding:

(1) Whenever an art merchant, in selling or exchanging a work of fine art, furnishes to a buyer of such work who is not an art merchant, a written instrument which, in describing the work, identifies it with any author or authorship, the description (a) shall be presumed to be part of the basis of the bargain and (b) shall create an express warranty of the authenticity of the authorship as of the date of such sale or exchange. The warranty shall not be negated or limited because the art merchant in the written instrument did not use formal words such as "warrant" or "guarantee" or because he did not have a specific intention or authorization to make a warranty or because any statement relevant to authorship is, or purports to be, or is capable of being merely the art merchant's opinion.

(2) In construing the degree of authenticity of authorship warranted, due regard shall be given to the terminology used in describing the authorship and the meaning accorded to such terminology by the customs and usage of the trade at the time and in the locality where the sale or exchange took place. A written instrument delivered pursuant to a sale which took

place in the state of Michigan which , in describing the work, states, for example,

(a) that the work is by a named author or has a named authorship, without any other limiting words, means, unequivocally, that the work is by the named author or has the named authorship.

(b) that the work is "attributed to a named author" means a work of the period of the author, attributed to him, but not with certainty by him.

(c) that the work is of the "school of a named author" means a work of the period of the author, by a pupil or close follower of the author, but not by the author.

Sec. 3. Words relevant to the creation of an express warranty of authenticity of authorship of a work of fine art and words tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of section 2202 of the uniform commercial code, being section 440.2202 of the Compiled Laws of 1948, on parol or extrinsic evidence, negation or limitation is inoperative to the extent that the construction is unreasonable. Subject to the limitations hereinafter set forth, the construction shall be deemed unreasonable if:

(1) the language tending to negate or limit the warranty is not conspicuous, written and contained in a provision, separate and apart from any language relevant to the creation of the warranty, in words which would clearly and specifically apprise the buyer that the seller assumes no risk, liability or responsibility for the authenticity of the authorship of such work of fine art. Words of general disclaimer like "all warranties, express or implied, are excluded" are not sufficient to negate or limit an express warranty of authenticity of the authorship of a work of fine art, created under section 2 of this act, or otherwise; or

(2) the work of fine art is proved to be a "counterfeit," as that term is defined in this act, and this was not clearly indicated in the description of the work; or

(3) the work of fine art is unqualifiedly stated to be the work of a named author or authorship and it is proved that, as of the date of sale or exchange, the statement was false, mistaken or erroneous.

Sec. 4. (1) The rights and liabilities created by this act shall be construed to be in addition to and not in substitution, exclusion or displacement of other rights and liabilities provided by law, including the law of principal and agent, except where such construction would, as a matter of law, be unreasonable.

(2) No art merchant who, as buyer, is excluded from obtaining the benefits of an express warranty under this act shall thereby be deprived of the benefits of any other provision of law.

RECOMMENDATION RELATING TO MINOR STUDENTS' CAPACITY TO BORROW

The federal government and State of Michigan have established loan funds enabling students to borrow money for higher education. In addition, many financial institutions have established educational loan programs and universities and colleges grant loans from funds made available through private sources. For various reasons, many students under 21 years of age seek participation in these loan programs without guarantees or other assurances of performance from adults. It is not clear under existing law whether or not a minor may disaffirm the loan contract.

Because of the national and state policies encouraging loan programs, the National Conference of Commissioners on Uniform State Laws has promulgated the Uniform Minor Student Capacity to Borrow Act. Because many states may have some relationship to an educational loan (for example, the domicile of the minor, the location of the educational institution, the state in which the loan is made), uniformity in the law of the several states is desirable. The Law Revision Commission therefore recommends the adoption of the proposed uniform act in Michigan. The proposed legislation removes the possible defense of minority for persons 16 years of age or older, but only if the educational institution has certified that the borrower is enrolled or has been accepted for enrollment as a student.

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 600.9928 of the Compiled Laws of 1948, by adding 1 new section to stand as section 1404.

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 600.9928 of the Compiled Laws of 1948, is amended by adding 1 new section to stand as section 1404 to read as follows:

SEC. 1404. (1) AS USED IN THIS SECTION:

(A) "PERSON" MEANS INDIVIDUAL, CORPORATION, GOVERNMENT, OR GOVERNMENTAL SUBDIVISION OR AGENCY, BUSINESS TRUST,

ESTATE, TRUST, PARTNERSHIP OR ASSOCIATION, OR ANY OTHER LEGAL ENTITY.

(B) "EDUCATIONAL INSTITUTION" MEANS A UNIVERSITY, COLLEGE, COMMUNITY COLLEGE, JUNIOR COLLEGE, HIGH SCHOOL, TECHNICAL, VOCATIONAL OR PROFESSIONAL SCHOOL, OR SIMILAR INSTITUTION, WHEREVER LOCATED, APPROVED OR ACCREDITED BY THE STATE DEPARTMENT OF EDUCATION FOR THE PURPOSES OF THIS SECTION, OR BY THE APPROPRIATE OFFICIAL, DEPARTMENT OR AGENCY OF THE STATE IN WHICH THE INSTITUTION IS LOCATED; AND

(C) "EDUCATIONAL LOAN" MEANS A LOAN OR OTHER AID OR ASSISTANCE FOR THE PURPOSE OF FURTHERING THE OBLIGOR'S EDUCATION AT AN EDUCATIONAL INSTITUTION.

(2) ANY WRITTEN OBLIGATION SIGNED BY A MINOR 16 OR MORE YEARS OF AGE IN CONSIDERATION OFAN EDUCATIONAL LOAN RECEIVED BY HIM FROM ANY PERSON IS ENFORCEABLE AS IF HE WERE AN ADULT AT THE TIME OF EXECUTION, BUT ONLY IF PRIOR TO THE MAKING OF THE EDUCATIONAL LOAN AN EDUCATIONAL INSTITUTION HAS CERTIFIED IN WRITING TO THE PERSON MAKING THE EDUCATIONAL LOAN THAT THE MINOR IS ENROLLED, OR HAS BEEN ACCEPTED FOR ENROLLMENT, IN THE EDUCATIONAL INSTITUTION.

RECOMMENDATION RELATING TO DOCTOR-PATIENT PRIVILEGE AND PSYCHOLOGIST-PATIENT PRIVILEGE

Occasionally a doctor treating a person for mental illness or a person engaged in the practice of psychology encounters a person who is potentially dangerous to himself or to others. The question has arisen as to whether or not the doctor or the psychologist can make disclosures of that information to public officials or to others. For example, a doctor's patient may be engaged in a hazardous occupation such as an airline pilot and if he suffers mental illness during the course of the occupation he may cause an injury not only to himself but to many other persons because of the dangerousness of the instrumentality with which he works.

With respect to doctors, the only provision in Michigan statutes relevant to the situation is the physician-patient privilege established in the evidence chapter of the Revised Judicature Act. Section 600.2157 of the Compiled Laws of 1948 reads in part as follows: "No person duly authorized to practice medicine or surgery shall be allowed to disclose any information which he may have acquired in attending any patient in his professional character. . . ."

Although this section is included in the Revised Judicature Act and therefore might be considered to relate only to court proceedings, the language of the section is much broader. Therefore, it is generally agreed that in the absence of a court order directing otherwise, any information acquired by a physician in the course of a physician-patient relationship, including information obtained by a physician who is head of a hospital in which the patient is being treated, is controlled by this section. Therefore, the physician is prohibited from disclosing information to public officials or others even though he has reason to believe that the patient may cause injury to himself or to others. The restriction on disclosure of information contained in this section is supplemented by the provisions of Act 237 of the Public Acts of 1899 dealing with the regulation and licensing of physicians. Section 338.52 of the Compiled Laws of 1948 provides that the willful betrayal of a professional secret constitutes unprofessional and dishonest conduct justifying refusal to issue or continue professional licensing of any physician guilty of that conduct.

The situation with respect to psychologists is not quite the same. Section 338.1018 of the Compiled Laws of 1948 provides in part: "No psychologist certified under the provisions of this act shall be compelled to disclose any information which he acquires from persons consulting him in his professional capacity. . . ." Although this section merely precludes compelling disclosure, yet it may be interpreted in such a man-

ner as to be substantially similar to the restrictions contained in the sections of the statutes dealing with physicians.

Currently, if a physician or psychologist does come into contact with a patient who is dangerous to himself or others, the only recourse is to seek admission of the person to a mental hospital. However, a petition must be signed by a suitable person and neither psychologists nor doctors desire to sign such petitions. Therefore, if psychologists and physicians are to have adequate means available to handle a dangerous situation, it is recommended that the privilege statutes in Michigan be amended to allow disclosure if the doctor or psychologist is convinced that the patient is dangerous to himself or others and that disclosure is necessary to prevent the threatened danger.

The proposed bills follow:

PROPOSED BILL NO. 1

A bill to amend section 2157 of Act No. 236 of the Public Acts of 1961, entitled "revised judicature act of 1961," being section 600.2157 of the Compiled Laws of 1948.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. Section 2157 of Act No. 236 of the Public Acts of 1961, being section 600.2157 of the Compiled Laws of 1948, is amended to read as follows:

Sec. 2157. No person duly authorized to practice medicine or surgery shall be allowed to disclose any information which he may have acquired in attending any patient in his professional character, and which information was necessary to enable him to prescribe for such patient as a physician, or to do any act for him as a surgeon: Provided, however, That in case such patient shall bring an action against any defendant to recover for any personal injuries, or for any malpractice, if such plaintiff shall produce any physician as a witness in his own behalf, who has treated him for such injury, or for any disease or condition, with reference to which such malpractice is alleged, he shall be deemed to have waived the privilege hereinbefore provided for, as to any or all other physicians, who may have treated him for such injuries, disease or condition: Provided further, That after the decease of such patient, in a contest upon the question of admitting the will of such patient to probate, the heirs at law of such patient, whether proponents or contestants of his will, shall

be deemed to be personal representatives of such deceased patient for the purpose of waiving the privilege hereinbefore created. THERE IS NO PRIVILEGE UNDER THIS SECTION IF THE PERSON AUTHORIZED TO PRACTICE MEDICINE OR SURGERY HAS REASONABLE CAUSE TO BELIEVE THAT THE PATIENT IS IN SUCH MENTAL OR EMOTIONAL CONDITION AS TO BE DANGEROUS TO HIMSELF OR TO THE PERSON OR PROPERTY OF ANOTHER AND THAT DISCLOSURE OF THE INFORMATION IS NECESSARY TO PREVENT THE THREATENED DANGER.

PROPOSED BILL NO. 2

A bill to amend section 18 of Act No. 257 of the Public Acts of 1959, entitled "An Act to provide for the certification of psychologists; to define the powers and duties of the superintendant of public instruction; and to provide penalties for the violation of this act," being section 338.1018 of the Compiled Laws of 1948.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. Section 18 of Act No. 257 of the Public Acts of 1959, being section 338.1018 of the Compiled Laws of 1948, is amended to read as follows:

Sec. 18. No psychologist certified under the provisions of this act shall be compelled to disclose any information which he acquires from persons consulting him in his professional capacity and which information was necessary to enable him to render services in his professional capacity to such persons. Any information may be disclosed with the consent of the person so confiding if the person is 21 years of age or over or if the person is a minor, with the consent of his parent or guardian. After the decease of the person in a contest upon the question of admitting the will of such person to probate, any or all of the heirs at law of such person, whether proponents or contestants of his will, and the personal representative of such deceased person, may waive the privilege hereinbefore created. THERE IS NO PRIVILEGE UNDER THIS SECTION IF A CERTIFIED PSYCHOLOGIST HAS REASONABLE CAUSE TO BELIEVE THAT THE PATIENT IS IN SUCH MENTAL OR EMOTIONAL CONDITION AS TO BE DANGEROUS TO HIMSELF OR TO THE PERSON OR PROPERTY OF ANOTHER AND THAT DISCLOSURE OF THE INFORMATION IS NECESSARY TO PREVENT THE THREATENED DANGER.

RECOMMENDATION RELATING TO CIRCUIT COURT COMMISSIONER POWERS IN WAYNE COUNTY

Effective January 1, 1969, the circuit court commissioner courts of this state were eliminated by constitutional requirement as well as legislative action. Mich. Const. Article VI, Sec. 26; Act. No. 154, P.A. 1968, C.L. 1948,600.9922. By the statutory provision, however, specific provision was made applicable only to Wayne County, which provided:

> "In any district in which there is a common pleas court, the duties and powers of the circuit court commissioner shall be performed by 4 referees appointed by the circuit court, which referees shall be court clerks of the circuit court commissioners court with 25 years' experience as such court clerks, and if an insufficient number of such qualified court clerks are available, the remaining referees shall be persons licensed to practice law in this state."

The Michigan Supreme Court noted "that serious question has been raised as to the constitutional validity of this phase of the statute." It thereupon entered an administrative order that:

> "Effective January 1, 1969, all of the duties and powers of the circuit court commissioners of Wayne County are hereby transferred to the common pleas court of Detroit."

This administrative order has been in effect throughout the year 1969 to date and no referees have been appointed.

The statutory provision for use of referees applicable only to Wayne County seems totally unjustifiable without regard to the constitutional issues which it raises. One of the basic aims in the improvement of our system for the administration of justice is to unify the court system of the state. The lower court system was sought to be amalgamated into a single district court system for the entire state. While local option was permitted to retain municipal courts, including the Common Pleas Court of Detroit, these exceptions were incorporated to meet political exigencies. To further fragment the judicial system by providing for the appointment of referees to perform circuit court commissioner duties in Wayne County seems particularly unwarranted in the light of the specific provisions which permit non-lawyers to serve as referees and the statutory formulation to preserve specific jobs for the only two individuals who meet the 25 year seniority

requirement.

In considering a change in this provision, two basic alternatives are available. The jurisdiction of the former circuit court commissioners court in Wayne County could be transferred in its entirety to the Common Pleas Court, as the Supreme Court has done, or it could be distributed among all of the courts functioning as the lower court system of Wayne County. Inasmuch as the Common Pleas Court is basically a municipal court for the city of Detroit, it is our recommendation that the jurisdiction be assigned among all of the courts which function within Wayne County. Thus, a resident of Highland Park or any other area served by a municipal court would be sued in that municipal court rather than in the Common Pleas Court of Detroit.

The proposed bill follows:

PROPOSED BILL

A bill to amend section 9922 of Act No. 236 of the Public Acts of 1961, entitled "revised judicature act of 1961," as amended by Act No. 154 of the Public Acts of 1968, being section 600.9922 of the Compiled Laws of 1948.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. Section 9922 of Act No. 236 of the Public Acts of 1961, as amended by Act No. 154 of the Public Acts of 1968, being Section 600.9922 of the Compiled Laws of 1948, is amended to read as follows:

Sec. 9922. All duties and powers which by law may be performed by justices of the peace, circuit court commissioners, judges of municipal courts, judges of police courts and judges of the recorders court of Cadillac shall be performed after December 31, 1968 by the district court. ~~In any district in which there is a common pleas court, the duties and powers of the circuit court commissioner shall be performed by 4 referees appointed by the circuit court, which referees shall be court clerks of the circuit court commissioners court with 25 years' experience as such court clerks, and if an insufficient number of such qualified court clerks are available, the remaining referees shall be persons licensed to practice law in this state. The present employees of the circuit court commissioners shall become employees of the circuit court in similar positions with salary ranges and benefits not inferior to their present status. The circuit court shall appoint all bailiffs of the superseded circuit court commissioner's court to continue to act as bailiffs and to serve all process in the same~~

~~manner and with the same fee schedule as formerly issued by the circuit court commissioner's court and formerly served by such bailiffs. All the rights, privileges and benefits of the bailiffs shall be maintained. Appeals from the referee shall be to the circuit court in the manner prescribed by rules of the supreme court.~~ IN GEOGRAPHIC AREAS HAVING NO DISTRICT COURTS BUT WHICH ARE SERVED BY MUNICIPAL OR COMMON PLEAS COURTS, THE DUTIES AND POWERS OF THE CIRCUIT COURT COMMISSIONERS SHALL BE PERFORMED BY THE DISTRICT COURTS, MUNICIPAL COURTS AND COMMON PLEAS COURTS WITHIN SUCH COUNTIES HAVING VENUE IN OTHER CIVIL ACTIONS AGAINST A DEFENDANT WHO IS ESTABLISHED, LOCATED, OR RESIDES IN THE GEOGRAPHIC AREA IN WHICH THE COURT IS LOCATED. THE PRESENT EMPLOYEES PERFORMING SERVICES INCIDENT TO THE DUTIES AND POWERS OF THE FORMER CIRCUIT COURT COMMISSIONERS AND THE BAILIFFS OF SUCH COURTS SHALL BE EMPLOYEES OF THE DISTRICT COURTS, MUNICIPAL COURTS AND COMMON PLEAS COURTS OF THE SAME COUNTY AS ASSIGNED BY THE STATE COURT ADMINISTRATOR. THE SALARY ARRANGEMENTS, FEES AND BENEFITS OF SUCH EMPLOYEES AND BAILIFFS SHALL NOT BE INFERIOR TO THEIR PRESENT STATUS. Fees payable under any statutory provisions for the performance of any of the duties of the offices abolished by this act shall be payable to the clerk of the district court OR OTHER SUCCESSOR COURTS for forwarding to the political subdivision involved. Unless the context otherwise indicates references in all laws to the courts so abolished shall be deemed to refer to the district court OR OTHER SUCCESSOR COURTS. This act shall supersede and revoke any acts or parts of acts in conflict with its provisions but only to the extent of such conflict.

SENATE BILL No. 260

March 22, 1971, Introduced by Senators COOPER, BISHOP, RICHARDSON and FAXON and referred to the Committee on Commerce.

A bill to amend section 3036 of Act No. 218 of the Public Acts of 1956, entitled

"The insurance code of 1956,"

being section 500.3036 of the Compiled Laws of 1948.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. Section 3036 of Act No. 218 of the Public Acts of 1956, being section 500.3036 of the Compiled Laws of 1948, is amended to read as follows:

Sec. 3036. Whenever an appeal is taken from any judgment in any case wherein it shall appear to the court that all or a part of the particular liability of the appellant thereunder is insured against, in and by any surety company or insurance carrier, authorized to do such business in Michigan, and the court is satisfied of the applicable coverage of such policy or suretyship, it shall not be required of the appellant to provide any appeal bond or bond to stay execution pending such appeal TO THE EXTENT OF THE COVERAGE OF SUCH POLICY OR SURETYSHIP, but such insurance carrier or surety company may be required by the court and is hereby given authority to execute its written recognizance to the opposite party or parties for the payment of the taxable costs of such appeal. ~~:Provided,~~ Such surety company or insurance carrier shall deposit with ~~said~~ THE court a copy of ~~said~~ THE insurance policy or bond and shall admit its liability thereunder, and agree to pay such judgment against its insured, if any, as shall be affirmed by ~~said~~ THE appellate court, but not exceeding the amount of the liability under ~~said~~ THE policy or bond; and in such case the court having jurisdiction thereof, on its own motion, may enter judgment against ~~said~~ THE surety company or carrier to such extent without further proceedings. IF THE COVERAGE OF SUCH POLICY OR SURETYSHIP IS LESS THAN THE AMOUNT OF THE JUDGMENT, A STAY OF EXECUTION SHALL

BE GRANTED UPON FILING OF A BOND FOR THE DIFFERENCE BETWEEN THE AMOUNT OF THE JUDGMENT AND THE COVERAGE OF SUCH POLICY OR SURETYSHIP.

805 '71

HOUSE BILL No. 4295

February 18, 1971, Introduced by Reps. O'Neill, Sharpe, McNeely, Geerlings, Ogonowski, Del Rio, Weber and Suski and referred to the Committee on Judiciary.

A bill to amend section 3036 of Act No. 218 of the Public Acts of 1956, entitled

"The insurance code of 1956,"

being section 500.3036 of the Compiled Laws of 1948.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. Section 3036 of Act No. 218 of the Public Acts of 1956, being section 500.3036 of the Compiled Laws of 1948, is amended to read as follows:

Sec. 3036. Whenever an appeal is taken from any judgment in any case wherein it shall appear to the court that all or a part of the particular liability of the appellant thereunder is insured against, in and by any surety company or insurance carrier, authorized to do such business in Michigan, and the court is satisfied of the applicable coverage of such policy or suretyship, it shall not be required of the appellant to provide any appeal bond or bond to stay execution pending such appeal TO THE EXTENT OF THE COVERAGE OF SUCH POLICY OR SURETYSHIP, but such insurance carrier or surety company may be required by the court and is hereby given authority to execute its written recognizance to the opposite party or parties for the payment of the taxable costs of such appeal. ~~:Provided,~~ Such surety company or insurance carrier shall deposit with ~~said~~ THE court a copy of ~~said~~ THE insurance policy or bond and shall admit its liability thereunder, and agree to pay such judgment against its insured, if any, as shall be affirmed by ~~said~~ THE appellate court, but not exceeding the amount of the liability under ~~said~~ THE policy or bond; and in such case the court having jurisdiction thereof, on its own motion, may enter judgment against ~~said~~ THE surety company or carrier to such extent without further proceedings. IF THE COVERAGE OF SUCH POLICY OR SURETYSHIP IS LESS THAN THE AMOUNT OF THE JUDGMENT, A STAY OF EXECUTION SHALL

BE GRANTED UPON FILING OF A BOND FOR THE DIFFERENCE BETWEEN THE AMOUNT OF THE JUDGMENT AND THE COVERAGE OF SUCH POLICY OR SURETYSHIP.

805 '71

RECOMMENDATION RELATING TO INSURANCE POLICY IN LIEU OF BOND

Where a judgment has been rendered against a defendant who carries insurance, it is provided by statute that such a policy may be used in lieu of a bond to stay proceedings. Compiled Laws 1948, Sec. 500.3036. The Michigan Supreme Court has construed the statute as eliminating the need for a bond even though the insurance coverage is substantially less than the amount of the judgment. See Wolodzko v. Burdick, 382 Mich. 528 (1969).

The Michigan Supreme Court has presently under consideration a change in court rules which will require that the elimination of a bond is available only when the insurance coverage is at least 50% of the amount of the judgment. Id. p. 534. As a matter of fairness, however, there seems no sound reason why a bond to stay proceedings must be in the full amount of the judgment when there is no insurance and only in one-half that sum when there is insurance coverage. It is thus our recommendation that the statute be amended to provide that to the extent that the insurance policy does not cover the amount of the judgment that the full difference shall be covered by a bond in order to stay proceedings.

The proposed bill follows:

PROPOSED BILL

A bill to amend section 3036 of Act No. 218 of the Public Acts of 1956, entitled, "the insurance code of 1956", being section 500.3036 of the Compiled Laws of 1948.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. Section 3036 of Act No. 218 of the Public Acts of 1956, being Section 500.3036 of the Compiled Laws of 1948, is amended to read as follows:

Sec. 3036. Whenever an appeal is taken from any judgment in any case wherein it shall appear to the court that all or a part of the particular liability of the appellant thereunder is insured against, in and by any surety company or insurance carrier, authorized to do such business in Michigan, and the court is satisfied of the applicable coverage of such policy or suretyship, it shall not be required of the appellant to provide any appeal bond or bond to stay execution pending such appeal TO THE EXTENT OF THE

COVERAGE OF SUCH POLICY OR SURETYSHIP, but such insurance carrier or surety company may be required by the court and is hereby given authority to execute its written recognizance to the opposite party or parties for the payment of the taxable costs of such appeal: Provided, Such surety company or insurance carrier shall deposit with said court a copy of said insurance policy or bond and shall admit its liability thereunder, and agree to pay such judgment against its insured, if any, as shall be affirmed by said appellate court, but not exceeding the amount of the liability under said policy or bond; and in such case the court having jurisdiction thereof, on its own motion, may enter judgment against said surety company or carrier to such extent without further proceedings. IF THE COVERAGE OF SUCH POLICY OR SURETYSHIP IS LESS THAN THE AMOUNT OF THE JUDGMENT, STAY OF EXECUTION SHALL BE GRANTED UPON FILING OF A BOND FOR THE DIFFERENCE BETWEEN THE AMOUNT OF THE JUDGMENT AND THE COVERAGE OF SUCH POLICY OR SURETYSHIP.

RECOMMENDATION RELATING TO APPEALS FROM MUNICIPAL COURTS

At the present time, appeals from the district courts are taken to the circuit court to be tried on the record made in the district court. Mich. Comp. Laws 1948, Sections 600.8341, 600.8342. Municipal courts, however, are still governed by the provisions formerly applicable to the justice courts. Mich. Comp. Laws 1948, Sections 730.106, 730.136. Appeals from justice courts were tried de novo in the circuit court. Mich. Comp. Laws 1948, Sections 600.7701 et seq. Appeals from municipal courts are tried de novo in the circuit court.

With municipal courts operating with stenographic transcripts similar to those made in the district courts, there is no sound reason for a retrial of the case in the circuit court. It is thus recommended that the procedure now applicable to appeals from the district court which are tried on the record be made equally applicable to appeals from municipal courts.

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 600.9928 of the Compiled Laws of 1948, by adding a new section 7751.

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 600.9928 of the Compiled Laws of 1948, is amended by adding a new section 7751 to read as follows:

SEC. 775. (1) APPEALS FROM MUNICIPAL COURTS SHALL BE ON A WRITTEN TRANSCRIPT OF THE RECORD MADE IN THE MUNICIPAL COURT OR ON A RECORD SETTLED AND AGREED TO BY THE PARTIES AND APPROVED BY THE COURT.

(2) APPEALS SHALL BE TO THE CIRCUIT COURT FOR THE COUNTY IN WHICH THE JUDGMENT IS RENDERED. APPEALS FROM FINAL JUDGMENTS SHALL BE AS OF RIGHT AND ALL OTHER APPEALS SHALL BE BY APPLICATION. APPEALS TO THE COURT OF APPEALS FROM JUDGMENTS ENTERED BY THE CIRCUIT COURT ON SUCH APPEALS SHALL BE BY APPLICATION.

RECOMMENDATION RELATING TO ELIMINATION OF CIRCUIT COURT COMMISSIONER POWERS OF MAGISTRATE

In the District Court Act, it is provided that a magistrate who is a licensed attorney has jurisdiction "to perform the powers and duties of a circuit court commissioner". C. L. 1948, §600.8511(e). The only significant activities of a circuit court commissioner were the handling of summary proceedings in landlord-tenant cases and in land contract foreclosures. The defendant in such cases has the right to demand a jury trial. In addition, the plaintiff in the summary proceeding can seek personal judgments against the defendant for the amount owing for unpaid rent. See C. L. 1948, §600.5634.

There is serious question as to the power of a magistrate to handle such cases both as a matter of statutory and constitutional limitations. As a practical matter, district court judges require that the judge rather than the magistrate should preside in cases involving summary proceedings.

It is clear that a summary proceeding for eviction of a tenant or foreclosure of a land contract is just as significant a civil action as most others which come before the district judges. There seems no sound reason why such cases should not be handled by the district judge rather than by a magistrate. It is thus our recommendation that the powers of magistrates to perform the duties of a circuit court commissioner should be deleted from the statute.

The proposed bill follows:

PROPOSED BILL

A bill to amend section 8511 of Act No. 236 of the Public Acts of 1961, entitled "revised judicature act of 1961", as amended by Act No. 182 of the Public Acts of 1969, being Section 600.8511 of the Compiled Laws of 1948.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. Section 8511 of Act No. 236 of the Public Acts of 1961, as amended by Act No. 182 of the Public Acts of 1969, being Section 600.8511 of the Compiled Laws of 1948, is amended to read as follows:

Sec. 8511. Magistrates shall have the following jurisdiction and duties:

(a) To arraign and sentence upon pleas of guilty for those violations of

(1) Act No. 300 of the Public Acts of 1949, as amended, being sections 257.1 to 259.923 of the Compiled Laws of 1948, or a local ordinance substantially corresponding thereto;

(2) Act No. 165 of the Public Acts of 1929, as amended, being sections 301.1 to 306.3 of the Compiled Laws of 1948;

(3) Act No. 286 of the Public Acts of 1929, as amended, being sections 311.1 to 315.2 of the Compiled Laws of 1948;

(4) Act No. 303 of the Public Acts of 1967, being sections 281.1001 to 281.1199 of the Compiled Laws of 1948;

(5) Act No. 254 of the Public Acts of 1933, as amended, being sections 475.1 to 479.49 of the Compiled Laws of 1948;

(6) Act No. 181 of the Public Acts of 1963, as amended, being sections 480.11 to 480.19 of the Compiled Laws of 1948;

(7) Act No. 74 of the Public Acts of 1968, being sections 257.1501 to 257.1518 of the Compiled Laws of 1948; and

(8) Act No. 339 of the Public Acts of 1919, as amended, being sections 287.261 to 287.290; when the maximum permissible punishment thereunder does not exceed 90 days in jail or a fine of not more than $100.00, or both, as authorized by the judges of the district court, except for violations of sections 625, 625b, 626, 626b and 904 of Act No. 300 of the Public Acts of 1949, as amended, or a local ordinance corresponding thereto.

(b) To issue warrants for the arrest of any person upon the written authorization of the prosecuting or municipal attorney.

(c) To fix bail and accept bond in all criminal cases.

(d) To issue search warrants, when authorized to do so by a district court judge.

~~(e) If the magistrate is a person licensed to practice law in this state, to perform the powers and duties of a circuit court commissioner.~~

~~(f)~~ (E) To act as coroner when required to do so, as provided by section 8 of Act No. 343 of the Public Acts of 1925, as added, being section 326.8 of the Compiled Laws of 1948.

RECOMMENDATION RELATING TO CONSTITUTIONAL AMENDMENT RE JURIES OF 12

The district courts have been created with all of the attributes of a court of record. All proceedings are stenographically recorded and written pleadings are provided for. By express provision of the creating act, however, "the district court is not a court of record." (1948 Compiled Laws, Sec. 600.8101). The reason this provision was inserted is that Article I, Section 20 of the Michigan Constitution permits less than 12 jurors only in "courts not of record".

In the trial of traffic cases and various other misdemeanors, it has for many years been found administratively necessary to provide for 6 man juries and such is the provision for the district courts. See C. L. 1948, 600.8355. Thus to meet the present constitutional limitation, it is necessary to provide by statute that the district court shall not be a court of record.

This constitutional limitation creates distinctions between the district court and other courts of record which are unwarranted. In its operation, the district court is no different than any other court of record. Yet many laws were enacted over the years which are applicable to courts of record and should be applicable to the district court but are inapplicable in the absence of an amendment to the laws or a new statute made specifically applicable to the district courts.

A number of provisions of the Revised Judicature Act are applicable to courts of record and should be equally applicable to the district courts. Such, for instance, are the provisions for so-called long arm jurisdiction. RJA, Chapter 7. Furthermore, in the field of res judicata, credence is granted to judgments of a court of record which is greater than in judgments by courts not of record. This is particularly significant in the area of recognition of judgments of another state which are accepted under the full faith and credit constitutional provisions when rendered in a court of record.

It is our belief that the status and effective ness of the District Courts will be materially enhanced by elimination of the statutory requirement that it is not a court of record. This can only be achieved by amending the constitution to eliminate the test for less than 12 man juries as being applicable only to courts not of record. The more proper delineation should refer to the nature of the offence. It is believed that the criminal jurisdictional limitation of the District Courts to misdemeanors having a maximum imprisonment of one year should be the basis for constitutional jurisdictional requirement as well. (1948 Compiled Laws, Sec. 600. 8311).

The proposed constitutional amendment follows:

JOINT RESOLUTION

A JOINT RESOLUTION proposing an amendment to Section 20 of Article I of the State Constitution relating to the use of less than 12 jurors.

RESOLVED, By the Senate and the House of Representatives of the State of Michigan, That the following amendment to Section 20 of Article I of the State Constitution, relating to juries of less than 12, is proposed, agreed to and submitted to the people of the State:

ARTICLE I

Sec. 20. In every criminal prosecution, the accused shall have the right to a speedy and public trial by an impartial jury, which may consist of less than 12 jurors in ~~all courts not of record~~ PROSECUTIONS FOR MISDEMEANORS PUNISHABLE BY A MAXIMUM IMPRISONMENT OF ONE YEAR; to be informed of the nature of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; to have the assistance of counsel for his defense; to have an appeal as a matter of right; and in courts of record, when the trial court so orders, to have such reasonable assistance as may be necessary to perfect and prosecute an appeal.