

49th Annual Report 2018

Michigan Law Revision Commission

JANE O. WILENSKY, *Executive Secretary*

Term Members:

RICHARD D. MCLELLAN,
Chairperson

ANTHONY DEREZINSKI,
Vice Chairperson

GEORGE E. WARD

WILLIAM C. WHITBECK

Legislative Members:

SENATOR TONYA SCHUITMAKER

REPRESENTATIVE PETER J. LUCIDO

REPRESENTATIVE BRIAN K. ELDER

Ex Officio Member:

JENNIFER DETTLOFF

Legislative Council Administrator

Boji Tower

3rd Floor

124 West Allegan

P.O. Box 30036

Lansing, Michigan 48909-7536



Michigan
Law Revision Commission

FORTY-NINTH ANNUAL REPORT
2018

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**This report may be downloaded from the Commission’s Internet website,
<http://council.legislature.mi.gov/mlrc.html>**

MICHIGAN LAW REVISION COMMISSION
FORTY-NINTH ANNUAL REPORT TO THE LEGISLATURE
FOR CALENDAR YEAR 2018

To the Members of the Michigan Legislature:

The Michigan Law Revision Commission hereby presents its forty-ninth annual report pursuant to section 403 of Act No. 268 of the Public Acts of 1986, MCL § 4.1403.

The Commission, created by section 401 of Act No. 268 of the Public Acts of 1986, MCL § 4.1401, consists of two members of the Senate, with one from the majority and one from the minority party, appointed by the Majority Leader of the Senate; two members of the House of Representatives, with one from the majority and one from the minority party, appointed by the Speaker of the House; the Director of the Legislative Service Bureau or his or her designee, who serves as an ex officio member; and four members appointed by the Legislative Council. The terms of the members appointed by the Legislative Council are staggered. The Legislative Council designates the Chair of the Commission. The Vice Chair is elected by the Commission.

Membership

The legislative members of the Commission during 2018 were Senator Tonya Schuitmaker of Lawton; Senator Bert Johnson of Detroit (resigned from the Senate on March 2, 2018); Representative Peter J. Lucido of Shelby Township; and Representative Brian K. Elder of Bay City. Legislative Council Administrator Jennifer Dettloff has been the ex officio member of the Commission since November 9, 2016. The appointed members of the Commission were Richard D. McLellan, Anthony Derezinski, George E. Ward, and William C. Whitbeck. Mr. McLellan served as Chairperson and Mr. Derezinski served as Vice Chairperson. Jane O. Wilensky served as Executive Secretary. Brief biographies of the Commission members and staff are located at the end of this report.

The Commission's Work in 2018

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 to recommend needed reform.
2. To receive and consider proposed changes in law recommended by the American Law Institute, the National Conference of Commissioners on Uniform State Laws, any bar association, and other learned bodies.
3. To receive and consider suggestions from justices, judges, legislators and other public officials, lawyers, and the public generally as to defects and anachronisms in the law.
4. To recommend 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 civil and criminal law of this state into harmony with modern conditions.
5. To encourage the faculty and students of the law schools of this state to participate in the work of the Commission.
6. To cooperate with the law revision commissions of other states and Canadian provinces.
7. To issue an annual report.

The problems to which the Commission directs its studies are largely identified through an examination by the Commission members and the Executive Secretary of the statutes and case law of Michigan, the reports of learned bodies and commissions from other jurisdictions, and legal literature. Other subjects are brought to the attention of the Commission by various organizations and individuals, including members of the Legislature.

The Commission's efforts during the year have been devoted primarily to three areas. First, Commission members provided information to legislative committees related to various proposals previously recommended by the Commission. Second, the Commission examined suggested legislation proposed by various groups involved in law revision activity. These proposals included legislation advanced by the Council of State Governments, the National Conference of Commissioners on Uniform State Laws, and the law revision commissions of various jurisdictions within and outside the United States. Finally, the Commission considered various problems relating to special aspects of current Michigan law suggested by its own review of Michigan decisions and the recommendations of others.

As in previous years, the Commission studied various proposals that did not lead to legislative recommendations. In the case of certain uniform or model acts, the Commission sometimes found that the subjects treated had been considered by the Michigan Legislature in recent legislation and, therefore, did not recommend further action. In other instances, uniform or model acts were not pursued because similar legislation was currently pending before the Legislature upon the initiation of legislators having a special interest in the particular subject.

Proposals for Legislative Consideration in 2018

In addition to its new recommendations, the Commission recommends favorable consideration of the following recommendations of past years upon which no final action was taken in 2018:

- (1) Revisions to Michigan's Freedom of Information Act, 2017 Annual Report, page 4.
- (2) Enhance Licensure of International Corporate Lawyers in Michigan, 2012-13 Annual Report, page 6.
- (3) Updating the Open Meetings Act, 2012-13 Annual Report, page 18.
- (4) Use of Technology to Conduct Government Meetings, 2003 Annual Report, page 9.
- (5) Governor's Power to Remove Public Officials from Office, 2003 Annual Report, page 21.
- (6) Immunity for Court-Appointed Psychologists, 2000 Annual Report, page 84.
- (7) Pre-Dispute, Contractual Venue Selection Clauses, 1998 Annual Report, page 203.
- (8) Uniform Unincorporated Nonprofit Associations Act, 1997 Annual Report, page 144.
- (9) Prison Mailbox Rule, 1997 Annual Report, page 137.
- (10) Uniform Conflict of Laws—Limitations Act, 1997 Annual Report, page 151.
- (11) E-Mail and the Freedom of Information Act, 1997 Annual Report, page 133.
- (12) Uniform Putative and Unknown Fathers Act, 1994 Annual Report, page 117.

- (13) Motorcycles and the No-Fault Insurance Act, 1993 Annual Report, page 131.
- (14) Tortfeasor Contribution under MCL 600.2925a(5), 1992 Annual Report, page 21.
- (15) International Commercial Arbitration, 1991 Annual Report, page 31.
- (16) Uniform Contribution Among Joint Tortfeasors Act, 1991 Annual Report, page 19.
- (17) Uniform Statutory Rule Against Perpetuities, 1990 Annual Report, page 41.
- (18) Standardization of Condemnation Powers Provisions, 1989 Annual Report, page 15.
- (19) Consolidated Receivership Statute, 1988 Annual Report, page 72.

Current Study Agenda

Topics on the current study agenda of the Commission are:

- (1) Recommendations for Codifying Michigan Choice-of-Law Rules.
- (2) Driver's Licenses for Undocumented Immigrants.
- (3) Criminal Misconduct in Office.

The Commission continues to operate with its sole staff member, the part-time Executive Secretary. The current Executive Secretary of the Commission is Jane O. Wilensky, who was responsible for the publication of this report. By using faculty members at several Michigan law schools as consultants and law students as researchers, the Commission has been able to operate on a budget substantially lower than that of similar commissions in other jurisdictions. At the end of this report, the Commission provides a list of more than 120 Michigan statutes passed since 1967 upon the recommendation of the Commission.

The Office of the Legislative Council Administrator handles the administrative functions and fiscal operations of the Commission under procedures established by the Legislative Council.

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

Respectfully submitted,

Richard D. McLellan, Chairperson
Anthony Derezinski, Vice Chairperson
George E. Ward
William C. Whitbeck
Senator Tonya Schuitmaker
Representative Brian K. Elder
Representative Peter J. Lucido
Jennifer Dettloff

A Resolution Honoring State Senator Tonya Schuitmaker

A resolution to commend and thank the Honorable Tonya Schuitmaker for her service to the Michigan Law Revision Commission.

Whereas, We are proud to salute Senator Schuitmaker and express our gratitude for her commitment to the work of the Michigan Law Revision Commission. Since joining the Commission in January 2009, her talents and energies in the field of law have been notable in her duties as a member of the Michigan Law Revision Commission; and

Whereas, First elected to the Michigan House of Representatives in November 2004 and elected to the Michigan Senate in November 2010, following three terms in the House of Representatives, Senator Schuitmaker has rendered exemplary service through her experience and insight. Her strong leadership, including her role as President Pro Tempore of the Michigan Senate and service on the Senate Appropriations Committee as Chair of the Subcommittee of Higher Education and as Vice Chair of the Senate Judiciary Committee, made Senator Schuitmaker a key participant in debates on many aspects of the law; and

Whereas, Her other Senate committee assignments included the Capital Outlay, Community Colleges, and Judiciary appropriations subcommittees and the Senate Committee on Energy and Technology. Her extensive experiences have not only been put to good use through the legislative process, but have also made her a valued contributor to the commission's work and gave her valuable perspective on the role laws play in all aspects of our society; and

Whereas, In her work as a legislator, practicing attorney, and community leader, she has demonstrated her dedication and commitment to public service and has set an example of hard work that is esteemed by her colleagues; and has enhanced her service to our Commission and has earned her our respect; now, therefore, be it

Resolved by the membership of the Michigan Law Revision Commission, That we extend this expression of gratitude to the Honorable Tonya Schuitmaker for her exemplary work with this body. We are confident that her strong sense of commitment and justice has long served our state well.

A RESOLUTION HONORING THE HONORABLE WILLIAM C. WHITBECK

A resolution to thank and commend the Honorable William C. Whitbeck for his service to the Michigan Law Revision Commission.

Whereas, It is a pleasure to extend this expression of thanks to the Honorable William C. Whitbeck for his dedication and contributions to the Michigan Law Revision Commission. Appointed to the Commission in January 2000, his enthusiasm and motivation have been an invaluable asset to the Commission and the people of this State; and

Whereas, Judge Whitbeck's undergraduate education was at Northwestern University, where he received a McCormack Scholarship in Journalism. He received his J.D. from the University of Michigan Law School in 1966 and was admitted to the Michigan Bar in 1969. During his legal career, Judge Whitbeck was a partner in the law firm of McLellan, Schlaybaugh & Whitbeck from 1975 to 1982, a partner in the law firm of Dykema, Gossett, Spencer, Goodnow and Trigg from 1982 to 1987, and a partner in the law firm of Honigman Miller Schwartz and Cohn from 1993 to 1997. With this wealth of legal knowledge, he has been particularly helpful in developing meaningful recommendations; and

Whereas, Governor John Engler appointed Judge Whitbeck to the Court of Appeals effective October 22, 1997, to a term ending January 1, 1999. Judge Whitbeck was reelected to six-year terms in 1998, 2004, and 2010. Chief Judge Richard Bandstra designated Judge Whitbeck as Chief Judge Pro Tem of the Court of Appeals effective January 1, 1999. The Supreme Court appointed Judge Whitbeck Chief Judge of the Michigan Court of Appeals three times and he served in that position from January 1, 2002, to December 31, 2007. He has been a valuable member of the Michigan Law Commission, and his perspective as an esteemed member of the judiciary has been particularly helpful in developing meaningful recommendations; now, therefore, be it

Resolved, That we extend this expression of our gratitude to the Honorable William C. Whitbeck for his dedicated service to the Michigan Law Revision Commission.

REPORT TO THE LEGISLATURE ON RECOMMENDATIONS FOR CODIFYING MICHIGAN'S CHOICE-OF-LAW RULES

This Report was written by Christopher Schwartz, a student at the University of Michigan Law School who worked for the Law Revision Commission. Mr. Schwartz brought the issue to the Commission's attention and conducted a review of the benefits and problems with codifying Michigan's choice-of-law rules. Michigan's current choice-of-law system is almost entirely governed by case law, which prescribes a "law of the forum" approach for tort law and a "most significant relationship" test for contracts. The Report concludes that codifying Michigan's choice-of-law system will make the law easier to understand and more predictable.

The Commission makes no recommendation about the Report. It is included in the Annual Report for review and consideration by the Legislature.

I. OVERVIEW OF THE CHOICE-OF-LAW SYSTEM

A. General History

Choice-of-law rules, sometimes called conflict-of-law rules, determine which jurisdiction's laws should be applied in a lawsuit. They are used when a legal problem has contacts with multiple states or jurisdictions. Take the following example. A citizen of Michigan injures a citizen of New York in a car crash in New York City with a car registered and insured in Michigan. The New York resident sues the Michigan citizen in Michigan court. Under New York law, the plaintiff would receive far less money than under Michigan law. Whether the Michigan court applies the law of New York or the law of Michigan to determine the recovery for the plaintiff is a choice-of-law question.

In the United States, choice-of-law rules are overwhelmingly state-level, judge-made rules. *See* George Bogert et al., *Bogert's Trusts and Trustees*, § 294. Characterization—Choice of law (2018). Choice-of-law problems are also fairly common. In 2016 alone, there were over 5,300 cases involving choice-of-law questions in federal courts and state appellate courts. Symeon C. Symeonides, *Choice of Law in the American Courts in 2016: Thirtieth Annual Survey*, 65 AM. J. COMP. L. 1, 3 (2017) [hereinafter "Symeonides Survey"].

Choice-of-law rules can be categorized into two legal camps: traditional and modern. The traditional choice-of-law rules are based on the idea of "vested rights" – that "rights and obligations [are] acquired or created in the territory ... where the critical events t[ake] place." *Id.* Thus, the traditional choice-of-law rules are the *lex loci* ("law of the place") rules. Until the early 1960s, choice-of-law rules were largely uniform in the United States: all states used the territorial *lex loci* rules of the First Restatement of Conflict of Laws, which focused on a single connecting factor within the territory of a state as determinative as to which law to apply in a multistate contact setting.

In the case of torts, for example, the traditional choice-of-law rule is the *lex loci delicti* rule ("the law of the place of wrong"), that is, all substantive questions relating to the existence of a tort claim are governed by the local law of the place of wrong. RESTATEMENT (FIRST) OF CONFLICT

OF LAWS § 377 (1934). That place is “the state where the last event necessary to make an actor liable for an alleged tort takes place,” i.e., the place where the cause of action accrued. *Id.* The state where the last event takes place, in turn, is the state where the injury occurred. *See id.* Today, eleven states still follow the *lex loci delicti* rule: Alabama, Georgia, Kansas, Maryland, New Mexico, North Carolina, South Carolina, Vermont, Virginia, West Virginia, and Wyoming. Symeonides Survey at 33.

In the case of lawsuits involving contracts, the traditional choice-of-law rule is the *lex loci contractus* rule (“the law of the place of contracting”). *See* RESTATEMENT (FIRST) OF CONFLICT OF LAWS § 311 (1934). The *lex loci contractus* rule is subdivided into issues of contract validity and contract construction and performance. *See* RESTATEMENT (FIRST) OF CONFLICT OF LAWS §§ 311, 355. If the issue turns on whether the parties have entered into a binding contract, that issue is resolved under the law of the state where the contract was made, which would be the place of acceptance of the offer. *Id.* at § 311. If the issue is one of performance, the law of the place of performance governs, in the absence of a valid choice-of-law clause in the parties’ agreement. *Id.* at § 355. Today, twelve states still follow the *lex loci contractus* rule: Alabama, Florida, Georgia, Kansas, Maryland, New Mexico, Oklahoma, Rhode Island, South Carolina, Tennessee, Virginia, and Wyoming. Symeonides Survey at 33.

Criticism of the First Restatement and of the territorial *lex loci* rules grew during the 1960s. *See, e.g.,* Brainerd Currie, *Change of Venue and the Conflict of Laws*, 22 U. CHI. L. REV. 405 (1954). The most influential critic was Professor Brainerd Currie, who proposed a choice-of-law methodology known as governmental interest analysis. *Id.* In a nutshell, his approach calls for a three-step analysis. First, the forum must identify the significant contacts that the case presents and match them with the state in which they occurred. *Id.* Such contacts would include, for example, the domicile of the parties and the place of the wrong in tort cases. *Id.* Second, the forum must see if the contact state’s laws are materially different on the specific issue. *Id.* For example, assume State A has a damages cap law on noneconomic damages, and State B provides for unlimited tort recovery. In that situation, there is a conflict. Third, the forum must identify the policy or governmental interest behind each state’s law and apply the law of the interested state. *Id.* For example, assume State A’s policy for having a damages cap law is to protect defendants (and their insurers) from economic ruin. Since both parties are domiciled in State B with its unlimited recovery, the only interested state is State B, the state where the loss will be felt. Thus, in sharp contrast to the *lex loci* rule, which would call for application of the law of State A (the place where the accident occurred) interest analysis would apply the law of State B, the law of the common domicile.

Other academics quickly joined the chorus of criticism aimed at the First Restatement. These scholarly camps all advanced a content-selecting system that focuses on the policy behind the competing legal rules, in contrast to the First Restatement’s jurisdiction-selecting choice-of-law rules.

The critics were successful in winning judicial converts in the 1960s, with the New York Court of Appeals in 1963, *see Babcock v. Jackson*, 12 N.Y.2d 473, 476-85 (1963), and the California Supreme Court in 1967 adopting the interest-analysis approach to resolving choice-of-law issues. *See Reich v. Purcell*, 67 Cal.2d 551, 63 Cal. Rptr. 31, 432 P.2d 727 (1967). Both courts broke

ranks with the First Restatement and adopted the modern interest analysis methodology for choice-of-law determinations.

The First Restatement, the various scholarly camps, and the early court decisions departing from the *lex loci* rules were synthesized in 1971 into the Second Restatement of Conflicts. *See generally* RESTATEMENT (SECOND) OF CONFLICT OF LAWS. The Second Restatement uses a choice-of-law methodology known as the “most significant relationship” (MSR) test, which directs the forum to apply the law of the state with the most significant relationship to the particular issue. *See, e.g.*, Eugene Scoles & Peter Hay, *Conflict of Laws* 57-67 (2d ed. 1992); RESTATEMENT (SECOND) CONFLICT OF LAWS § 122 (1971). The Second Restatement’s approach incorporates the First Restatement’s jurisdiction-selecting rules by providing presumptively valid *lex loci* rules to resolve many issues. *See, e.g.*, RESTATEMENT (SECOND) CONFLICT OF LAWS § 145 (1971). Those *lex loci* rules are to be applied, unless there is some other state with a more significant relationship to the issue, in which case the *lex loci rule* is displaced and MSR state’s law is applied. *See, e.g., id.* To guide courts in making the MSR determination, § 6 of the Second Restatement sets forth seven considerations for making a choice-of-law selection:

- (1) the needs of the interstate and international systems,
- (2) the relevant policies of the forum,
- (3) the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue,
- (4) the protection of justified expectations,
- (5) the basic policies underlying the particular field of law,
- (6) certainty, predictability, and uniformity of result, and
- (7) ease in the administration and application of the law to be applied.

The MSR state is determined by examining a list of connecting factors (e.g., the parties’ domicile, place of the wrong, seat of the relationship) that are deemed significant in light of the foregoing seven § 6 factors. The specific choice-of-law provisions of the Second Restatement are organized by subject matter: torts, contracts, property, trusts, status, business corporations, and administration of estates. The list of connecting factors varies with each subject matter.

In tort conflicts, 27 states follow the Restatement Second or a “significant contacts” approach, and 28 states do likewise in contract conflicts. Symeonides Survey at 33. The other states that no longer follow the traditional *lex loci* rules, but which at the same time have not adopted the Restatement Second’s MSR approach, use variations on the interest analysis choice-of-law approach, the “better law” approach, or a “combined modern” approach. *Id.* Two states, Michigan and Kentucky, use the *lexi fori* (“law of the forum”) approach for tort law. *Id.*

B. Dépeçage

Sometimes a court will apply laws of different jurisdictions to different issues within the same case. This is known as dépeçage. For instance, in *In re Disaster at Detroit Metro. Airport on Aug. 16, 1987*, 750 F. Supp. 793 (E.D. Mich. 1989), there was an airplane crash in Michigan. The plaintiffs filed wrongful death suits against both the Missouri manufacturer of the airplane (which manufactured the airplane in California) and the Minnesota airline. *Id.* at 796. The court determined that California's law would apply to the products liability claim against the manufacturer, but that Michigan's law would apply to whether punitive damages should be imposed against the airline. *Id.* at 802, 808.

For the products liability claim, the conflict was important because both Missouri's and California's products liability laws used strict liability for design flaws, while Michigan's used a negligence standard. *Id.* at 799-800. The court applied California law, reasoning that California had an interest in regulating manufacturing in its territory to protect consumers (protecting consumers being the basis for its strict liability laws) while Michigan did not have an interest in regulating another state's manufacturing processes (protecting manufacturers being the basis for its negligence laws). *See id.* at 801-02. As for the imposition of punitive damages, the conflict mattered because Minnesota law allowed for punitive damages in wrongful death actions and Michigan law did not. *Id.* at 805-08. The court found that both Minnesota and Michigan had interests in regulating the airline, and that Minnesota's interest was not so great as to displace Michigan law, so the court ended up applying the law of the forum – Michigan law – and barring the award of punitive damages. *Id.* at 807-08. Thus, both California and Michigan law were applied to different issues in the same case.

C. Michigan's Current Choice-of-Law System

Michigan joined the modern choice-of-law revolution in tort conflicts in 1980s¹ and in contract conflicts in 1995. *Chrysler Corp. v. Skyline Industrial Services, Inc.*, 448 Mich. 113, 528 N.W.2d 698 (1995). Michigan uses *lex fori* for tort law conflicts and the Second Restatement's MSR approach for contract law conflicts.

In tort conflicts, the leading Supreme Court opinion is *Olmstead v. Anderson*, 428 Mich. 1, 400 N.W.2d 292 (1987). In *Olmstead*, a Michigan defendant was involved in a fatal car crash in Wisconsin that killed two Minnesota residents. *Id.* at 3. At the time of the accident, Wisconsin, the place of the wrong, had a damages cap of \$25,000 for wrongful death, whereas neither Michigan nor Minnesota limited recovery for wrongful death actions. *Id.* at 4. After surveying the developments in the choice-of-law field in Michigan and in other states, as well as concluding there was no longer any sound justification for the *lex loci delicti* rule, the Court adopted a *lex fori* rule to resolve tort conflicts. *Id.* at 20. Under the *lex fori* rule, the law of the forum provides the applicable rule of decision and will only be displaced if it can be shown that some other state has a greater interest than the forum in having its law applied. *Id.*

In *Olmstead*, the Court found that damage cap laws are concerned with compensation and the protection of defendants from exorbitant damage awards, not with conduct. Consequently, the state of the place of the wrong – Wisconsin – had little or no interest in such compensation and

¹ *Olmstead v. Anderson*, 428 Mich. 1, 20, 400 N.W.2d 292, 300 (1987); *Sexton v. Ryder Truck Rental, Inc.*, 413 Mich. 406, 320 N.W.2d 843 (1982).

protection when none of the parties resided there. *Id.* at 28. The Court concluded that because neither of the parties was from Wisconsin, the law in conflict dealt with loss allocation rather than conduct regulation, and there was no conflict in the law of Michigan and Minnesota, the law of the forum (Michigan) would be applied. *Id.* at 29. Had the Supreme Court followed the traditional choice-of-law rule, *lex loci delicti*, Wisconsin law would have applied.

In contract conflicts, the Michigan Supreme Court adopted the Second Restatement's MSR approach in *Skyline*, 448 Mich. at 125. In *Skyline*, the Supreme Court recognized that "[t]he trend in this Court has been to move away from traditional choice-of-law conceptions toward a more policy-centered approach." *Id.* at 122-23. The Court found the traditional *lexi loci contractus* too inflexible, and that "§§ 187 and 188 of the Second Restatement, with their emphasis on examining the relevant contacts and policies of the interested states, provide a sound basis for moving beyond formalism to an approach more in line with modern-day contracting realities." *Id.* at 123.

II. THE BENEFITS OF CODIFYING MICHIGAN'S CHOICE-OF-LAW SYSTEM

A. The Law Is Easier to Understand

Codifying Michigan's choice-of-law system will make the law easier to understand for lawyers, judges, and the citizenry generally. First, the codification will organize the foundation of the law into a single place rather than having it scattered across numerous cases. *See, e.g.*, Jean Louis Bergel, *Principal Features and Methods of Codification*, 48 LA. L. REV. 1073, 1079 (1988). Second, codification can clarify the law by giving clear language, especially where there was previously only Supreme Court pluralities or dicta on the matter. For instance, for roughly 13 years, Michigan's choice-of-law rules for contracts were "governed" by a plurality decision, *Sexton v. Ryder Truck Rental*, 413 Mich. 406, 320 N.W.2d 843 (1982). Third, codification can simplify the law by reducing numerous court decisions governing a particular kind of dispute down to a single, clear provision. In these ways, a statute codifying Michigan's choice-of-law rules will act like a "good user manual" for the subject.

B. The Law Is More Predictable and Uniform

One benefit to a codified choice-of-law system is that it becomes easier to predict which law will be applied in each case, and the results of choice-of-law analyses become more uniform. For instance, Louisiana codified its choice-of-law rules in 1991, with the codification taking effect in 1992. Patrick J. Borchers, *Louisiana's Conflicts Codification: Some Empirical Observations Regarding Decisional Predictability*, 60 LA. L. REV. 1061 (2000). From 1988 to 1992, prior to codification of Louisiana's choice-of-law rules, in state-based choice-of-law cases, trial courts were only affirmed 52.9% of the time by appeals courts. *Id.* at 1064-69. After the codification, from 1992 to 1999, trial courts were affirmed 76.2% of the time on choice-of-law decisions. *Id.* This shows that Louisiana's codification significantly improved the uniformity and predictability of choice-of-law decisions, contributing to a more robust rule of law.

C. It Prevents Pushing the State's Choice-of-Law Rules to the Edge of What the Constitution Permits

Codifying Michigan's choice-of-law system can also make it less likely that courts will push choice-of-law decisions to the edge of what the United States Constitution permits. In *Allstate*

Ins. Co. v. Hague, 449 U.S. 302, 305 (1981), Mr. Hague died from injuries in an automotive accident where he was the passenger on a motorcycle. The accident occurred in Wisconsin near the Minnesota border and involved three residents of Wisconsin – though Mr. Hague was employed in Minnesota, commuting daily from Wisconsin. *Id.* After the accident, Mr. Hague’s wife moved to Minnesota, and as representative of her husband’s estate, brought suit in Minnesota. *Id.* at 305-6. She argued that Mr. Hague’s insurance policies should stack, as permitted by Minnesota law but forbidden by Wisconsin law. *Id.* The Minnesota Supreme Court applied Minnesota law over Wisconsin law, using its “better law” approach. *See id.* at 302. The Supreme Court of the United States affirmed the Minnesota Supreme Court, holding “that for a State’s substantive law to be selected in a constitutionally permissible manner, that State must have a significant contact or significant aggregation of contacts, creating state interests, such that choice of its law is neither arbitrary nor fundamentally unfair.” *Id.* at 312-13 Presently, Michigan’s *lex fori* choice-of-law system for tort law could realistically go to the boundaries of the constitutional limits handed down in *Allstate*, since Michigan could conceivably apply the law of the forum where the parties have agreed on Michigan using a choice-of-forum clause for a tort dispute, have a case with virtually no contacts with Michigan, and have a dispute that has contacts with multiple states. Codifying Michigan’s choice-of-law rules could provide clearer rules for when to opt out of *lex fori* in tort cases, and thus avoid pushing on constitutional boundaries.

Avoiding the constitutional boundaries of choice-of-law rules has several advantages. First, it makes the law more predictable since cases will be decided only by the statute and not by a combination of the statute and constitutional caselaw. Second, it can reduce or even eliminate the possibility of appeals to the Supreme Court of the United States regarding the state’s choice-of-law rulings, potentially reducing the amount of litigation in the state. Third, as a policy matter, it is often good to stay away from the edge of what is permitted by the United States Constitution.

Such a codification of Michigan’s choice-of-law rules would be similar to Michigan’s long-arm statute, MCL § 600.705, which provides a limited list of instances where Michigan will assert personal jurisdiction over nonresidents. Because Michigan’s long-arm statute only extends Michigan’s personal jurisdiction assertions to certain situations rather than whenever the United States Constitution permits (as in states like California, CAL. CODE CIV. PROC. § 410.10), it makes Michigan’s courts significantly less likely than California’s courts to push up to the boundaries of the United States Constitution or engage in constitutional violations when attempting to assert personal jurisdiction.

III. THE POTENTIAL PROBLEMS OF CODIFYING MICHIGAN’S CHOICE-OF-LAW SYSTEM

A. Potential Ossification and Inflexibility of a Codified Choice-of-Law System

The codification of choice-of-law rules can ossify the law, preventing its adaptation to changing circumstances or exceptional cases. Symeon C. Symeonides, *Codifying Choice of Law Around the World: An International Comparative Analysis* 172 (2nd ed. 2017) [hereinafter “Symeonides Analysis”]. But this ossification tends only to occur when the codification consists of “inflexible mechanical rules,” such as in the First Restatement, where no development is possible. *Id.* at 173.

Additionally, ossification can easily be countered if the legislature periodically updates the law to meet changing circumstances.

The difficulty with which codified choice-of-law rules deal with exceptional cases can also be alleviated by the provisions of the statute itself. For instance, a statute can provide for alternative factors, as the MSR approach of the Second Restatement does, when certain conditions are met. *See id.* at 174-75. The statute can also provide for an “escape clause” to allow courts to depart from the choice-of-law rules under certain circumstances. *Id.* at 174. For instance, the Swiss codification provides that courts should not apply the codified rule when “it is manifest that the particular case has only a very slight connection to that law and has a much closer relationship to another law.” *Id.* at 191. A statute could also provide for courts to consider numerous factors, weighed in light of the facts of a case, rather than looking only at one factor. *Id.* at 174.

B. Potential Limitations or Complications from Federal Law, Including Insurance, Corporate Governance, Contracts, and Family Law

A fully codified choice-of-law system should be cognizant of federal regulations (or choice-of-law mandates) in several areas of law that are mostly governed by the states. These areas include, for instance, insurance, corporate governance, contracts, and family law. These examples are non-exhaustive.

Generally, insurance contracts are governed by state choice-of-law rules. *See, e.g.,* RESTATEMENT (SECOND) CONFLICT OF LAWS §§ 192-93 (1971); *see also Ruhlin v. N.Y. Life Ins. Co.*, 304 U.S. 202 (1938). But there are certain areas where federal law governs insurance matters. For instance, federal law governs contracts of marine insurance, though federal law may turn to state law for the rule of decision. *See, e.g., Wilburn Boat Co. v. Fireman's Ins. Co.*, 348 U.S. 310 (1955). Federal law also states that the law governing disputes between fraternal benefit associations and their members concerning the rights of members is the law of the state where the association is organized. *Order of United Commercial Travelers v. Wolfe*, 331 U.S. 586 (1947).

In matters of corporate governance, for instance, the Internal Affairs Doctrine, which states that matters of internal corporate governance shall be governed by the law of the corporation’s state of incorporation, may be a choice-of-law rule required by the Constitution. *See CTS Corp. v. Dynamics Corp. of Am.*, 481 U.S. 69 (1987). Similarly, in the realm of contracts for goods, when there are parties headquartered in different nations – a situation that could be ripe for choice-of-law issues – the United Nations Convention on Contracts for the International Sale of Goods (commonly known as the “CISG” or the “Vienna Convention”) will govern the dispute unless the parties opted to have a different law govern the contract.

In certain matters of family law, there are federal laws and treaties which govern. For instance, the Hague Convention on the Civil Aspects of International Child Abduction or Hague Abduction Convention governs which forum will hear a case about a child internationally abducted by a parent. Additionally, the Full Faith and Credit for Child Support Orders Act of 1994 requires states to enforce, and not modify, child support orders from other states. 28 U.S.C. § 1738B (2012).

IV. EXAMPLES OF CODIFIED CHOICE-OF-LAW SYSTEMS

A. Michigan's Borrowing Statute

Michigan has codified one aspect of its choice-of-law system: its borrowing statute. MCL § 600.5861. Michigan's borrowing statute attempts to reduce forum shopping by using the shorter of two statutes of limitation – Michigan's or the place where the action accrued – for non-Michigan residents who sue in Michigan's courts. The statute states:

“An action based upon a cause of action accruing without this state shall not be commenced after the expiration of the statute of limitations of either this state or the place without this state where the cause of action accrued, except that where the cause of action accrued in favor of a resident of this state the statute of limitations of this state shall apply. This amendatory act shall be effective as to all actions hereinafter commenced and all actions heretofore commenced now pending in the trial or appellate courts.”

B. Codification in Other States

Louisiana and Oregon have had more extensive codification of their choice-of-law rules. For instance, Louisiana codified its contract, family, and tort (“delictual or quasi-delictual obligation”) law in the 1990s in Book IV of its Civil Code, including Articles 3515, 3519, 3537, and 3542. The rules generally select “the law of the state whose policies would be most seriously impaired if its law were not applied to that issue.” For example, Article 315, the general provisions regarding choice-of-law principles in disputes, states as follows:

“Except as otherwise provided in this Book, an issue in a case having contacts with other states is governed by the law of the state whose policies would be most seriously impaired if its law were not applied to that issue.

That state is determined by evaluating the strength and pertinence of the relevant policies of all involved states in the light of: (1) the relationship of each state to the parties and the dispute; and (2) the policies and needs of the interstate and international systems, including the policies of upholding the justified expectations of parties and of minimizing the adverse consequences that might follow from subjecting a party to the law of more than one state.”

Oregon's codification of its choice-of-law rules took effect in 2010 and applies to contracts and torts, which are generally governed by OR. REV. STAT. §§ 15.360 and 15.430, respectively. It consists of fourteen articles spanning three major groupings. Symeon C. Symeonides, *Oregon's New Choice-of-Law Codification for Tort Conflicts: An Exegesis*, 88 OR. L. REV. 963, 974 (2009). The first grouping “deals with preliminary issues, including definitions of terms used in the Act, a delineation of the Act's substantive and geographical scope, and special rules for characterization, localization, and determining domicile.” *Id.* The second grouping provides the choice-of-law in noncontractual disputes like torts. *Id.* The third grouping provides for the choice-of-law in contractual disputes, and it governs the applicability of choice-of-law clauses in agreements. *Id.* There is also a residual provision at the end of the statute. See OR. REV. STAT. §

15.445. For instance, the portion of the codification that governs contracts without choice-of-law provisions, 15.360, states as follows:

“To the extent that an effective choice of law has not been made by the parties pursuant to ORS 15.350 or 15.355, or is not prescribed by ORS 15.320, 15.325, 15.330, 15.335 or 15.380, the rights and duties of the parties with regard to an issue in a contract are governed by the law, in light of the multistate elements of the contract, that is the most appropriate for a resolution of that issue. The most appropriate law is determined by:

- (1) Identifying the states that have a relevant connection with the transaction or the parties, such as the place of negotiation, making, performance or subject matter of the contract, or the domicile, habitual residence or pertinent place of business of a party;
- (2) Identifying the policies underlying any apparently conflicting laws of these states that are relevant to the issue; and
- (3) Evaluating the relative strength and pertinence of these policies in:
 - (a) Meeting the needs and giving effect to the policies of the interstate and international systems; and
 - (b) Facilitating the planning of transactions, protecting a party from undue imposition by another party, giving effect to justified expectations of the parties concerning which state's law applies to the issue and minimizing adverse effects on strong legal policies of other states.”

C. Codification in Other Nations

Roughly 85 nations have codified their choice-of-law rules in the last 60 years. *See Symeonides Analysis, supra*, at 13. Even England, the nation that gave rise to the common-law system of jurisprudence, codified its choice-of-law rules pertaining to torts in 1995 before codifying other aspects of its choice-of-law system in the years following. *Id.* at 3. Major international organizations, including the European Union and Mercosur, have also adopted choice-of-law codifications in recent years. *Id.* at 30-35.

The Canadian province of Québec has codified its choice-of-law system in its Civil Code in Articles 3083-3133. *See Civil Code of Quebec, S.Q. 1991, c 64, art 3083-3133*². For instance, Articles 3126-3129 govern tort (“civil liability”) choice of law and state:

“3126. The obligation to make reparation for injury caused to another is governed by the law of the State where the act or omission which occasioned the injury occurred. However, if the injury appeared in another State, the law of the latter State is applicable if the author should have foreseen that the injury would manifest itself there.

In any case where the author and the victim have their domiciles or residences in the same State, the law of that State applies.

² URL: http://legisquebec.gouv.qc.ca/en/showdoc/cs/CCQ-1991?langCont=en#ga:l_ten-gb:l_two-h1

3127. Where an obligation to make reparation for injury arises from nonperformance of a contractual obligation, claims based on the nonperformance are governed by the law applicable to the contract.

3128. Whatever its source, the liability of the manufacturer of a movable is governed, at the choice of the victim,

(1) by the law of the State where the manufacturer has his establishment or, failing that, his residence, or

(2) by the law of the State where the movable was acquired.

3129. The application of the rules of this Code is mandatory with respect to civil liability for any injury suffered in or outside Québec as a result of exposure to or the use of raw materials, whether processed or not, originating in Québec.”

Switzerland codified its choice-of-law system for tort, contract, corporate, and family law in its Federal Code on Private International Law. *See* Swiss CPIL, Umbricht Attorneys, Zurich (Switzerland) 2007³. Articles 116 and 117 of the code codify Switzerland’s choice-of-law provisions regarding contracts, and in one translation, state the following:

“Art. 116 -- Choice of law by the parties

1. The contract shall be governed by the law chosen by the parties.

2. The choice of law must be express or clearly evident from the terms of the contract or the circumstances. In all other respects it shall be governed by the law chosen.

3. The choice of law may be made or modified at any time. If made or modified following the conclusion of the contract, it shall be retroactive to the time the contract was concluded. The rights of third parties shall take precedence [over the law chosen by the contract].

Art. 117 -- Absence of a choice of law

1. In the absence of a choice of law, the contract shall be governed by the law of the State with which it is most closely connected.

2. It is presumed that the closest connection exists with the State in which the party who must perform the characteristic obligation is habitually resident or, if the contract was concluded in the exercise of a professional or commercial activity, where such party has his place of business.

3. In particular, the following shall be considered the characteristic obligation:

³ URL:

[https://www.hse.ru/data/2012/06/08/1252692468/SwissPIL%20%D0%B2%20%D1%80%D0%B5%D0%B4.%202007%20\(%D0%B0%D0%BD%D0%B3%D0%BB.\).pdf](https://www.hse.ru/data/2012/06/08/1252692468/SwissPIL%20%D0%B2%20%D1%80%D0%B5%D0%B4.%202007%20(%D0%B0%D0%BD%D0%B3%D0%BB.).pdf)

- a. The obligation of the alienator, in contracts of alienation;
- b. The obligation of the party transferring the use of a thing or a right, in the case of contracts concerning the use of a thing or a right;
- c. The service provided, in the case of mandates, work and labor contracts, and similar service contracts;
- d. The obligation of the custodian, in custodial contracts;
- e. The obligation of the guarantor or the surety, in guaranty or surety contracts.”

2018 REPORT ON RECENT COURT DECISIONS IDENTIFYING STATUTES
FOR LEGISLATIVE ACTION AND
RECOMMENDATIONS TO THE LEGISLATURE

As part of its statutory charge to examine recent judicial decisions to discover defects and anachronisms in the law and to recommend needed reforms, the Michigan Law Revision Commission undertook a review of Michigan Supreme Court and Court of Appeals decisions issued from January 1 through December 31, 2018 urging legislative action. That review identified three decisions for which the Commission makes no recommendations. The decisions examined by the Commission are:

1. *Brugger v Midland Cty. Bd. Of Rd. Commissioners*, 324 Mich App 307; 920 NW2d 388 (2018)
2. *McNeill-Marks v MidMichigan Med. Ctr.-Gratiot*, 502 Mich 851; 912 NW2d 181, 194; reconsideration denied, 503 Mich 854; 915 NW2d 888 (2018).
3. *People v Sharpe*, 502 Mich 313, 338 n 6; 918 NW2d 504, 517 n 6 (2018)

1. The Legislature Has Created Confusion by Enacting Different Time Periods in Two Different Statutes for Presuit Notice to County Road Commissions of Intent to Sue

A. Background

Under Section 1402(1) of the Governmental Liability for Negligence Act, also called the Governmental Tort Liability Act (GTLA), MCL 691.1402(1), a county road commission may be liable when it fails to maintain the roads in conditions that are reasonably safe and convenient for public travel. In *Brugger v Midland Cty. Bd. Of Rd. Commissioners*, plaintiff sued the Midland County Road Commission after he lost control of his motorcycle and crashed, alleging that the crash was due to large potholes and uneven pavement on a road maintained by the County Road Commission.

Section 1404 of the GTLA requires plaintiffs to inform the government agency within 120 days of the injury giving rise to the lawsuit that they intend to sue. MCL 691.1404. In accordance with this provision, plaintiff served the Road Commission with a presuit notice of intent to sue 110 days after the crash. After plaintiff filed his lawsuit, the Court of Appeals, in *Streng v Bd of Mackinac Co. Rd. Comm'rs*, 315 Mich App 449 (2016), held that a provision of the Public Highway and Private Road Act, also called the County Road Law, MCL 224.21(3), controlled the timing and content of a presuit notice to a county road commission, not the GTLA. Under the County Road Law, plaintiffs must give presuit notice of intent to sue within 60 days of the injury giving rise to the lawsuit. Relying on *Streng*, defendant filed a motion for summary disposition on the grounds that plaintiff failed to timely file a presuit notice of intent to sue.

The circuit denied the motion, holding that *Streng* should be applied prospectively. The Court of Appeals affirmed, holding that *Streng* should only be applied prospectively. The Court noted that “[t]his case presents a highly unusual circumstance” where “[t]he Legislature has enacted two inconsistent statutes governing presuit notice to road commissions.” The Court based its decision

on the fact that the *Streng* decision varied from “what was held to be the law for at least 40 years.” Also relevant to the Court was the fact that confusion about the law was created by the Legislature and the Judiciary, not the plaintiff. The Court noted that these factors weigh strongly against sanctioning a party who relied on the law and acted in good faith.

B. Question Presented

Should the Legislature clarify whether the Governmental Tort Liability Act, MCL 691.1404, or the County Road Law, MCL 224.21(3), governs presuit notices to county road commissions?

C. Recommendation

The Commission recommends legislative review of this issue and recommends legislative action to resolve the inconsistencies in MCL 691.1404 and MCL 224.21(3).

2. The Meaning of the Terms “Report” and “Public Body” in the Michigan Whistleblower Protection Act

A. Background

Plaintiff, who worked in a hospital, had a Personal Protection Order against a woman who was the biological grandmother of her adopted children, and who had threatened to harm her and the children. Plaintiff unexpectedly saw the woman in the hospital, and told her private attorney about the encounter. Despite asking her attorney not to serve the PPO because the woman was very ill, the PPO was served while the woman was in the hospital. The woman filed a complaint with the defendant hospital, alleging a violation of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). After conducting an investigation, defendant concluded that plaintiff violated HIPAA by telling her attorney that the woman was a patient at the hospital, and terminated plaintiff’s employment. Plaintiff sued defendant, claiming a violation of the Michigan Whistleblower Protection Act (WPA), MCL 15.361 *et seq.*, which protects employees “from adverse employment consequences that result from the employee’s reporting of actual or suspected violations of law.”

The trial court held that plaintiff informing her attorney was not a “report to a public body” under the WPA. The Court of Appeals reversed, holding that plaintiff’s call to her attorney was a “report to a public body,” and, therefore, a protected activity under the WPA, since plaintiff’s attorney, as a member of the State Bar of Michigan (SBM), was a member of a “public body” under MCL 15.361(d)(iv).

Following briefing and oral argument on the application for leave to appeal, the Supreme Court denied the application for leave. Justice Zahra dissented from the denial. Justice Zahra’s dissent concludes with a section titled “Statement to the Legislature,” in which he strongly encourages the Legislature to “reexamine this inartfully drafted statute, particularly the ‘public body’ definition under MCL 15.361(d). The statutory definition of ‘public body’ is extremely expansive and may well exceed the scope of entities the Legislature intended to include as an entity or organization suitable to field a report of suspected illegal activity.”

B. Question Presented

Should the Legislature reexamine the definition of “public body” and clarify the definition of “report” under the Michigan Whistleblower Protection Act?

C. Recommendation

The Commission recommends legislative review of this issue to clarify the definition of “public body” in the Michigan Whistleblower Protection Act and to expand review of the definition of “public body” in other statutes.

3. Definition of “Sexual Conduct” Under the Rape-Shield Statute

A. Background

Under the rape-shield statute, MCL 750.520j, a defendant accused of rape cannot offer evidence of a victim’s past “sexual conduct.” The two exceptions to the prohibition are: (1) evidence of past instances of “sexual conduct” with the defendant, and (2) evidence of specific instances of “sexual activity” that show “the source or origin of semen, pregnancy, or disease.” Under the statute, each of these exceptions can only be used if a judge finds that the evidence is material to a fact at issue in the case and that the evidence’s inflammatory or prejudicial nature does not outweigh its probative value. The statute does not define “sexual conduct.” In a footnote in a concurring opinion in *People v Sharp*, Justice Markman again urged the Legislature to clarify the meaning of “sexual conduct” under the rape-shield statute.

Interpretations of the meaning of “sexual conduct” in MCL 750.520j have divided the justices of the Supreme Court on several occasions. See, for example, *People v Duenaz*, 498 Mich 969 (2016) (“[W]e encourage the Legislature to clarify whether evidence of prior sexual abuse constitutes ‘sexual conduct’ within the meaning of the rape-shield statute, MCL 750.520j.”). In *People v Piscopo*, 480 Mich 966, 970 (2007), Justice Markman dissented from an order denying an application for leave to appeal in which the Court of Appeals held that a defendant could not admit evidence that his victim had been sexually abused. Justice Markman argued that “sexual conduct” should only encompass behavior and voluntary conduct because of the definition of the word “conduct,” and because the statute contrasts “sexual conduct” with the broader term of “sexual activity.” See also *People v Parks*, 483 Mich 1040, 1057 (2009), in which Justices Markman and Cavanagh reiterated this view, but Justice Young disagreed, believing that Justice Markman’s interpretation of the term “sexual conduct” was “artificially narrow.”

B. Question Presented

Should the Legislature amend the rape-shield statute, MCL 750.520j, to clarify the meaning of the term “sexual conduct”?

C. Recommendation

The Commission recommends legislative review of this issue but makes no recommendation of specific legislative action.

PRIOR ENACTMENTS PURSUANT TO
MICHIGAN LAW REVISION COMMISSION RECOMMENDATIONS

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

1967 Legislative Session

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

1968 Legislative Session

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

1969 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Access to Adjoining Property	1968, p. 19	55
Recognition of Acknowledgments	1968, p. 64	57
Dead Man's Statute Amendment	1966, p. 29	63
Notice of Change in Tax Assessments	1968, p. 30	115
Antenuptial and Marital Agreements	1968, p. 27	139
Anatomical Gifts	1968, p. 39	189
Administrative Procedures Act	1967, p. 11	306
Venue for Civil Actions	1968, p. 17	333

1970 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Land Contract Foreclosures	1967, p. 55	86
Artist-Art Dealer Relationships	1969, p. 41	90
Minor Students' Capacity to Borrow Act	1969, p. 46	107
Warranties in Sales of Art	1969, p. 43	121
Appeals from Probate Court	1968, p. 32	143
Circuit Court Commissioner Powers of Magistrates	1969, p. 57	238

1971 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Revision of Grounds for Divorce	1970, p. 7	75
Civil Verdicts by 5 of 6 Jurors in Retained Municipal Courts	1970, p. 40	158
Amendment of Uniform Anatomical Gift Act	1970, p. 45	186

1972 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Summary Proceeding for Possession of Premises	1970, p. 16	120
Interest on Judgments	1969, p. 59	135
Business Corporations	1970, Supp.	284
Constitutional Amendment re Juries of 12	1969, p. 60	HJR "M"

1973 Legislative Session

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

1974 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Venue in Civil Actions Against Non-Resident Corporations	1971, p. 63	52
Choice of Forum	1972, p. 60	88
Extension of Personal Jurisdiction in Domestic Relations Cases	1972, p. 53	90
Technical Amendments to the Michigan General Corporations Act	1973, p. 37	140
Technical Amendments to the Revised Judicature Act	1971, p. 7	297
Technical Amendments to the Business Corporation Act	1974, p. 30	303
Amendment to Dead Man's Statute	1972, p. 70	305
Attachment and Collection Fees	1968, p. 22	306
Contribution Among Joint Tortfeasors	1967, p. 57	318
District Court Venue in Civil Actions	1970, p. 42	319
Due Process in Seizure of a Debtor's Property (Elimination of Pre-Judgment Garnishment)	1972, p. 7	371

1975 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Hit-Run Offenses	1973, p. 54	170
Equalization of Income Rights of Husband and Wife in Entirety Property	1974, p. 12	288
Disposition of Community Property Rights at Death	1973, p. 50	289
Insurance Policy in Lieu of Bond	1969, p. 54	290
Child Custody Jurisdiction	1969, p. 23	297

1976 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Due Process in Seizure of a Debtor's Property (Replevin Actions)	1972, p. 7	79
Qualifications of Fiduciaries	1966, p. 32	262
Revision of Revised Judicature Act Venue Provisions	1975, p. 20	375
Durable Family Power of Attorney	1975, p. 18	376

1978 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Juvenile Obscenity	1975, p. 133	33
Multiple Party Deposits	1966, p. 18	53
Amendment of Telephone and Messenger Service Company Act	1973, p. 48	63
Elimination of References to Abolished Courts:		
a. Township Bylaws	1976, p. 74	103
b. Public Recreation Hall Licenses	1976, p. 74	138
c. Village Ordinances	1976, p. 74	189
d. Home Rule Village Ordinances	1976, p. 74	190
e. Home Rule Cities	1976, p. 74	191
f. Preservation of Property Act	1976, p. 74	237
g. Bureau of Criminal Identification	1976, p. 74	538
h. Fourth Class Cities	1976, p. 74	539
i. Election Law Amendments	1976, p. 74	540
j. Charter Townships	1976, p. 74	553
Plats	1976, p. 58	367
Amendments to Article 9 of the Uniform Commercial Code	1975, Supp.	369

1980 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Condemnation Procedures	1968, p. 8	87
Technical Revision of the Code of Criminal Procedure	1978, p. 37	506

1981 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Elimination of Reference to the Justice of the Peace: Sheriff's Service of Process	1976, p. 74	148
Court of Appeals Jurisdiction	1980, p. 34	206

1982 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Limited Partnerships	1980, p. 40	213
Technical Amendments to the Business Corporation Act	1980, p. 8	407

Interest on Probate Code Judgments	1980, p. 37	412
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1983 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
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Elimination of References to Abolished Courts:		
Police Courts and County Board of Auditors	1979, p. 9	87
Federal Lien Registration	1979, p. 26	102

1984 Legislative Session

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

1986 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
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Amendments to the Uniform Limited Partnership Act	1983, p. 9	100
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1987 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
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Amendments to Article 8 of the Uniform Commercial Code	1984, p. 97	16
Disclosure in the Sale of Visual Art Objects Produced in Multiples	1981, p. 57	40, 53, 54

1988 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Repeal of M.C.L. § 764.9	1982, p. 9	113
Statutory Rule Against Perpetuities	1986, p. 10	417, 418
Transboundary Pollution Reciprocal Access to Courts	1984, p. 71	517

1990 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Elimination of Reference to Abolished Courts:		
a. Procedures of Justice Courts and Municipal Courts	1985, p. 12; 1986, p. 125	217
b. Noxious Weeds	1986, p. 128; 1988, p. 154	218
c. Criminal Procedure	1975, p. 24	219
d. Presumption Concerning Married Women	1988, p. 157	220
e. Mackinac Island State Park	1986, p. 138; 1988, p. 154	221
f. Relief and Support of the Poor	1986, p. 139; 1988, p. 154	222
g. Legal Work Day	1988, p. 154	223
h. Damage to Property by Floating Lumber	1988, p. 155	224

1991 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Elimination of Reference to Abolished Courts:		
a. Land Contracts	1988, p. 157	140
b. Insurance	1988, p. 156	141
c. Animals	1988, p. 155	142
d. Trains	1986, pp. 153, 155; 1987, p. 80; 1988, p. 152	143
e. Appeals	1985, p. 12	144
f. Crimes	1988, p. 153	145
g. Library Corporations	1988, p. 155	146
h. Oaths	1988, p. 156	147
i. Agricultural Products	1986, p. 134; 1988, p. 151	148
j. Deeds	1988, p. 156	149
k. Corporations	1989, p. 4; 1990, p. 4	150
l. Summer Resort Corporations	1986, p. 154; 1988, p. 155	151
m. Association Land	1986, p. 154; 1988, p. 155	152
n. Burial Grounds	1988, p. 156	153
o. Posters, Signs, and Placecards	1988, p. 157	154

p. Railroad Construction	1988, p. 157; 1988, p. 156	155
q. Work Farms	1988, p. 157	156
r. Recording Duties	1988, p. 154	157
s. Liens	1986, pp. 141, 151, 158; 1988, p. 152	159

1992 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Determination of Death Act	1987, p. 13	90

1993 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Condemnation Procedures of Home Rule Villages	1989, p. 17	32
Condemnation Procedures Regarding Railroads	1989, p. 25	354
Condemnation Procedures Regarding Railroad Depots	1989, p. 26	354

1995 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Condemnation Procedures Regarding Inland Lake Levels	1989, p. 24	59
Condemnation Procedures of School Districts	1989, p. 24	289

1996 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Felony Murder and Arson	1994, p. 179	20, 21

1998 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Condemnation Procedures of General Law Villages	1989, p. 16	254
Repeal of Article 6 of the Uniform Commercial Code	1994, p. 111; 1997, p. 131	489
Uniform Fraudulent Transfer Act	1988, p. 13	434
Uniform Trade Secrets Act	1993, p. 7	448
Revisions to Lemon Law (recommendation to include leased vehicles)	1995, p. 7	486

2002 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Guilty but Mentally Ill - Burden of Proof	2000, p. 85	245

2003 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Anatomical Gifts	1993, p. 53	62, 63

2004 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Governor's Power to Remove Public Officials from Office (recommendation on school board and intermediate school board members)	2003, p. 21	234

BIOGRAPHIES OF COMMISSION MEMBERS AND STAFF

RICHARD D. McLELLAN

Richard D. McLellan is Chair of the Michigan Law Revision Commission, a position he has filled since 1986 following his appointment as a public member of the Commission in 1985.

McLellan is a practicing attorney and business consultant in Lansing, Michigan. In 2007, Mr. McLellan retired as a lawyer with the law firm of Dykema Gossett PLLC where he served as the Member-in-Charge of the firm's Lansing Office and as the leader of the firm's Government Policy Department.

He is a member of the Board of Directors of ITC Holdings (NYSE: ITC) and is an Independent Trustee of the JNL Series Trust, a \$50 billion variable annuity fund managed by the Jackson National Life Insurance Company. He also serves as Chairman of Africa Continental Holdings, LLC.

By appointment of the Supreme Court, Mr. McLellan served two terms as a Member of the Board of Commissioners of the State Bar of Michigan.

Mr. McLellan started his career as an administrative assistant to Governor William G. Milliken and as Acting Director of the Michigan Office of Drug Abuse.

Following the 1990 Michigan elections, Mr. McLellan was named Transition Director to then Governor-elect John Engler. In that capacity, he assisted in the formation of Governor Engler's Administration and conducted a review of state programs. He was also appointed by the Governor as Chairman of the Corrections Commission, a member of the Michigan Export Development Authority, a member of the Michigan International Trade Authority, a member of the Library of Michigan Board of Trustees, a member of the Michigan Jobs Commission, a member of the McPherson Commission on Charter Schools, and Chairperson of the Michigan Film Advisory Commission.

During the administration of President Gerald Ford, Mr. McLellan served as an advisor to the Commissioner of the Food and Drug Administration and as a member of the National Advisory Food and Drug Committee of the U.S. Department of Health, Education, and Welfare.

In 1990, Mr. McLellan was appointed by President George Bush as a Presidential Observer to the elections in the People's Republic of Bulgaria. The elections were the first free elections in the country following 45 years of Communist rule. In 1996, he again acted as an observer for the Bulgarian national elections. And again, in February 1999, he acted as an observer for the Nigerian national elections with the International Republican Institute.

Mr. McLellan is a member of the Board of Governors of the Cranbrook Institute of Science, one of Michigan's leading science museums. He helped establish and served for ten years as President of the Library of Michigan Foundation. He helped establish and served as both President and Chairman of the Michigan Japan Foundation, the private foundation providing funding for the Japan Center for Michigan Universities.

Mr. McLellan has served as a member of the Board of Trustees of Michigan State University Detroit College of Law and is a member of the Advisory Board for MSU's James H. and Mary B. Quello Center for Telecommunication Management and Law. He also serves as an adjunct professor in MSU's College of Communications Arts.

Mr. McLellan is a former Chairman of the Board of Directors of the Michigan Chamber of Commerce and is a member of the Board of Directors of the Mackinac Center for Public Policy, the Oxford Foundation, and the Cornerstone Foundation.

Mr. McLellan served as a member of the Board of Directors of the Mercantile & General Life Reassurance Company of America and the Crown America Life Insurance Company. He also served as Chairman of the Michigan Competitive Telecommunications Providers Association and as Chairman of the Information Technology Association of Michigan.

Mr. McLellan has been active in matters concerning persons with disabilities. He is a former President of the Arthritis Foundation, Michigan Chapter, a former member of the National Advocacy Committee of the Arthritis Foundation, and a former member of the National Research Committee, Arthritis Foundation.

He is a graduate of the Michigan State University Honors College and the University of Michigan Law School. He has served as an adjunct professor of international studies at Michigan State University.

ANTHONY DEREZINSKI

Mr. Derezinski is Vice Chairman of the Michigan Law Revision Commission, a position he has filled since May 1986 following his appointment as a public member of the Commission in January of that year.

Mr. Derezinski recently served for four years as a Councilmember of the Ann Arbor City Council to which he was elected in November of 2008. He was also an Instructor at the University of Michigan School of Education where he taught courses in various aspects of education law. He is the former Director of Government Relations for the Michigan Association of School Boards from which he retired in 2008. He also previously served as an adjunct professor of law at the University of Michigan Law School and at the Department of Education Administration of Michigan State University, and previously was a visiting professor of law at the Thomas M. Cooley Law School.

He is a graduate of Muskegon Catholic Central High School, Marquette University, the University of Michigan Law School (Juris Doctor degree), and Harvard Law School (Master of Laws degree). He is married and resides in Ann Arbor, Michigan.

Mr. Derezinski is a Democrat and served as a State Senator from 1975 to 1978. He was a member of the Board of Regents of Eastern Michigan University for 14 years, served on the Committee of Visitors of the University of Michigan Law School, and was a member of the Council of the Center for the Education of Women in Ann Arbor. He also served on the Foundation Board of Hospice of Ann Arbor and as a Judge and Chief Judge of the Michigan Military Appeals Tribunal. He currently serves on the Boards of Directors of Washtenaw Literacy and of the Evangelical Homes of Michigan Foundation.

He served as a Lieutenant in the Judge Advocate General's Corps in the United States Navy from 1968 to 1971 and as a military judge in the Republic of Vietnam. He is a member of the Veterans of Foreign Wars, Derezinski Post 7729, the American Legion Department of Michigan, and the Vietnam Veterans of America. He is also a Life Member of the Harley Owners' Group.

GEORGE E. WARD

Mr. Ward is a public member of the Michigan Law Revision Commission and has served since his appointment in August 1994.

Mr. Ward was the Chief Assistant Prosecuting Attorney in Wayne County in the administration of the Honorable John D. O’Hair. Earlier in his career, he clerked for Justice Theodore Souris of the Michigan Supreme Court and for 20 years was in private civil practice in the City of Detroit. In 2001, Mr. Ward returned to private practice in Wayne County.

He is a graduate of the University of Detroit, and the University of Michigan Law School. He and his wife, Margaret, parents of five adult children and grandparents of nine, live in Canton.

Mr. Ward is an Adjunct Professor at Michigan State College of Law, Wayne State University Law School, and the University of Detroit Mercy School of Law, and a Wayne County Public Administrator. He is a board member of Community Social Services of Wayne County; a consultant to the Macomb County Home Rule Charter Commission in 2008; past President of the Incorporated Society of Irish American Lawyers; a former President of the Board of Control of Saginaw Valley State University; a former commissioner of the State Bar of Michigan; the former President of the Wayne County Home Rule Charter Commission; the former Executive Secretary of the 1971-1972 City of Detroit Charter Revision Commission; and a former member of the Board of Directors of Wayne Center.

WILLIAM C. WHITBECK

Judge William C. Whitbeck is a public member of the Michigan Law Revision Commission and has served since his appointment in January 2000.

Judge Whitbeck was born on January 17, 1941, in Holland, Michigan, and was raised in Kalamazoo, Michigan. His undergraduate education was at Northwestern University, where he received a McCormack Scholarship in Journalism. He received his J.D. from the University of Michigan Law School in 1966 and was admitted to the Michigan Bar in 1969.

Judge Whitbeck has held a variety of positions with the state and federal governments, including serving as Administrative Assistant to Governor George Romney from 1966 to 1969, Special Assistant to Secretary George Romney at the U.S. Department of Housing and Urban Development from 1969 to 1970, Area Director of the Detroit Area Office of the U.S. Department of Housing and Urban Development from 1970 to 1973, Director of Policy of the Michigan Public Service Commission from 1973 to 1975, and Counsel to Governor John Engler for Executive Organization/Director of the Office of the State Employer from 1991 to 1993. He served on the Presidential Transition Team of President-Elect Ronald Reagan in 1980 and as Counsel to the Transition Team of Governor-Elect John Engler in 1990.

In private practice, Judge Whitbeck was a partner in the law firm of McLellan, Schlaybaugh & Whitbeck from 1975 to 1982, a partner in the law firm of Dykema, Gossett, Spencer, Goodnow and Trigg from 1982 to 1987, and a partner in the law firm of Honigman Miller Schwartz and Cohn from 1993 to 1997.

Judge Whitbeck is a member of the State Bar of Michigan, the American Bar Association, the Ingham County Bar Association, and the Castle Park Association, and has served as Chair of the Michigan Historical Commission. He is a Fellow of both the Michigan State Bar Foundation and the American Bar Foundation.

Governor John Engler appointed Judge Whitbeck to the Court of Appeals effective October 22, 1997, to a term ending January 1, 1999. Judge Whitbeck was reelected to six-year terms in 1998, 2004, and 2010. Judge Whitbeck retired from the Court on November 21, 2014. Chief Judge Richard Bandstra designated Judge Whitbeck as Chief Judge Pro Tem of the Court of Appeals effective January 1, 1999. The Supreme Court appointed Judge Whitbeck Chief Judge of the Michigan Court of Appeals three times, and he served in that position from January 1, 2002 to December 31, 2007.

Judge Whitbeck and his wife, Stephanie, reside in downtown Lansing in a 125-year-old historic home that they have completely renovated. They are members of St. Mary Cathedral.

Judge Whitbeck is the author of a work of fiction, *To Account for Murder*, a courtroom drama set in Michigan in 1945-1946.

BRIAN K. ELDER

Representative Brian Elder is a legislative member of the Michigan Law Revision and has served since February of 2017. He is serving his first term representing the 96th House District, which includes the cities of Bay City and Essexville and Bangor, Frankenlust, Hampton, Kawkawlin, Merritt, Monitor, and Portsmouth townships in Bay County. Representative Elder serves as the Democratic Vice Chair on the Agriculture Committee, is a member of the Military and Veterans Affairs Committee and the Energy Policy Committee, and is the Chair and Co-Founder of the Michigan Legislative Labor Caucus.

Representative Elder comes from three generations of autoworkers and is the first member of his family to attend college, having worked his way through Wayne State University, graduating Summa Cum Laude and Phi Beta Kappa with a bachelor's degree in History. He graduated from the UCLA School of Law, earning a Juris Doctorate, with honors in Property Law and Oral Advocacy.

Representative Elder has practiced law in Mid-Michigan since 1998 and currently owns Brian K. Elder, P.L.C., a general civil law practice. Representative Elder has represented dozens of municipalities over his career, as well labor unions, union members, and individuals in the areas of estate planning and elder law.

Representative Elder served eight years as a Bay County Commissioner and served as the Chairman of the Bay County Board of Commissioners. As a County Commissioner, Representative Elder was an acknowledged leader in economic development, creating and chairing Bay Future, Inc., Bay County's premiere public-private economic development partnership. He was Bay County's lead negotiator on the Fabiano Bros. multi-million dollar facility project that resulted in the expansion of the Monitor DDA and led to an additional \$400,000.00 of tax revenue per year to local Bay County governments.

Of course, Representative Elder's favorite accomplishment as a County Commissioner may be the creation of "Central Bark," Bay County's only dog park.

Representative Elder lives in Bay City and is married to Susan Elder, a German teacher at Bay City Central High School and Handy Middle School. They have three children in the Bay City Public School System.

PETER J. LUCIDO

State Representative Peter J. Lucido is a legislative member of the Michigan Law Revision Commission and has served on the Commission since January 2015. He was first elected to serve the 36th District in November 2014. The district covers part of Macomb County including Bruce, Washington, and part of Shelby townships and the Village of Romeo. In November of 2018, he was elected to serve as the state senator for the 8th Senate District in 2019.

Representative Lucido serves as vice chair of the House Law & Justice Committee, as well as a member of the Tax Policy, Transportation and Infrastructure, and Financial Liability Reform committees. He earned a Juris Doctorate from Detroit College of Law (now Michigan State University School of Law), a Master of Business Administration from Central Michigan University, a bachelor's degree in Public Administration and Business from Oakland University, and an associate degree from Macomb Community College.

Representative Lucido has practiced law for more than 30 years and was the founder, president, and managing partner of one of Macomb County's largest law firms. He is the founder and publisher-emeritus of *Macomb Now Magazine*. Additionally, he is a licensed attorney, insurance agent, and realtor, and was formerly a licensed security register representative.

Representative Lucido has been involved in the community as a member of the Knights of Columbus, Macomb County Chamber of Commerce, Shelby Golden K Kiwanis, Greater Romeo-Washington Chamber of Commerce, Michigan Farm Bureau, Italian American Cultural Center, Italian American Chamber of Commerce, De La Salle Collegiate Board of Trustees, De La Salle Pilot Bar Association, Oakland University Presidents Council, and a former board member and current Ambassador Club member for Henry Ford Macomb Hospitals (formerly known as St. Joseph Mercy Macomb).

He and his wife have been married for more than 25 years and have three children.

TONYA SCHUITMAKER

State Senator Tonya Schuitmaker is a legislative member of the Michigan Law Revision Commission and has served on the Commission since January 2009. She was elected to the Michigan House in November 2004 and was first elected to the Michigan Senate in November 2010, following three terms in the House of Representatives.

Senator Schuitmaker holds a B.A. in business administration from Michigan State University and graduated Cum Laude from the Detroit College of Law. Before her election to the Michigan House of Representatives, Senator Schuitmaker was a partner in the law firm of Schuitmaker, Cooper and Schuitmaker. She began practicing law in 1993 with a concentration in family, probate, real estate, and municipal law.

Senator Tonya Schuitmaker has advocated for vulnerable individuals, such as senior citizens and children, and crime victims through various legislative initiatives. In addition to her role as President Pro Tempore of the Michigan Senate, Senator Schuitmaker serves on the Appropriations Committee as Chair of the Subcommittee of Higher Education and as a member of the Capital Outlay, Community Colleges, and Judiciary appropriations subcommittees. She also serves as Vice Chair of the Judiciary Committee and is a member of the Committee on Energy and Technology.

Actively involved in professional associations, Senator Schuitmaker serves as a member of the Uniform Law Commission, the Federalist Society, Van Buren County Bar Association, and the American Bar Association. She recently completed the Aspen Institute-Rodel Fellowship in Public Leadership. Senator Schuitmaker has previously served on the State of Michigan Board of Medicine, Van Buren County Communications Corrections Advisory Board, and the State of Michigan Board of Real Estate Brokers and Salespersons.

Senator Schuitmaker resides in Lawton with her husband, Steve, and their two children, Jordan and Savina.

JENNIFER DETTLOFF

Jennifer Dettloff has served as an ex officio member of the Michigan Law Revision Commission since her appointment as the Legislative Council Administrator on November 9, 2016. As Legislative Council Administrator, she is responsible for the supervision and oversight of the following agencies: Legislative Service Bureau, Legislative Corrections Ombudsman, Michigan Veterans' Facility Ombudsman, Criminal Justice Policy Commission (staff), Joint Committee on Administrative Rules (staff), Michigan Law Revision Commission, State Drug Treatment Court Advisory Committee, and the Michigan Commission on Uniform State Laws.

Prior to being appointed to the Legislative Council, Ms. Dettloff served as Legal Counsel for two Senate Majority Leaders. She had previously served legislators in both the House and Senate in numerous capacities.

Ms. Dettloff is a member of the State Bar of Michigan. She holds a B.A. from James Madison College at Michigan State University in Social Relations and a J.D. from Thomas M. Cooley Law School.

Ms. Dettloff and her husband, Robert Snyder, live in Williamston, Michigan with their triplets, Madeline, Jack, and William.

JANE O. WILENSKY

Jane O. Wilensky was an Assistant Attorney General from 1984 until 2008, serving in the Finance and Development and Education and Social Services Divisions. From 1997 until 2008, she was the First Assistant in the Education and Social Services Division. Prior to her appointment as an Assistant Attorney General, she worked in the Office of Strategy and Forecasting in the Department of Commerce and the Office of Regulatory and Consumer Affairs in the Michigan Public Service Commission. She was a law clerk for the Honorable John W. Fitzgerald of the Michigan Supreme Court. In 2011, she was appointed Executive Secretary of the Commission.

Ms. Wilensky is a graduate of Boston University's School of Public Communications and received her J.D. Cum Laude from the Thomas M. Cooley Law School.