MICHIGAN
LAW REVISION COMMISSION

SEVENTH ANNUAL REPORT

1972

MICHIGAN LAW REVISION COMMISSION

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Tom Downs, Vice Chairman
David Lebenbom
Harold S. Sawyer

Ex-Officio Members:

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Robert L. Richardson
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Representatives:

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MICHIGAN LAW REVISION COMMISSION
Seventh Annual Report to the Legislature

To the Members of the Michigan Legislature:

The Law Revision Commission hereby presents its seventh 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 1972 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 Carl S. Hawkins of the University of Michigan Law School served as Executive Secretary of the Commission. Professor Hawkins is resigning as Executive Secretary, effective December 31, 1972. The Commission wishes to record its gratitude and appreciation to Professor Hawkins for his excellent contributior to the work of the Commission in his three years of service. Professor Stanley Siegel of the University of Michigan Law School has been appointed by the Commission to serve as Executive Secretary, beginning January 1, 1973.

The Commission is charged by statute with the following duties:

1. To examine the common law and statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reform.

2. To receive and consider proposed changes in law recommended by the American Law Institute, the National Conference of Commissioners on Uniform State Laws, any bar association 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 seventh 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) Due Process in Seizure of a Debtor's Property.
(2) Taxpayer Relief from Excessive Property Tax Assessments.
(3) Extension of Personal Jurisdiction in Domestic Relations Cases.
(4) Model Choice of Forum Act.
(5) Elimination of Appointment of Appraisers in Probate Court.
(6) Amendment of "Dead Man's" Statute.

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 1972:

(1) Technical Amendments to Revised Judicature Act -- S.B. 1217, in Senate Committee on Judiciary. See Recommendations of 1971 Annual Report, p. 7.

(2) Revised Uniform Adoption Act -- S.B. 1216 in Senate Committee on Judiciary; H.B. 5922 in House Committee on Youth Care. See Recommendations of 1971 Annual Report, p. 40.

(3) Waiver of Medical Privilege -- S.B. 1214, H.B. 6034. See Recommendations of 1971 Annual Report, p. 59.

(4) Venue in Civil Actions against Non-Resident Corporations -- S.B. 1215, passed by Senate; pending in House Committee on Judiciary, along with H.B. 6035. See Recommendations of 1971 Annual Report, p. 63.

(5) Abolition of Dower -- S.B. 252 passed by Senate, defeated in House; H.B. 4576 pending in Committee on Judiciary. See Recommendations of 1970 Annual Report, p. 14.

(6) District Court Venue in Civil Actions -- S.B. 275, H.B. 4577. See Recommendations of 1970 Annual Report, p. 42.

(7) Execution and Levy in Proceedings Supplementary to Judgment -- H.B. 4578 passed by House; pending in Senate Committee on Judiciary, along with S.B. 200. See Recommendations of 1970 Annual Report, p. 51.

(8) Condemnation Procedures Act -- S.B. 460 in Senate Committee on Judiciary; H.B. 4729, after public hearing in House Committee on Judiciary, reported without recommendation and laid on table. See Recommendations of 1968 Annual Report, p. 11.

(9) Attachment Fees Act -- S.B. 199, H.B. 4318. See Recommendations of 1968 Annual Report, p. 23.

(10) Quo Warranto Act -- S.B. 150, H.B. 4320. See Recommendations of 1967 Annual Report, p. 43.

(11) Contribution Among Joint Tortfeasors Act -- S.B. 262, H.B. 4579. See Recommendations of 1967 Annual Report, p. 57.

(12) Qualifications of Fiduciaries Act -- S.B. 198, H.B. 4628. See Recommendations of 1966 Annual Report, p. 32.

(13) Local Administrative Procedures Act -- S.B. 309, H.B. 4473. See Recommendations of 1969 Annual Report, p. 10.

(14) Uniform Child Custody Jurisdiction Act -- H.B. 4294 passed by House; pending in Senate Committee on Judiciary along with S.B. 193. See Recommendations of 1969 Annual Report, p. 22.

Topics on the current study agenda of the Commission are:

(1) Court Costs
(2) Joint Estates in Real and Personal Property
(3) Amendments to Uniform Commercial Code
(4) Battered Child Legislation
(5) Juvenile Code Revision
(6) Commercial Leasing Code
(7) Constitutional Limitations on Amending Statutes
(8) Mobile Home Park Act Revision
(9) Technical Amendments to Business Corporation Act
(10) Non-Profit Corporation Act

Topics on the future study calendar of the Commission are:

(1) Evidence Code
(2) 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 the University of Michigan Law School, Ann Arbor, Michigan 48104. The use of consultants has made it possible to expedite a large 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 Acknowledgements	1968, p. 61	57
Dead Man's Statute Amendment	1966, p. 29	63
Venue Act	1968, p. 19	333

1970 Legislative Session

Appeals from Probate Court Act	1968, p. 32	143
Land Contract Foreclosures	1967, p. 55	86
Artist-Art Dealer Relationships Act	1969, p. 44	90
Warranties in Sales of Art Act	1969, p. 47	121
Minor Students Capacity to Borrow Act	1969, p. 51	107
Circuit Court Commissioner Powers of Magistrates Act	1969, p. 62	238

1971 Legislative Session

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

Business Corporation Act	1970, Supp.	284
Summary Proceedings for Possession of Premises	1970, p. 16	120
Interest on Judgments Act	1969, p. 64	135
Constitutional Amendment re Juries of 12	1969, p. 65	HJR "M"

Following passage of P.A. 1972, No. 120, which is an amended version of the Commission's proposed bill to revise summary proceedings for possession of premises, the Chairman of the District Court Committee on Rules and Forms requested assistance in the preparation of court rules to correlate with the new statutory provisions. The Executive Secretary of the Commission prepared a draft of proposed rules which was given to the District Court Committee. As of this writing, the official court rules have not yet been adopted and published.

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 6, 1972

RECOMMENDATIONS RELATING TO DUE PROCESS IN SEIZURE OF A DEBTOR'S PROPERTY

Recent court decisions have held that it is unconstitutional to seize the property of an alleged debtor as security for the claim against him, unless provision is made for a noticed hearing to determine the probable validity of the underlying claim. Fuentes v. Shevin, 407 U.S. 67, 92 S. Ct. 1983 (1972); Sniadach v. Family Finance Corp., 395 U.S. 337, 89 S. Ct. 1820, 23 L. Ed.2d 349 (1969); Inter City Motor Sales v. Szymanski, 42 Mich. App. 112, 201 N.W.2d 378 (1972). In response to these decisions, the Commission has reviewed Michigan's statutes to determine what provisions need to be revised or repealed. We have concluded that amendments are required (1) to the attachment, garnishment and replevin provisions of the Revised Judicature Act, (2) to the secured creditor provisions of the Uniform Commercial Code, and (3) to the repossession provisions of the Motor Vehicle Sales Finance Act. The reasons for these recommendations are set forth below, and three proposed bills to cover the recommended amendments are transmitted with this report.

1. Revised Judicature Act

a. Replevin

Michigan statutes authorize a civil action to recover possession of personal property. M.C.L.A. §§600.2920, 600.7301-600.7379. By a process commonly known as "replevin" or "claim and

delivery," these statutes permit the party claiming the right to possession to have the property seized and delivered to him pending judgment, by posting a bond and filing an affidavit as to the merits of his claim.

The Michigan Court of Appeals has now ruled that this procedure violates the due process guarantees of the Michigan and Federal constitutions, to the extent that it permits seizure of property without notice and before there has been any opportunity for a hearing on the merits of the claim for possession. Inter City Motor Sales v. Szymanski, supra. This decision was based upon a recent United States Supreme Court ruling which invalidated Florida and Pennsylvania replevin statutes as denying due process of law for the same reasons. Fuentes v. Shevin, supra.

Therefore, the Commission recommends that the replevin provisions of the Revised Judicature Act be amended to provide that no process may be issued for seizure of the property before judgment, unless there has been a noticed hearing to make a preliminary determination as to the probable validity of the underlying claim for possession. Such an amendment would provide due process of law for the party in possession and would impose no great hardship upon the party claiming the right to possession.

Typically replevin is used by a secured creditor or by the seller or finance company under a conditional sales contract to repossess the property when the debtor or purchaser has fallen

behind in his payments. Judicial action to repossess is usually the last resort after a series of contacts trying to persuade the debtor to make up his payments. It will be no great hardship for the creditor to wait the few additional days required to give notice of a hearing on his application for pre-judgment replevin, and such notice of impending judicial action may even persuade the debtor to catch up on his payments or agree to terms to avoid seizure of the property.

The Commission recommends against making any provision for emergency exceptions to permit seizure without notice when it is feared that the property might be disposed of or its value impaired. These are risks which any creditor unavoidably incurs when he takes security in things which are movable or perishable. No judicial process could be devised which would entirely eliminate the power of the irresponsible debtor to impair such security before the property could be seized, and it is doubtful whether a provision for emergency seizure without notice would do enough good to justify the difficulties it would cause. In order to comply with due process, such a provision would have to require a court determination not only as to the probable validity of the underlying claim for possession, but also as to the truth of the asserted emergency circumstances. The extreme difficulty of making the latter determination fairly in an ex parte hearing opens the proceeding to a degree of abuse more harmful than the

benefits to be gained in the rare circumstance of its justifiable use. Hence no provision for ex parte seizure is included in the proposed statute.

The procedures for taking possession of the property are left to rules of the Supreme Court, as under present law. Of course, these rules will require amendment upon passage of the proposed statute.

b. Attachment and Garnishment

The constitutional requirement of due process also requires changes in the provisions of Michigan law under which writs of attachment and garnishment are issued before judgment without notice and a hearing. M.C.L.A. §§600.4001, 600.4011, 600.7401 - 600.7579, 600.8306.

In Sniadach v. Family Finance Corp., supra, the United States Supreme Court invalidated the provisions of Wisconsin law permitting pre-judgment garnishment of wages. Michigan law does not permit pre-judgment garnishment of wages, M.C.L.A. §600.4011(3) but the Fuentes opinion makes it clear that Sniadach was not narrowly based upon some principle peculiar to the nature of the garnished asset. Rather it was aimed at the basic unfairness of any judicial process which interferes with the use and enjoyment of an asset without an opportunity for a hearing.

This reading of Sniadach had been confirmed by a number

of decisions in other states. See Randone v. Appellate Dept., 5 Cal.3d 536, 96 Cal. Rptr. 709, 488 P.2d 13 (1971) (pre-judgment attachment of bank account without notice is unconstitutional); Jones Press, Inc. v. Motor Travel Services, Inc., 286 Minn. 205, 176 N.W.2d 87 (1970) (pre-judgment garnishment of accounts receivable is unconstitutional); Larson v. Fetherston, 44 Wis.2d 712, 172 N.W. 20 (1969) (pre-judgment garnishment of any asset without notice is unconstitutional).

To conform pre-judgment attachment and garnishment practice with the standards prescribed in the Fuentes and Sniadach opinions, Michigan statutes would have to be amended to provide for a noticed hearing at which the court would have to determine (1) the probable validity of the primary claim, and (2) the existence of the asserted statutory ground for issuing the writ (e.g., in the case of attachment, that the defendant is about to abscond or fraudulently transfer or dispose of the asset; and, in the case of garnishment, that plaintiff is justly apprehensive of his ability to collect any judgment which may be entered upon trial of the principal suit). The obvious judicial burden this would entail should be carefully weighed against the creditor's need for such a pre-judgment remedy, as well as its basic unfairness to the debtor who has not yet had his day in court.

Attachment and garnishment differ materially from replevin in this respect. In replevin a secured creditor is asserting

a property right in the asset to be seized, which as a rule is evidenced by written agreement of the parties. By attachment or garnishment an unsecured creditor is attempting to seize an asset in which he has no property interest and which is unrelated to his primary claim against the debtor. In effect he is using the judicial process to acquire collateral security which he has not bargained for, on a claim which in advance of trial has never been proven. Furthermore, in the case of garnishment, heavy burdens are imposed upon a third party who becomes involved as a garnishee defendant only because he owes the principal defendant money or is holding some asset of the defendant's, unrelated to the primary controversy.

Moreover, if advance notice were required before garnishment took place, the evasive debtor would remove the fund from his bank account and the garnishment would become meaningless. The non-evasive debtor would honor his debt, in any event, if judgment were rendered against him in the trial on the merits. The garnishment before judgment would only serve to harass him.

Because of the harshness of the remedy, the availability of pre-judgment attachment and garnishment has theoretically been limited to statutory grounds which basically allege prospective fraudulent transfer or concealment of the alleged debtor's assets. Too often in practice the assertion of such grounds is only a matter of form, and the real reason for using attachment or

garnishment is not to prevent fraudulent conduct, but rather to put pressure upon the defendant to pay or settle the disputed claim by tying up his assets in advance of trial.

It is therefore recommended that the Revised Judicature Act be amended to eliminate pre-judgment attachment and garnishment, with one exception. The statute should retain the use of pre-judgment attachment or garnishment to provide a basis for jurisdiction quasi in rem as to claims against a defendant who is not subject to personal jurisdiction in Michigan courts. The Supreme Court in the Fuentes opinion expressly recognized the use of these writs to secure jurisdiction as a "basic and important public interest" justifying an exception to the general requirement of notice and an opportunity for hearing before seizure is permitted. 407 U.S. at p. 91, n. 23.

The proposed amendments would not affect garnishment after judgment. This use of the writ would be retained as a means of applying a chose in action to the satisfaction of a judgment, since that cannot be done by execution.

The Common Pleas and retained municipal courts derive their powers of replevin, attachment and garnishment from the chapters of the Revised Judicature Act which formerly regulated justice courts. M.C.L.A. §§600.7301-600.7586. With the abolition of justice courts it should no longer be necessary to retain parallel

sets of statutory provisions covering the same subject. This was recognized to a large extent by P.A. 1971, No. 41, which provided that the new district courts were to be governed by the same provisions as the circuit courts, as to attachment and garnishment. M.C.L.A. §600.8306. Therefore, rather than revise the old justice court provisions regulating replevin, attachment and garnishment, it is recommended that they be repealed, and that the Common Pleas, municipal and district courts take their powers in such matters by reference to the provisions which govern the circuit courts.

The proposed amendments make the basic changes required to comply with due process, but do not provide all the procedural detail necessary to regulate proceedings for attachment and garnishment, which are now covered by rules of the Supreme Court. The court rules presently dealing with these subjects would, of course, have to be revised to conform to the basic statutory changes proposed by this bill.

2. Uniform Commercial Code

Under the Uniform Commercial Code, property which serves as collateral for an obligation may be taken by the secured creditor, either by peaceful self-help, or by judicial action. M.C.L.A. §440.9503.

The provision for taking by judicial process should be amended to provide for notice and opportunity for a hearing, in compliance

with the Fuentes decision. This may be accomplished by providing that the judicial action authorized by the Code shall be under the provisions of the Revised Judicature Act, amended as proposed above.

If it is unconstitutional to seize the debtor's property by judicial process without notice and a hearing, a statute authorizing the creditor to take the property without any judicial process must surely be unconstitutional, unless the taking is done with the debtor's consent. The Commission recommends amendment of the Uniform Commercial Code to eliminate authorization for self-help seizures, except when the debtor's consent is obtained at the time of taking. It is also proposed that taking of the property without judicial order be permitted only if the debtor is relieved of further liability for the debt. The sophisticated debtor will usually impose such requirement as a condition to his consent to give up the property without court action. The unsophisticated debtor, normally the typical consumer credit buyer, should be accorded the same protection by law.

Submitted with this report is a proposed bill to make these basic changes in sections 9503 and 9504 of the Code, along with technical amendments needed to harmonize other related sections. The thrust of these changes is essentially similar to H.B. 6327, introduced in the 1972 session of the Legislature.

3. Motor Vehicle Sales Finance Act

Before the Uniform Commercial Code was enacted, the Motor

Vehicle Sales Finance Act contained its own provisions for repossessing automobiles. C.L. 1948, §§492.123-492.127. These provisions were repealed by the Uniform Commercial Code, so that repossession of automobiles is now covered by the Code provisions discussed under the previous heading. If these Code provisions are amended as recommended, it would not be strictly necessary to amend the Motor Vehicle Sales Finance Act.

However, section 14(c) of the Act might still be construed as implying a right to repossess financed automobiles by self-help, without the buyer's consent, M.C.L.A. §492.114(c). It is therefore recommended that this provision be amended to state explicitly that any right of repossession must be exercised in accordance with the Uniform Commercial Code. A proposed bill is transmitted with this report. Its purpose and effect are substantially similar to H.B. 6326 introduced in the 1972 session of the Legislature.

4. Statutes Unaffected

The Commission has studied a number of additional statutes which provide for seizure or disposition of property without notice and a judicial hearing. However, for reasons stated below, we have concluded that these statutes need not be amended in response to the Fuentes decision.

a. Special Lien Statutes

Numerous special statutes give a creditor a lien on his debtor's property. Some of these statutes raise no questions

insofar as the Fuentes decision is concerned, because the lien is enforceable only by judicial process, after notice and a decision on the merits. See, e.g., Mechanic's Lien on Real Property, M.C.L.A. §§570.10 et seq.; and Thresher's Lien, M.C.L.A. §§570.331 et seq.

We have also excluded from our concern the large number of lien statutes which authorize the creditor to retain possession of the debtor's property as security for payment. An illustration of this type would be the Garage Keeper's Lien provided by M.C.L.A. §§570.301 et seq.

The Fuentes decision was concerned with due process of law in the creditor's seizing, taking or repossessing his debtor's property. When property has been left in the creditor's hands, allowing him to retain possession of it pending satisfaction of his claim should not offend due process, for that merely puts the burden of invoking the judicial process consistently upon the party who seeks to interfere with actual possession. Perhaps at the point these statutes authorize the creditor to sell the retained property without judicial process, problems akin to the concern of the Fuentes decision begin to arise. But invariably these statutes require notice to the debtor before the property may be sold, and there is time for him to invoke judicial action to recover the chattel before sale, if he disputes the validity of the underlying claim.

The following lien statutes contain provisions which need not be amended, because they deal with property already in the creditor's possession, as discussed in the preceeding paragraph:

Garage Keeper's Lien, M.C.L.A. §§570.301 et seq.

Innkeeper's Lien, M.C.L.A. §427.201.

Dry Cleaner's Lien, M.C.L.A. §570.211.

Carrier's Lien, M.C.L.A. §§440.7307 et seq.

Warehouseman's Lien, M.C.L.A. §§440.7209 et seq.

Mechanic's Lien on Chattels, M.C.L.A. §§570.185 et seq.

Bank's Lien for Safe Deposit Box Rental, M.C.L.A. §§487.36, 487.145, 487.285, 487.586.

Possessor's Lien for Paying Tax on Personal Property of Non-resident, M.C.L.A. §211.14(7).

Logger's Lien for Expenses of Breaking Log-jam, M.C.L.A. §§426.51 et seq.

River Improvement Company's Lien on Floatables for Tolls, M.C.L.A. §485.118.

River Improvement Company's Lien for Breaking Log-jam, M.C.L.A. §§485.121 et seq.

Lien on Stock in Summer Resort Associations for Delinquent Subscriptions, M.C.L.A. §455.15.

There remain two special lien statutes which go beyond retention of the property and provide for seizure of the property by judicial process upon ex parte application by the creditor. While these two statutes appear to violate the principles of the Fuentes decision, we are not recommending amendments to rehabilitate them, because they no longer have any practical importance.

One of these statutes is M.C.L.A. §§570.402 et seq., which provides for a lien on watercraft over five tons to satisfy various kinds of claims against the owner. When the creditor files a verified complaint in circuit court, the clerk issues a warrant to the sheriff commanding him to seize the watercraft. M.C.L.A. §§5704.404 et seq. There is no provision for notice or hearing before seizure.

This statute was enacted at a time when the lien provided by federal maritime law did not cover a vessel in its home port. The state statute was used to cover that gap. The federal maritime lien has since been extended to cover the area of the Michigan statute by enactments in 1910 and 1920. Act June 23, 1910, c. 373, 36 Stat. 604; Act June 5, 1920, c. 250, 41 Stat. 1005; 46 U.S.C.A. §§971 et seq. To the extent that the Michigan statute has not been superseded by federal law, 46 U.S.C.A. §975, it has fallen into disuse because creditors prefer the federal maritime lien which takes priority over all non-maritime liens.

The other statute is M.C.L.A. §§426.1 et seq., which provides for a lien for labor on forestry products. The lien may be enforced by a writ of attachment issued upon the claimant's ex parte application, M.C.L.A. §§426.5-426.11, and to this extent the statute appears to conflict with the Fuentes decision. The statute was used mainly to provide some security for the wages of loggers and sawyers employed by transitory or impecunious logging companies.

However important that might have been at an earlier time, the statute seems to have fallen into disuse. We have found no cases under it later than 1917, and, therefore, do not think it should be necessary to amend the statute in order to rehabilitate it for contemporary use.

b. Public Health and Safety Statutes

Private property which is involved in criminal activity or which constitutes some threat to public health or safety may be summarily seized by state officials under a number of statutes. These exercises of police power obviously belong in a different category than seizure of property to satisfy private claims against the owner, which is the immediate concern of the Fuentes decision. As to some of these statutes, there may be room to doubt whether the particular interest in public health or safety is sufficiently compelling or urgent to justify giving up the safeguards of notice and a hearing. But it would be an over reaction to the Fuentes decision to conclude that categorical changes are required.

For this reason, the Commission has not recommended amendment of the following statutes:

Seizure of seeds believed to violate state seed law, M.C.L.A. §286.713.

Seizure of suspected contraband cigarettes, M.C.L.A. §205.509 (c-g).

Seizure of food or dairy products believed to violate pure foods law, M.C.L.A. §289.37.

Seizure of illegal oil, M.C.L.A. §319.21.

Seizure of forestry products unlawfully cut or removed from state lands, M.C.L.A. §322.136.

Seizure of illegal prophylactics, M.C.L.A. §329.254.

c. Tax Collection Statutes

M.C.L.A. §211.47 authorizes seizure and sale of personal property to pay unpaid property taxes, without prior notice, hearing or judicial process. M.C.L.A. §§211.113 and 211.156 authorize seizure of things removed from land bid to the state for non-payment of taxes, again without prior notice, hearing or judicial process.

These provisions authorize a creditor (the state) to seize property before providing an opportunity for a hearing on the probable validity of the underlying claim. However, it has long been recognized that the sovereign has power to assess, levy and collect taxes without resort to judicial process, and that it is not unconstitutional to require the taxpayer to pay a disputed assessment before he can have judicial review. The United States Supreme Court recognized this as an exception to the Fuentes decision. At pages 91-92 of 407 U.S. the opinion states, ". . . the Court has allowed summary seizure of property to collect the internal revenue of the United States," citing Phillips v. Commissio 283 U.S. 589. Consequently no changes in Michigan's tax collection statutes are recommended in this respect.

PROPOSED BILL

AN ACT to amend Act No. 236 of the Public Acts of 1961, entitled "An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of such courts, and of the judges and other officers thereof; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in said courts; pleading, evidence, practice and procedure in civil actions and proceedings in said courts; to provide remedies and penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with, or contravening any of the provisions of this act," as amended, being sections 600.101 to 600.9930 of the Compiled Laws of 1948, by amending sections 2920, 4001, 4011, 4021, and 8306, by adding a new section 8307, and by repealing sections 7301 through 7586.

The People of the State of Michigan enact:

Section 1. Sections 2920, 4001, 4011, 4021, and 8306 of Act No. 236 of the Public Acts of 1961, as amended, being sections 600.2920, 600.4001, 600.4011, 600.4021, and 600.8306 of the Compiled Laws of 1948, are amended to read as follows:

Sec. 2920. (1) A civil action may be brought to recover any goods or chattels which have been unlawfully taken or unlawfully detained and to recover damages sustained by the unlawful taking or unlawful detention, except as provided below.

(a) No action may be maintained under this provision for any property taken by virtue of any warrant for the collection of any tax, assessment, or fine in pursuance of any statute of this state.

(b) No action may be maintained under this provision to recover goods or chattels seized by virtue of any execution or attachment at the suit of the defendant in the execution or attachment unless the goods or chattels are exempted by law from execution or attachment.

(c) No action may be maintained under this provision by any person who does not at that time have a right to possession of the goods taken or detained.

(d) NO WRIT, ORDER OR PROCESS FOR DELIVERY OF THE GOODS OR

CHATTELS BEFORE JUDGMENT MAY BE ISSUED UNLESS THE COURT, AFTER A NOTICED HEARING, DETERMINES THAT THE CLAIM FOR RECOVERY IS PROBABLY VALID AND THE PARTY CLAIMING DELIVERY FILES A SUFFICIENT BOND, UNDER PROCEDURES PROVIDED BY COURT RULES.

(2) (a) Whenever any person holds papers pertaining to an office, and he is not the person in that office, he shall surrender them to the person entitled to that office.

(b) The person entitled to possession of such books and papers may bring an action to recover their possession. The court may order any person to show cause why he should not be compelled to deliver such books and papers and may order the delivery of the books and papers.

Sec. 4001. The circuit courts of the state shall have the power by attachment to apply to the satisfaction of a claim due or to become due any interest in things which are subject to the judicial jurisdiction of the state and belonging to the person against whom the claim is asserted, UPON EX PARTE APPLICATION SHOWING THAT THE PERSON AGAINST WHOM THE CLAIM IS ASSERTED IS NOT SUBJECT TO THE JUDICIAL JURISDICTION OF THE STATE OR AFTER DILIGENT EFFORT CANNOT BE SERVED WITH PROCESS AS REQUIRED TO SUBJECT HIM TO THE JUDICIAL JURISDICTION OF THE STATE. A COPY OF THE WRIT OF ATTACHMENT SHALL BE SERVED UPON THE PERSON AGAINST WHOM THE CLAIM IS MADE BY THE SAME MEANS PROVIDED BY COURT RULES FOR SERVICE OF PROCESS IN OTHER CASES IN WHICH PERSONAL JURISDICTION OVER THE DEFENDANT IS NOT REQUIRED. ~~whether-or-not-the-person himself-is-subject-to-the-judicial-jurisdiction-of-the-state.~~ The courts may exercise the jurisdiction granted in this section only if action is taken in accordance with court rules promulgated to protect the parties. ~~and-it-is-asserted-that-1-or-more-of the-following-situations-exists:~~

~~(1)-that-the-defendant-has-absconded-or-is-about-to-abscond from-the-state-or-is-concealed-therein-to-the-injury-of-his creditors;~~

~~(2)-that-the-defendant-has-assigned,-disposed-of,-or-concealed any-of-his-property-with-intent-to-defraud-his-creditors;~~

~~(3)-that-the-defendant-is-about-to-assign,-dispose-of,-or conceal-any-of-his-property-with-intent-to-defraud-his-creditors;~~

~~(4)-that-the-defendant-has-removed-or-is-about-to-remove any-of-his-property-from-the-state-with-intent-to-defraud-his creditors;~~

~~(5) that the defendant has fraudulently contracted the debt or fraudulently incurred the obligation respecting which the suit is brought;~~

~~(6) that the defendant is not a resident of the state and has not resided therein for 3 months immediately preceding;~~

~~(7) that the defendant is a foreign corporation.~~

Sec. 4011. (1) Except as otherwise provided in ~~(2)~~, (3), (4), and (5), (6) AND (7) of this section, the circuit courts of the state shall have power by garnishment to apply to the satisfaction of a claim evidenced by contract, judgment of this state, or foreign judgment

(a) personal property belonging to the person against whom the claim is asserted but which is in the possession or control of a third person if the third person is subject to the judicial jurisdiction of the state and the personal property to be applied is within the boundaries of this state;

(b) an obligation owed to the person against whom the claim is asserted if the obligor is subject to the judicial jurisdiction of the state; whether or not the state has jurisdiction over the person against whom the claim is asserted.

(2) The courts may exercise the jurisdiction granted in this section only if action is taken in accordance with court rules promulgated to protect the parties. ~~and it is asserted that the plaintiff is justly apprehensive of the loss of his claim unless garnishment is issued.~~ Except as otherwise provided by court rule, the state of Michigan and every governmental unit therein, including but not limited to a public, municipal, quasi-municipal, or governmental corporation, unincorporated board, public body, or political subdivision, may be proceeded against as garnishees in the same manner and with like effect as individuals.

(3) NO WRIT OF GARNISHMENT MAY BE ISSUED BEFORE JUDGMENT, EXCEPT UPON EX PARTE APPLICATION SHOWING THAT THE PERSON AGAINST WHOM THE CLAIM IS ASSERTED IS NOT SUBJECT TO THE JUDICIAL JURISDICTION OF THE STATE OR AFTER DILIGENT EFFORT CANNOT BE SERVED WITH PROCESS AS REQUIRED TO SUBJECT HIM TO THE JUDICIAL JURISDICTION OF THE STATE, IN WHICH CASE A COPY OF THE WRIT OF GARNISHMENT SHALL BE SERVED UPON THE PERSON AGAINST WHOM THE CLAIM IS MADE BY THE SAME MEANS PROVIDED BY COURT RULES FOR SERVICE OF PROCESS IN OTHER CASES IN WHICH PERSONAL JURISDICTION OVER THE DEFENDANT IS NOT REQUIRED.

~~(2)~~ (4) No garnishment proceedings are to be commenced against the state of Michigan or any governmental unit therein, including but not limited to a public, municipal, quasi-municipal, or governmental corporation, unincorporated board, public body, or political subdivision, until after the plaintiff's claim has been reduced to judgment.

~~(3)~~ (5) No garnishment proceedings are to be commenced against any person for money owing to a principal defendant on account of labor performed by the principal defendant until after the plaintiff's claim has been reduced to judgment.

~~(4)~~ (6) A sheriff or other public officer is not subject to garnishment for any money or things received or collected by him by virtue of an execution or other legal process in the favor of the principal defendant or because of any money in his hands for which he is accountable merely as a public officer to the principal defendant.

~~(5)~~ (7) No garnishment proceedings are to be commenced if the commencement of such proceedings is forbidden by a statute of this state.

Sec. 4021. The county in which some of the property attached is situated is a proper county of venue for attachment. ~~if~~

~~(1) the county is designated in RJA chapter 16 as a proper county of venue of the action; or~~

~~(2) no county designated in RJA chapter 16 as a proper county of venue is the location of some of the attached property; or~~

~~(3) personal jurisdiction cannot be acquired over the defendant.~~

Sec. 8306. (1) Subject to the limitations of jurisdictional amount and venue OTHERWISE APPLICABLE IN ~~as prescribed in sections 8301 and 8312,~~ the COMMON PLEAS, MUNICIPAL AND district courtS, SUCH COURTS shall have the same power with respect to attachment and garnishment as the circuit court.

(2) The substantive grounds upon which such relief is available shall be as determined in section 4001 with respect to attachment and as determined in section 4011 with respect to garnishment.

(3) The COMMON PLEAS, MUNICIPAL AND district courtS may exercise the jurisdiction granted by this section only if action is taken in accordance with supreme court rules promulgated to protect the parties. ~~and it is asserted that the requisite substantive grounds exist.~~

(4) All garnishment proceedings shall be treated as auxiliary actions to the principal action. The party commencing such a proceeding shall not be required to pay ~~the~~ AN ADDITIONAL filing fee ~~prescribed in section 8373~~ OR JURY FEE with respect to that garnishment proceeding but shall pay to the clerk the sum of $5.00 as a service fee for the issuance of every writ of garnishment except a writ issued by the small claims division. OF THE DISTRICT COURT.

(5) No other fees shall be required with respect to attachment and garnishment except as otherwise provided by law.

Section 2. Act No. 236 of the Public Acts of 1961, as amended, is amended by adding Section 8307 to read as follows:

SEC. 8307. (1) SUBJECT TO THE LIMITATIONS OF JURISDICTIONAL AMOUNT AND VENUE OTHERWISE APPLICABLE IN THE COMMON PLEAS, MUNICIPAL AND DISTRICT COURTS, SUCH COURTS SHALL HAVE THE SAME POWER AS THE CIRCUIT COURT WITH RESPECT TO CIVIL ACTIONS TO RECOVER GOODS OR CHATTELS WHICH HAVE BEEN UNLAWFULLY TAKEN OR UNLAWFULLY DETAINED.

(2) THE SUBSTANTIVE GROUNDS UPON WHICH SUCH RELIEF IS AVAILABLE SHALL BE AS PROVIDED IN SECTION 2920.

(3) DELIVERY OF THE GOODS OR CHATTELS TO THE CLAIMANT BEFORE JUDGMENT MAY BE ALLOWED ONLY AS PROVIDED IN SECTION 2920(1)(d) UNDER PROCEDURES PROVIDED BY SUPREME COURT RULES PROMULGATED TO PROTECT THE PARTIES.

Section 3. Sections 7301 through 7586 of Act No. 236 of the Public Acts of 1961, as amended, being sections 600.7301 through 600.7586 of the Compiled Laws of 1948, as amended, are repealed.

Section 4. The provisions of this act shall apply to all actions pending on the effective date of the act, as well as to actions filed thereafter.

PROPOSED BILL

A bill to amend sections 9501 through 9504 of Act No. 174 of the Public Acts of 1962, entitled "Uniform commercial code," being sections 440.9501 through 440.9504 of the Compiled Laws of 1948.

The People of the State of Michigan enact:

Section 1. Sections 9501 through 9504 of Act No. 174 of the Public Acts of 1962, being sections 440.9501 through 440.9504 of the Compiled Laws of 1948, are amended to read as follows:

Sec. 9501. (1) When a debtor is in default under a security agreement, a secured party has the rights and remedies provided in this part and except as limited by subsection (3) those provided in the security agreement. He may reduce his claim to judgment, foreclose or otherwise enforce the security interest by any available judicial procedure. If the collateral is documents the secured party may proceed either as to the documents, or as to the goods covered thereby. A secured party in possession has the rights, remedies and duties provided in section 9207. The rights and remedies referred to in this subsection are cumulative.

(2) After default, the debtor has the rights and remedies provided in this part, those provided in the security agreement and those provided in section 9207.

(3) To the extent that they give rights to the debtor and impose duties on the secured party, the rules stated in the subsections referred to below may not be waived or varied except as provided with respect to compulsory disposition of collateral (subsection (1) of section 9505) and with respect to redemption of collateral (section 9506) but the parties may by agreement determine the standards by which the fulfillment of these rights and duties is to be measured if such standards are not manifestly unreasonable:

(a) subsection (2) of section 9502 and subsection (2) of section 9504 insofar as they require accounting for surplus proceeds of collateral;

(b) subsectionS (1) AND (3) of section 9504 and subsection (1) of section 9505 which deal with disposition of collateral;

(c) subsection (2) of section 9505 which deals with acceptance of collateral as discharge of obligation;

(d) section 9506 which deals with redemption of collateral; and

(e) subsection (1) of section 9507 which deals with the secured party's liability for failure to comply with this part.

(4) If the security agreement covers both real and personal property, the secured party may proceed under this part as to the personal property or he may proceed as to both the real and the personal property in accordance with his rights and remedies in respect of the real property in which case the provisions of this part do not apply.

(5) When a secured party has reduced his claim to judgment the lien of any levy which may be made upon his collateral by virtue of any execution based upon the judgment shall relate back to the date of the perfection of the security interest in such collateral. A judicial sale, pursuant to such execution, is a foreclosure of the security interest by judicial procedure within the meaning of this section, and the secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this article.

Sec. 9502. (1) When so agreed and in any event on default the secured party is entitled to notify an account debtor or the obligor on an instrument to make payment to him whether or not the assignor was theretofore making collections on the collateral, and also to take control of any proceeds to which he is entitled under section 9306. AND THE LIMITATIONS OF SECTIONS 9503 AND 9504 SHALL NOT BE APPLICABLE THERETO.

(2) A secured party who by agreement is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor and who undertakes to collect from the account debtors or obligors must proceed in a commercially reasonable manner and may deduct his reasonable expenses of realization from the collections. If the security agreement secures an indebtedness, the secured party must account to the debtor for any surplus, and unless otherwise agreed, the debtor is liable for any deficiency. But, if the underlying transaction was a sale of accounts, contract rights, or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

Sec. 9503. Unless otherwise agreed a secured party has on default the right to take possession of the collateral. In taking possession a secured party may proceed without judicial process if THE DEBTOR CONSENTS THERETO AT THE TIME OF TAKING AND THE SECURED PARTY ACCEPTS THE COLLATERAL IN SATISFACTION OF THE DEBTOR'S

OBLIGATION, OR ~~this can be done without breach of the peace or may~~ SHALL proceed by action UNDER SECTION 2920 OF ACT NO. 236 OF THE PUBLIC ACTS OF 1961. If the security agreement so provides the secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties. Without removal a secured party may render equipment unusable, and may dispose of collateral on the debtor's premises under section 9504.

Sec. 9504. (1) ~~A secured party after default may sell, lease or otherwise dispose of any or all of the collateral in its then condition or following any commercially reasonable preparation or processing.~~ A SECURED PARTY PROCEEDING BY ACTION AS PROVIDED IN SECTION 9503, UPON ORDER OF THE COURT AUTHORIZING REPOSSESSION, MAY APPLY TO THE COURT FOR AN ORDER AUTHORIZING THE SALE, LEASE OR OTHER DISPOSITION OF THE COLLATERAL OR MAY TAKE SUCH OTHER ACTION AS IS APPROVED BY THE DEBTOR. THE ORDER IF MADE, SHALL DIRECT THAT ANY SALE, LEASE OR OTHER DISPOSITION OF THE COLLATERAL SHALL BE IN A COMMERCIALLY REASONABLE MANNER AS THE COURT SHALL DIRECT, OR SHALL TAKE PLACE AT PUBLIC AUCTION AFTER NOTICE TO THE DEBTOR IN THE FORM PRESCRIBED BY THE COURT AND PUBLICATION FOR 2 CONSECUTIVE WEEKS IN A NEWSPAPER OF GENERAL CIRCULATION IN THE COUNTY OF RESIDENCE OF THE DEBTOR. Any sale of goods is subject to the article on sales (article 2). The proceeds of disposition shall be applied in the order following to

(a) the reasonable expenses of retaking, holding, preparing for sale, selling and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys fees and legal expenses incurred by the secured party;

(b) the satisfaction of indebtedness secured by the security interest under which the disposition is made;

(c) the satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security interest must seasonably furnish reasonable proof of his interest, and unless he does so, the secured party need not comply with his demand.

(2) If the security interest secures an indebtedness, the secured party must account to the debtor for any surplus, and, unless otherwise agreed, the debtor is liable for any deficiency. But if the underlying transaction was a sale of accounts, contract rights, or chattel paper, the debtor is entitled to any surplus

or is liable for any deficiency only if the security agreement so provides.

(3) Disposition of the collateral may be by public or private proceedings AS ORDERED BY THE COURT OR APPROVED BY THE DEBTOR, and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor, and except in the case of consumer goods to any other person who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the debtor in this state or who is known by the secured party to have a security interest in the collateral. The secured party may buy at any public sale and if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations he may buy at private sale. IF AUTHORIZED BY ORDER OF THE COURT OR APPROVED BY THE DEBTOR

(4) When collateral is disposed of by a secured party after default, the disposition transfers to a purchaser for value all of the debtor's rights therein, discharges the security interest under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interests even though the secured party fails to comply with the requirements of this part or of any judicial proceedings.

(a) In the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he does not buy in collusion with the secured party, other bidders or the person conducting the sale; or

(b) in any other case, if the purchaser acts in good faith.

(5) A person who is liable to a secured party under a guaranty indorsement, repurchase agreement or the like and who receives a transfer of collateral from the secured party or is subrogated to his rights has thereafter the rights and duties of the secured party. Such a transfer of collateral is not a sale or disposition of the collateral under this article.

PROPOSED BILL

A bill to amend section 14 of Act No. 27 of the Public Acts of the Extra Session of 1950, entitled as amended "Motor vehicle sales finance act," as amended, being section 492.114 of the Compiled Laws of 1948.

The People of the State of Michigan enact:

Section 1. Section 14 of Act No. 27 of the Public Acts of the Extra Session of 1950, as amended, being section 492.114 of the Compiled Laws of 1948, is amended to read as follows:

Sec. 14. (a) No installment sale contract shall be signed by any party thereto unless it contains all of the information and statements required by this act.

(b) No installment sale contract shall contain any acceleration clause under which any part or all of the time balance represented by payments, not yet matured, may be declared immediately payable because the seller or holder deems himself to be insecure.

(c) No installment sale contract shall contain any provision authorizing any person acting on behalf of the seller or holder to enter upon premises of the buyer unlawfully, or to commit any breach of the peace in the repossession of the motor vehicle or collateral security. ANY RIGHT OF REPOSSESSION OF A MOTOR VEHICLE PROVIDED IN AN INSTALLMENT SALES CONTRACT SHALL BE EXERCISED ONLY IN THE MANNER PROVIDED IN SECTIONS 9503 AND 9504 OF ACT NO. 174 OF THE PUBLIC ACTS OF 1962.

(d) No installment sale contract shall contain any provision whereby the buyer waives any right of action against the seller, holder or other person acting on behalf of the holder for any illegal act committed in the collection of the payments under the contract or in the repossession of the motor vehicle or collater security.

(e) No installment sale contract shall contain any provision whereby the buyer executes a power of attorney appointing the seller the holder, or the agent of such licensee as the buyer's agent in collection of the payments under the contract or in repossession of the motor vehicle sold or collateral security.

(f) No installment sale contract shall contain any provision relieving the holder, or other assignee, from liability for any

legal remedies which the buyer may have had against the seller under the contract or under any separate instrument executed in connection therewith: Provided, That this subsection shall in no way impair or affect the rights and powers of a holder in due course of a negotiable instrument.

RECOMMENDATION RELATING TO TAXPAYER RELIEF FROM EXCESSIVE PROPERTY TAX ASSESSMENTS

Taxpayers throughout the state have for many years complained about excessive property tax assessments from which no adequate procedures for relief are available under present laws. The laws call for hearings before assessing officers upon request of the taxpayer. If relief is not granted by the assessor, the taxpayer may then go to the board of review. If relief is still not forthcoming, the taxpayer may appeal to the State Tax Commission. While these procedures appear adequate on their face, in practice they have proved largely ineffective in granting relief to taxpayers with legitimate complaint that their property assessment is excessive.

The assessing officer who first arrives at the assessment valuation is rarely disposed to change his own views no matter what proofs the taxpayer may offer to the contrary. The board of review to whom the taxpayer must next appeal is generally totally inexpert in property valuations and relief for the taxpayer is not only rare but is more often dependent upon political or personal relationships rather than meritorious contentions as to value. The unhappy taxpayer may then appeal to the State Tax Commission as his final avenue for relief. While the law requires a full and fair hearing before the Tax Commission, in fact it is rarely available.

By law the Tax Commission is required to hold a quasi-judicial type of hearing in which proofs are taken and the evidence is weighed on a totally impartial basis. In practice, the hearing is generally conducted by one commissioner with no legal training or understanding of legal limitations as to admissible evidence and clearly lacking in judicial qualities for impartial weighing of the evidence. Moreover, the Tax Commission's own staff undertakes to evaluate the property and almost invariably it accepts the judgment of its own staff over that of any other proofs which are submitted. The weight of the contrary evidence in behalf of the taxpayer is generally given short shrift no matter how clearly it demonstrates the inadequacy of the staff findings.

Furthermore, the assessing officers are required to rely on guiding principles and procedures established by the Tax Commission and its staff as the agency which has superintending control over assessing officers. As may be expected, the Tax Commission is unlikely to be critical of assessments made pursuant to their guidelines, no matter how inappropriate the result in the individual case.

Thus, hearings before the Tax Commission are largely perfunctory and generally offer no reasonable opportunity for the taxpayer to gain a fair hearing based on competent testimony which is judiciously weighed. If a taxpayer is to get a truly

impartial consideration of his claim of excessive assessment, it can only be achieved in a court of law. It is thus our recommendation that a taxpayer complaining of excessive assessment should have the right to choose between the present procedures which eventuate in final hearing before the State Tax Commission or a full scale court hearing in which a circuit judge considers the proofs presented by both the taxing authorities and the taxpayer and makes his decision in conformance with those proofs as required by law.

A cursory reading of the present statute might indicate that the taxpayer already has such a choice under the present laws, since Section 53 of the General Property Tax Act (C.L. 1948, §211.53) provides that a taxpayer may pay his property tax under protest and file suit in court within 60 days thereafter for recovery of any portion representing an unlawful assessment. In fact, however, the taxpayer gets no such relief by suit under this section. In such suit the courts are not permitted to weigh evidence as to the actual value of the property. The courts are required to accept the Tax Commission's findings on value, except upon proof of fraud, error of law or the adoption of wrong principles.

The only relief currently available to a taxpayer claiming excessive valuation is by appeal to the Tax Commission after first exhausting his required complaint to the assessor and

appeal to the board of review. If the Tax Commission's decision is deemed oppressive, the taxpayer may appeal to the Court of Appeals. Such appeal, however, is not a matter of right and is available only by application for leave to appeal which generally is only a perfunctory review and in the final analysis is limited to issues of law. Article VI, Section 28 of the Michigan Constitution provides:

> "In the absence of fraud, error of law or the adoption of wrong principles, no appeal may be taken to any court from any final agency provided for the administration of property tax laws from any decision relating to valuation or allocation."

Under this constitutional requirement, the Tax Commission is deemed the "final agency" whose decisions may not be reviewed in the absence of clear proof of "fraud, error of law or the adoption of wrong principles". Hudson-Weber v. City of Southfield, 18 Mich. App. 66, Kingsford Chemical Co. v. Kingsford, 347 Mich. 91, Naph-Sol Refining Co. v. Muskegon, 346 Mich. 16, Moran v. Grosse Pointe Twp., 317 Mich. 248, S.S. Kresge Co. v. Detroit, 276 Mich. 565.

The present statutory provisions are further inadequate in that they have resulted in imposing much confusion along with complex technical pre-requisites incident to the recovery of excessive taxes even if a favorable decision is obtainable from the Tax Commission. Under present laws, the taxpayer must comply with Section 152 of the General Property Tax Act which calls for successive appeals to the assessor, the board of review and

the Tax Commission, and must also comply with Section 53 which requires payment under protest and commencement of suit within 60 days thereafter to recover excessive tax payments. While a Section 152 hearing before the Tax Commission must determine the proper level of property assessments, it does not provide any machinery for repayment of any taxes determined to be excessive. While Section 152(a) was this year amended (P.A. 1972, No. 95) and now calls for repayment of the excess taxes collected, it provides no means of enforcement other than the suit required by Section 53.

Thus, a taxpayer who appeals to the Tax Commission must nonetheless pay his taxes under written protest and commence court action within 60 days thereafter in order to recover any amount found to be excessive. The court suit and the appeal to the Tax Commission must pend at the same time. The hearing in court is generally delayed until after the decision of the Tax Commission. The taxpayer must then await trial of the court action before he can secure refund of any excessive taxes as determined based on the Tax Commission's decision as to the proper assessment.

This maze of legal obstacle course is further enmeshed where the property taxes are paid in two installments. Each installment must be paid under written protest and a separate court action started within 60 days thereafter. The two suits may then be

joined for trial together. The legal ramifications are further enhanced as each separate suit is filed with each tax payment in succeeding years, prior to the time that the appeal to the Tax Commission has been resolved. Hearings before the Tax Commission generally take place from one to three years after the appeal is taken. In the interim, the taxpayer who seeks relief from an unfair assessment must continue to take appeals to the Tax Commission for each new year and must file a new suit in court with each tax payment he makes. It is not uncommon to have 9 law suits pending covering a single property assessment - i.e., in each year 2 suits are filed for each 1/2 of city taxes and 1 suit for each county tax which for a period of 3 years totals 9 suits.

To resolve the current inadequacies of the laws relating to relief to taxpayers from excessive assessments, it is recommended that the right to sue in court should be made meaningful as an alternative remedy. Thus, the taxpayer should be able to choose whether to go to the circuit court and get a full trial of his rights based on testimony before a circuit judge or in the alternative, he may appeal to the Tax Commission and should be able to get a substantially self-executing order of the Tax Commission which entitles him to any refund which it may determine. The recommendations for amendment of the General Property Tax Act herewith submitted seek basically to achieve this end.

The following comments are explanatory of the specific changes

proposed.

A. Comments re Section 27 Amendments

1. The word "cash" is inserted in the first sentence of Section 27 for the purpose of clarifying that the "cash value" defined by the statute refers to a "cash price" as distinguished from a price resulting from a contractual commitment for payment over an extended term of years under either a land contract or purchase money mortgage. It is well recognized that the "cash price" is generally lower than that which is paid under a long term mortgage or land contract with varying amounts of initial payment. Certainly, the constitutional provision under Article IX, Section 3 limiting property taxes to 50% of "true cash value" as defined by Section 27 of the General Property Tax Act is intended to mean such "cash price". In the absence of the amendmen assessing officers feel free to use the sales price under a land contract or purchase money mortgage as indicative of the cash price

2. The word "economic" is eliminated in the third sentence of Section 27. Its insertion in the 1969 amendment of the Act has caused considerable dispute as to its intended meaning. While "economic income" is generally deemed to refer to money income or its equivalent, the taxing authorities have contended that it creates a new concept of taking into account hypothetical income which is different than the actual income from the property. It is their contention that if a property is leased under a long term lease for a rental which in later years proves unduly low

in the face of changed economic conditions, the taxing authorities can evaluate the property based upon the income which would be received therefrom if there were no lease previously executed. They thus in effect define "economic income" as the possible income absent a lease, rather than the actual income in the face of a pre-existing lease.

The term "economic income" has no such dictionary meaning, nor is it a clearly established term of art. The definition of "economic income" imposed by the taxing authorities is in fact merely a device to place higher values on property for assessment purposes than its present income can justify. Their definition of this term is certainly unwarranted in the face of the constitutional and statutory requirements that property be assessed in relation to its "true cash value", namely what it could be sold for in the market place as defined in Section 27. The selling price for real property, particularly of a commercial nature, is related to its present income rather than to any concepts of a hypothetical assumption that its income might be something else if the property were not leased.

Evidencing the solely tactical use by taxing officials of their definition of "economic income" is their continued insistence upon use of actual income when the rental under a long term lease exceeds that which could be obtained under current economic conditions. It is thus a heads you win and tails you lose proposition.

It is clear that the definition of "economic income" as interpreted by the taxing authorities has no relationship to the definition of "true cash value" as required under the constitutional and statutory provisions. We thus recommend elimination of the word "economic" so that along with other factors, the actual income from the property is to be weighed in its evaluation.

B. Comments re Section 53 Amendments

The requirement for payment of the tax under protest as a condition to bringing suit is eliminated. To require each payment to be made accompanied by a written protest is a mere formality which a taxpayer may well overlook through oversight. Yet it serves no significant benefit to the taxing authority. By elimination of the protest, the time when the tax authority learns that the tax payment is being contested is merely delayed for a maximum of 60 days until the suit is filed.

C. Comments re Section 53(b) Amendments

1. The present Section 53(b) is eliminated. It serves no useful purpose since for all practical purposes, the relief provided thereby is available under Section 53. It is limited to the rare situation where both the taxing authority and the taxpayer agree that there has been a mutual mistake and is available during a one year period only. There is no need for continuing that provision, since by mutual agreement, any unlawful payment can be returned with no need for statutory authorization.

The new Section 53(b) is utilized to formulate the new

provisions available for bringing suit in the circuit court as an alternative remedy to appeal to the State Tax Commission.

2. Under the new provisions, the commencement of an action in circuit court will eliminate the need for appeal to the Tax Commission. Upon such suit being filed, the Tax Commission will have no jurisdiction or authority in determining the particular assessment. With the Tax Commission no longer acting in the matter, there will no longer be "any final agency provided for the administration of property tax laws (making) any decision relating to valuation" (Const. Art. VI, Sec. 38). Thus, the constitutional limitation therein requiring that in an appeal from "any final agency", the courts shall review only matters of "fraud, error of law or the adoption of wrong principles" will not be applicable to such suits.

3. Under the new provisions, there will no longer be any mandatory requirement for the taxpayer to exhaust his administrative remedies as a condition to prevailing in the suit. As earlier noted herein, the hearings before the assessor, board of review and Tax Commission are generally ineffective in granting relief to the taxpayer. If the taxpayer is willing to go to the trouble and expense of a court action to determine his rights, he should not be burdened by requirements of going before the 3 strata of taxing authorities as well.

4. Trial on the merits of a taxpayer's claim will take place before a circuit court judge who must base his decision

solely upon the proofs presented in open court in like manner as in other civil cases tried by the court without a jury. Such decision must be based upon legally admissible and competent proofs and must conform to the preponderance of the evidence.

5. Under present law, a lawful assessment requires a determination of true cash value of the property on the assessment date. To that valuation is applied a percentage factor equal to the average ratio of assessments to true cash value in the assessment district. To the amount so arrived at, there must be applied the uniformly established equalization factor for the assessment district for the year in question. In keeping with the constitutional requirement, the final assessment after equalization is limited to 50% of the true cash value of the property. These requirements which are referred to in the statutes rather ambiguously are specifically spelled out in the proposed statute.

6. In line with the long established presumption of the validity of assessments by taxing authorities, the burden of proof as to the true cash value of the property is placed upon the taxpayer. As in other civil actions, the plaintiff must make a prima facie case by introducing proofs that contradict the assessment valuation arrived at by the taxing authorities. Thereupon, the taxing authorities must submit their proofs in opposition thereto. The judgment of the court is arrived at by weighing the respective proofs in the light of all of the

facts presented at the trial.

7. On the issue of the average ratio of the assessments to true cash value in the assessment district, the burden of proof is placed upon the governmental unit rather than the taxpayer in keeping with its obligation to gather the necessary information for that purpose. Similarly the burden of proof is placed upon the governmental unit to present its information as to the uniform equalization factor applied within the assessment district.

8. The refund procedure is further simplified by providing that all governmental units who have received taxes under the unlawful assessment may be joined in the same suit. Thus, both the city and the county can be joined in a single suit. Furthermore upon payment of the second half of the contested tax, the suit can be amended to include claim for that refund without filing a separate suit as a present. Likewise, if before the suit is heard, assessments have been made for subsequent years, those issues too, can be tried by amendment in the single suit without the need for bringing additional suits. Thus, the 9 suits previously described would all be resolved in a single suit.

9. Express provision is also made for payment of 6% interest on refunds in like manner as in other cases of civil liability. C.L. 1948, §600.6013.

D. Comments re Section 152(a) Amendments

1. Section 152(a) is amended to incorporate and clarify the existing statutory and case law as to the basis for arriving at

a lawful property assessment. In substance, the State Tax Commissic is required to use the same criteria for determination of a lawful assessment as is required under Section 53(b) hearings in the circuit court.

2. There is further added to subsection (3) of Section 152(a) provision for summary judgment to carry out the decision of the Tax Commission when refund is ordered. Instead of seeking a court judgment based upon a full trial, provision is made for summary judgment for the refund to be entered in the circuit court based only on motion presenting the order of the State Tax Commission.

The proposed bill follows:

PROPOSED BILL

AN ACT to amend sections 27, 53, 53(b) and 152(a) of Act No. 206 of the Public Acts of 1893, entitled as amended "An act to provide for the assessment of property and the levy and collection of taxes thereon, and for the collection of taxes heretofore and hereafter levied; making such taxes a lien on the lands taxed, establishing and continuing such lien, providing for the sale and conveyance of lands delinquent for taxes and for the inspection and disposition of lands bid off to the state and not redeemed or purchased; to define and limit the jurisdiction of the courts in proceedings in connection therewith; to limit the time within which actions may be brought; to prescribe certain limitations with respect to rates of taxation; to provide penalties for the violation of this act; and to repeal all acts and parts of acts in anywise contravening any of the provisions of this act," as amended, being sections 211.27, 211.53, 211.53(b) and 211.152(a) of the Compiled Laws of 1948.

The People of the State of Michigan enact:

Section 1. Section 27 of Act No. 206 of the Public Acts of 1893, as amended, being section 211.27 of the Compiled Laws of 1948, is amended to read as follows:

Sec. 27. The words "cash value", whenever used in this act, shall be held to mean the usual selling price at the place where the property to which the term is applied shall be at the time of assessment, being the CASH price which could be obtained therefor at private sale, and not at forced or auction sale. Any sale or other disposition by the state or any agency or political subdivision thereof heretofore or hereafter made of lands acquired for delinquent taxes or any appraisal made in connection therewith shall not be considered as controlling evidence of true cash value for assessment purposes. In determining the value the assessor shall also consider the advantages and disadvantages of location, quality of soil, zoning, existing use, and present ~~economic~~ income of structures; quantity and value of standing timber, water power and privileges, mines, minerals, quarries or other valuable deposits known to be available therein and their value.

Notwithstanding any other provisions of law, except as hereinafter provided, property shall be assessed at 50% of its true cash value in accordance with article 9, section 3 of the constitution.

Assessment of property, as required herein, shall be inapplicable to the assessment of any property subject to the levy of ad valorem taxes within voted tax limitation increases to pay principal and interest on limited tax bonds issued by any governmental unit, including any county, township, community college district or school district prior to January 1, 1964, if the assessment required to be made under this act would be less than the assessment as state equalized prevailing on such property at the time of the issuance of such bonds. Such inapplicability shall continue until levy of taxes to pay principal and interest on such bonds shall no longer be required. The assessment of such property required by this act shall be applicable for all other purposes.

Section 2. Section 53 of Act No. 206 of the Public Acts of 1893, as amended, being section 211.53 of the Compiled Laws of 1948, is amended to read as follows:

Sec. 53. Any person may pay the taxes or special assessments, or any one of the several taxes or special assessments, on any parcel or description of land, or on any undivided share thereof, and the treasurer shall note across the face of the receipt in ink any portion of the taxes or special assessments remaining unpaid. ~~A person may protest any tax or special assessment which is paid within 60 days of such payment, whether levied on personal or real property, to the treasurer, specifying in writing, signed by him, the grounds of the protest, and the treasurer shall minute the fact of the protest on the tax roll. The person may, within 30 days after such protest, sue the township or city for the amount paid, and recover, if the tax or special assessment is shown to be illegal for the reason shown in the protest.~~ WITHIN 60 DAYS AFTER TIMELY PAYMENT OF ANY TAX OR SPECIAL ASSESSMENT, WHETHER LEVIED ON PERSONAL OR REAL PROPERTY, A PERSON MAY SUE THE TOWNSHIP OR CITY FOR RECOVERY OF SUCH TAX OR SPECIAL ASSESSMENT OR ANY PORTION THEREOF ARISING FROM A CLAIM OF UNLAWFUL ASSESSMENT AS PROVIDED IN SECTION 53(b). In cities where, by special provisio state and county taxes are collected by the county treasurer, suits for the recovery of state and county taxes only shall be brought against the county, and any such suit against a county for the recovery of taxes or special assessments so paid to the county treasurer shall proceed in all respects as provided herein for suits against townships. When payment of the taxes or special assessments on any parcel or description of land or on any undivided share thereof, is made to any city, village, township or county treasurer, the treasurer shall place or cause to be placed upon the face of the receipt the following certificate: "I hereby certify that application was made to pay all taxes and special assessments due and payable at this office on the

description shown in this receipt except _____

_____

(Signed)_____Treas."

Any person owning an undivided share or other part or parcel of real property assessed in 1 description may pay on the part thus owned, by paying an amount having the same relation to the whole tax or special assessment as the value of the part on which payment is made has to the value of the whole parcel; the application to pay the taxes or special assessments on any part of any parcel or description of land shall be accompanied by a statement from the assessing officer of the township or city in which the lands are situated showing the valuation of the part and of the several parts of the parcel or description of land, and it shall be the duty of the assessing officer to make the valuations and furnish a statement at the request of any person who presents to an assessing officer a correct description and division of the parcel or description of land to be divided. The person making the payment shall accurately describe the part or share on which he makes payment, and the receipt given, and the record of the receiving officer shall show the description, and by whom paid; and in case of the sale of the remaining part, or share for nonpayment of taxes or special assessments, he may purchase the same in like manner as any disinterested person could. Any person having a lien on property may, after 30 days from the time the tax is payable, pay the taxes thereon, and the same may be added to his lien and recovered with the rate of interest borne by the lien. A tenant of real estate may pay the taxes thereon and deduct the same from his rent, unless there is an agreement to the contrary. Such payment may be made to the township treasurer while the tax roll is in his hands, or afterwards to the county treasurer. The receipt given shall be evidence of such payment. Every such receipt shall be deemed to include the foregoing certificate, and unless otherwise noted thereon, shall be construed as an application to pay all taxes and special assessments assessed against the property described therein and then due and payable at the office of the treasurer issuing such receipt.

Any person owning either the mineral rights or surface rights in property, but not both, which rights are authorized under this act to be separately assessed may pay on the rights so owned as herein authorized for the payment upon an undivided share in such property except that the state geologist or his authorized deputy, instead of the local assessing officer, shall furnish a statement showing the valuation upon the mineral rights.

If a part of any parcel of real property is acquired for highway purposes, it shall be separately assessed and the assessing officer shall make the allocation of the taxes or special assessments between the part so acquired and the remainder as may be deemed by the assessing officer to be in conformity with standard assessment practices. Upon the payment of the taxes or assessments attributable thereto, the part or parcel of real property so acquired shall be removed from the tax rolls. The acceptance by the city, village, township or county treasurer of such payment shall not affect, prejudice or destroy any tax lien on the remainder of the parcel of real property from which the part is taken.

Section 3. Section 53(b) of Act No. 206 of the Public Acts of 1893, as amended, being section 211.53(b) of the Compiled Laws of 1948, is amended to read as follows:

Sec. 53(b). ~~As an alternative to section 53, whenever there has been a clerical error or a mutual mistake of fact relative to the correct assessment figures, the rate of taxation or the mathematical computation relating to the assessing of taxes, and the error or mutual mistake is verified by the local assessing officer, and approved by the board of review at a meeting held only for such purpose on Tuesday following the second Monday in December. The board of review shall file an affidavit relative to the errors or mutual mistake with the proper officials who are involved with the assessment figures, rate of taxation or mathematical computation and all official records relative thereto shall be corrected. Where such error or mutual mistake results in an overpayment or underpayment, the rebate shall be made to the taxpayer or the taxpayer notified and payment made within 30 days of such notice. A correction under this section may be made in the year in which the error was made or in the following year only.~~ (1) A SUIT FOR REFUND OF TAXES OR SPECIAL ASSESSMENTS UNDER SECTION 53 SHALL BE BROUGHT IN THE CIRCUIT COURT FOR THE COUNTY IN WHICH THE REAL OR PERSONAL PROPERTY OR ANY PART THEREOF IS LOCATED. NOTWITHSTANDING THE PROVISIONS OF SECTIONS 152 AND 152(a), THE TAXPAYER WHO BRINGS SUCH SUIT SHALL NOT BE REQUIRED TO APPEAL TO THE STATE TAX COMMISSION IN ORDER TO DETERMINE THE LAWFUL ASSESSMENT FOR HIS PROPERTY AND TO ESTABLISH HIS RIGHT FOR REFUND FOR TAXES OR SPECIAL ASSESSMENTS UNLAWFULLY ASSESSED. UPON SUCH SUIT BEING FILED, THE STATE TAX COMMISSION SHALL HAVE NO JURISDICTION TO DETERMINE THE VALIDITY OF SUCH ASSESSMENT. IN THE EVENT OF SUCH SUIT, THE STATE TAX COMMISSION SHALL NOT BE DEEMED THE FINAL AGENCY PROVIDED FOR THE ADMINISTRATION OF PROPERTY TAX LAWS UNDER ARTICLE VI, SECTION 28 OF THE MICHIGAN CONSTITUTION. THE FAILURE OF A TAXPAYER TO PROTEST THE ASSESSMENT OF HIS PROPERTY TO THE ASSESSING OFFICERS OR TO ANY BOARD OF

REVIEW SHALL NOT PRECLUDE HIS RIGHT TO BRING SUCH SUIT.

(2) SUCH SUIT SHALL BE TRIED BY THE CIRCUIT JUDGE WITHOUT A JURY. IF IT IS CLAIMED IN SUCH SUIT THAT THE ASSESSMENT WAS UNLAWFUL IN THAT IT EXCEEDED THE AMOUNT OF ASSESSMENT WARRANTED BY THE TRUE CASH VALUE OF THE PROPERTY, THE DETERMINATION OF THE TRUE CASH VALUE OF THE PROPERTY SHALL BE MADE BY THE COURT BASED SOLELY ON THE PROOFS PRESENTED AT THE HEARING ON THE MERITS. IN ARRIVING AT ITS DETERMINATION OF THE LAWFUL ASSESSMENT THE COURT SHALL DETERMINE AN AMOUNT TO BE ARRIVED AT BY MULTIPLYING ITS FINDING OF TRUE CASH VALUE BY A PERCENTAGE EQUAL TO THE RATIO OF THE AVERAGE LEVEL OF ASSESSMENTS IN RELATION TO TRUE CASH VALUES IN THE ASSESSMENT DISTRICT. THE LAWFUL ASSESSMENT SHALL BE DETERMINED BY APPLYING TO SUCH AMOUNT THE EQUALIZATION FACTOR WHICH IS UNIFORMLY APPLICABLE IN THE ASSESSMENT DISTRICT FOR THE YEAR IN QUESTION; PROVIDED, HOWEVER, THAT AFTER APPLYING THE EQUALIZATION FACTOR, THE LAWFUL ASSESSMENT SHALL NOT EXCEED 50% OF THE TRUE CASH VALUE OF THE PROPERTY ON THE ASSESSMENT DATE. IN SUCH SUIT, PLAINTIFF SHALL HAVE THE BURDEN OF PROOF IN ESTABLISHING THE TRUE CASH VALUE OF HIS PROPERTY, BUT DEFENDANTS SHALL HAVE THE BURDEN OF PROOF IN ESTABLISHING THE RATIO OF THE AVERAGE LEVEL OF ASSESSMENTS IN RELATION TO TRUE CASH VALUES IN THE ASSESSMENT DISTRICT AND THE EQUALIZATION FACTOR WHICH WAS UNIFORMLY APPLIED IN THE ASSESSMENT DISTRICT FOR THE YEAR IN QUESTION.

(3) IF AN UNLAWFUL ASSESSMENT OF PROPERTY IS THE BASIS FOR PAYMENT OF TAXES TO MORE THAN ONE GOVERNMENTAL UNIT, ALL GOVERNMENTAL UNITS TO WHOM SUCH TAXES HAVE BEEN PAID SHALL BE JOINED AS DEFENDANTS IN THE SAME SUIT. IF SUBSEQUENT TO THE BRINGING OF SUCH SUIT PLAINTIFF HAS PAID ADDITIONAL TAXES AS A RESULT OF THE UNLAWFUL ASSESSMENTS ON THE SAME PROPERTY, OR IF IN SUBSEQUENT YEARS UNLAWFUL ASSESSMENTS HAVE BEEN MADE AGAINST THE SAME PROPERTY, PLAINTIFF SHALL BE ENTITLED TO AMEND HIS COMPLAINT PRIOR TO THE TIME OF TRIAL TO JOIN ALL OF HIS CLAIMS FOR REFUND BY REASON OF PAYMENTS BASED ON SUCH UNLAWFUL ASSESSMENTS AND THE LIMITATION OF 60 DAYS FOR BRINGING SUIT UNDER SECTION 53 SHALL BE INAPPLICABLE. ANY SUM DETERMINED BY THE COURT TO HAVE BEEN UNLAWFULLY PAID SHALL BEAR INTEREST AT 6% PER YEAR FROM THE DATE OF PAYMENT TO THE DATE OF JUDGMENT AND THE JUDGMENT SHALL BEAR INTEREST AT 6% PER YEAR TO DATE OF ITS PAYMENT.

Section 4. Section 152(a) of Act No. 206 of the Public Acts of 1893, as amended, being section 211.152(a) of the Compiled Laws of 1948, is amended to read as follows:

Sec. 152(a). (1) ~~Notwithstanding any other provision of the law to the contrary if an appeal is filed with the state~~

~~tax-commission-under-section-152-the-taxes-shall-be-apportioned and-levied-on-the-valuation-of-the-property-as-fixed-by-the board-of-review-and-equalized-under-section-34.~~ UPON AN APPEAL UNDER SECTION 152, THE STATE TAX COMMISSION SHALL FIRST DETERMINE THE TRUE CASH VALUE OF THE PROPERTY ON THE ASSESSMENT DATE AND THEN DETERMINE AN AMOUNT TO BE ARRIVED AT BY MULTIPLYING ITS FINDING OF TRUE CASH VALUE BY A PERCENTAGE EQUAL TO THE RATIO OF THE AVERAGE LEVEL OF ASSESSMENTS IN RELATION TO TRUE CASH VALUES IN THE ASSESSMENT DISTRICT. THE LAWFUL ASSESSMENT SHALL BE DETERMINED BY APPLYING TO SUCH AMOUNT THE EQUALIZATION FACTOR WHICH IS UNIFORMLY APPLIED IN THE ASSESSMENT DISTRICT FOR THE YEAR IN QUESTION; PROVIDED, HOWEVER, THAT AFTER APPLYING THE EQUALIZATION FACTOR, THE LAWFUL ASSESSMENT SHALL NOT EXCEED 50% OF THE TRUE CASH VALUE OF THE PROPERTY ON THE ASSESSMENT DATE. IN A CONTESTED HEARING BEFORE THE STATE TAX COMMISSION, THE TAXPAYER SHALL HAVE THE BURDEN OF PROOF IN ESTABLISHING THE TRUE CASH VALUE OF HIS PROPERTY, BUT THE GOVERNMENTAL UNIT SHALL HAVE THE BURDEN OF PROOF IN ESTABLISHING THE RATIO OF THE AVERAGE LEVEL OF ASSESSMENTS IN RELATION TO TRUE CASH VALUES IN THE ASSESSMENT DISTRICT AND THE EQUALIZATION FACTOR WHICH WAS UNIFORMLY APPLIED IN THE ASSESSMENT DISTRICT FOR THE YEAR IN QUESTION. The taxes shall be due and payable and subject to the same collection fees and interest in the same manner and amount as if an appeal had not been filed. When the valuation is established by the state tax commission appeals decision the tax collecting officer having the tax roll in his possession shall make the necessary adjustments to the tax liability.

(2) If additional taxes are due they may be paid to the collecting officer with the addition of a collection fee of 1% of the additional tax for a period of 60 days after the taxpayer receives notification of the increased tax liability. After the 60 day period such taxes shall be considered delinquent and commencing March 1 following the year of the levy shall be subject to the same collection fees and interest charges as other delinquent taxes. The notification of increased tax liability shall be sent to the taxpayer shown in the roll by the collecting officer by certified mail, return receipt requested, within 5 days after receiving notification from the tax commission of the valuation established. The notification shall be sent by the state tax commission to all taxing units involved, to the county treasurer and the city or township treasurer.

(3) If the tax liability is decreased due to a decreased valuation and an overpayment of taxes has been made to the collecting officer, the tax collecting officer having possession of the tax roll or delinquent tax roll shall make a refund of

the tax overpayment. There shall be added to the tax overpayment refund a proportionate share of the collection fees paid. The collection fee rebate shall be computed by multiplying the total collection fee paid by a fraction the numerator of which is the amount of tax refund and the denominator of which is the total tax paid. The officer making the refund shall charge back such refund to all taxing units in the same proportion as the originally collected tax was distributed. The chargeback may be made prior to or subsequent to the payment of the refund to the taxpayer in the discretion of the county, city or township treasurer. IF THE TAX COLLECTING OFFICER FAILS TO MAKE PAYMENT OF SUCH REFUND WITHIN 30 DAYS AFTER THE DECISION OF THE STATE TAX COMMISSION AND NO TIMELY APPEAL THEREFROM IS PENDING, THE TAXPAYER SHALL BE ENTITLED TO HAVE A JUDGMENT ENTERED AGAINST THE GOVERNMENTAL UNIT TO WHOM THE TAXES WERE PAID BY A PETITION IN THE FORM OF A MOTION FOR SUMMARY JUDGMENT FILED IN THE CIRCUIT COURT IN WHICH THE PROPERTY IS LOCATED, SUPPORTED BY A CERTIFIED COPY OF THE ORDER OF THE STATE TAX COMMISSION, WITH INTEREST AS PROVIDED IN SECTION 53(b).

RECOMMENDATION RELATING TO EXTENSION OF PERSONAL JURISDICTION IN DOMESTIC RELATIONS CASES

It is recommended that the Revised Judicature Act be amended to empower Michigan courts to exercise personal jurisdiction over a fugitive spouse or parent who has deserted a dependent spouse or child in Michigan. Existing laws provide incomplete remedies against the spouse or parent who has fled the state or has otherwise disappeared so that he cannot be found for service of process. The deserted wife may obtain a divorce without personal service of process upon the defendant, but without personal jurisdiction the court cannot enter an enforceable judgment for alimony or support payments, except as the defendant has assets within the state which may be seized and applied to payment of the judgment.

In most cases there are no such assets, and the only recourse for the deserted spouse or child in Michigan is to pursue the defendant and sue him in the state to which he has fled, or to bring an action under the Uniform Reciprocal Enforcement of Support Act (URESA). M.C.L.A. §§780.151 - 780.174. Economic considerations eliminate the former alternative in most cases. Under URESA the Michigan dependent's application for relief is filed in a Michigan court for a preliminary determination and then is forwarded to a court in the state where the defendant can be served with process. The responding court may then enter an enforceable judgment requiring the defendant to make support payments to the Michigan plaintiff.

However, there are several reasons why URESA is not a completely satisfactory remedy: (1) it is not available when the defendant has fled to a state or foreign jurisdiction which has not adopted reciprocal procedures; (2) it does not work when the defendant cannot be found for service of process in the responding state; (3) prosecution of the plaintiff's case is dependent upon the initiative and cooperation of busy public officials in both states; and (4) the ultimate determination of need for support is made by the court of the responding state rather than by a Michigan court. The proposed bill would provide an additional remedy to overcome one or more of these disadvantages in some cases.

The proposed bill would make the fugitive spouse or parent subject to the personal jurisdiction of Michigan courts on the basis of his having deserted a dependent spouse or child within this state. This jurisdiction would be invoked by service of process as provided in court rules, regardless of where the defendant may be. The Michigan court would then have the power to enter binding personal judgments for alimony or support obligations imposed by Michigan law.

State courts are no longer limited to asserting personal jurisdiction in those cases where the defendant is served with process within the state. It is required only (1) that the defendant has minimum contacts or relations with the state such

that it is not unfair to require him to defend within the state, and (2) that process be served by means reasonably calculated to give the defendant notice and an opportunity to defend the action. International Shoe Co. v. State of Washington, 326 U.S. 310, 66 S.Ct. 154, 90 L. Ed. 95 (1945); Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950); McGee v. International Life Ins. Co., 355 U.S. 220, 78 S.Ct. 199, 2 L.Ed.2d 223 (1957). Sections 701 and 705 of the Revised Judicature Act have gone a long way toward enumerating the contacts or relations which will justify the assertion of state jurisdiction over persons, whether or not they are residents. But the present statute does not necessarily exhaust the full reach of power available to the states.

If one who has never been in Michigan may be subject to personal jurisdiction on the basis of business done with a Michigan resident, M.C.L.A. §600.705(1), or on the basis of an act done outside the state causing injury to occur to a person in the state, M.C.L.A. §600.705(2), surely there is an even more compelling basis for personal jurisdiction when the defendant has enjoyed a family domicile in Michigan and then abandons his dependents, leaving them as potential charges upon the public welfare resources of this state.

The states of Illinois, Kansas, Oklahoma and Wisconsin have recently amended their jurisdictional statutes to provide explicitly

for the exercise of personal jurisdiction over a fugitive father who is personally served with process in another state. Kansas Stats. Ann. §60-308(b)(8)(1971); Illinois Stats. Ann., Civ. Prac. Act Chap. 110, §17(e)(1968); Oklahoma Stats., Title 12, §1701.3 (1969 Supp.); Wisconsin Stat., §§247.055, 247.057 (1969). California statutes authorizing service of process outside the state have been construed as giving personal jurisdiction in an alimony claim against a defendant whose matrimonial domicile had been in California but who was served with process in another state to which he had moved. See Soule v. Soule, 193 Cal. App.2d 443, 14 Cal. Rptr. 417 (1961). The validity of these statutes has been upheld when challenged as unconstitutional extensions of state jurisdiction. Mizner v. Mizner, 84 Nev. 268, 439 P.2d 679 (1968), cert. den. 393 U.S. 847, rehearing den. 393 U.S. 972, (alimony decree under California statute given full faith and credit); Scott v. Hall, 203 Kan. 331, 454 P.2d 449 (1969)(upholding alimony award under Kansas statute); Hines v. Clendenning, 465 P.2d 460 (Okla. 1970) (upholding jurisdiction to award alimony under Oklahoma statute); Dillon v. Dillon, 46 Wis.2d 659, 176 N.W.2d 362 (1969) (upholding orders as to custody, alimony and support payments under Wisconsin statute).

The proposed Michigan statute would provide the basis for personal jurisdiction on similar grounds. To invoke such jurisdiction it would be necessary to serve process by means provided

by court rules for the acquisition of personal jurisdiction. Under General Court Rules 105.1 and 105.9, the defendant can be personally served wherever he is found. If he cannot be found for personal service, the court under sub-rule 105.8 may authorize service by any substitute means which is reasonably calculated to give actual notice. Thus the court might authorize substitute service by mailing to the last known address used by the defendant after deserting his family, or by mailing to his parents, relatives, employer or other persons who might be in contact with the defendant.

In other circumstances, when the state's interest in exercising jurisdiction was no more compelling than here, the United States Supreme Court has ruled that actual receipt of personal service is not indispensable for acquisition of personal jurisdiction. Where personal service is impossible or impractical, no more is required than a serious effort to make service by means best calculated to give notice in the particular circumstances. Mullane v. Central Hanover Bank & Trust Co., supra.

The Appendix includes abstracts of the Illinois, Oklahoma, Kansas and Wisconsin statutes, plus a reprint of a thorough study of this problem recently published in the University of Michigan Journal of Law Reform. While the proposed bill differs in form, its substance and purpose are the same as that recommended in the reprinted article.

The proposed bill follows:

PROPOSED BILL

AN ACT to amend section 705 of Act No. 236 of the Public Acts of 1961, entitled "An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of such courts, and of the judges and other officers thereof; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in said courts; pleading, evidence, practice and procedure in civil actions and proceedings in said courts; to provide remedies and penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with, or contravening any of the provisions of this act," as amended, being section 600.705 of the Compiled Laws of 1948.

The People of the State of Michigan enact:

Section 1. Section 705 of Act No. 236 of the Public Acts of 1961, as amended, being section 600.705 of the Compiled Laws of 1948, is amended to read as follows:

Sec. 705. The existence of any of the following relationships between an individual or his agent and the state shall constitute a sufficient basis of jurisdiction to enable the courts of record of this state to exercise limited personal jurisdiction over such individual and to enable such courts to render personal judgments against such individual or his representative arising out of the act or acts which create any of the following relationships:

(1) The transaction of any business within the state.

(2) The doing or causing any act to be done, or consequences to occur, in the state resulting in an action for tort.

(3) The ownership, use, or possession of any real or tangible personal property situated within the state.

(4) Contracting to insure any person, property, or risk located within this state at the time of contracting.

(5) Entering into a contract for services to be rendered or for materials to be furnished in the state by the defendant.

(6) Acting as a director, manager, trustee, or other officer of any corporation incorporated under the laws of, or having its principal place of business within, the state of Michigan.

(7) MAINTAINING A DOMICILE IN THE STATE WHILE SUBJECT TO A MARITAL OR FAMILY RELATIONSHIP WHICH IS THE BASIS OF THE CLAIM FOR DIVORCE, ALIMONY, SEPARATE MAINTENANCE, PROPERTY SETTLEMENT, CHILD SUPPORT OR CHILD CUSTODY.

Section 2. This act shall apply to actions pending on its effective date and to actions commenced thereafter, regardless of whether the cause of action arose prior to the effective date of this act or arose thereafter.

RECOMMENDATION RELATING TO THE MODEL CHOICE OF FORUM ACT

It is recommended that the Revised Judicature Act of 1961 be amended to incorporate the substance of the Uniform Law Commissioners' Model Choice of Forum Act. The Model Act has a twofold purpose, to state the circumstances in which a court: (1) should exercise jurisdiction which has been granted it by the defendant's consent, or (2) should refrain from exercising existing jurisdiction because of an agreement by the parties that suit should be brought in another state.

The general power of Michigan courts to exercise jurisdiction based upon consent is already recognized by sections 701(3), 711(3), 721(3), and 731(3) of the Revised Judicature Act, but these sections do not contain the explicit safeguards provided by the Model Act to prevent the abuse of such consent in circumstanc when the exercise of jurisdiction based thereon would be oppressive or unjust. Adoption of the Model Act will add a reasonable and desirable limitation on the power to exercise jurisdiction based upon prior consent.

There are no Michigan statutes or court rules dealing with the problem of when a Michigan court should refrain from exercising existing jurisdiction because of an agreement by the parties that suit should be brought in another state. Two decisions by federal courts in Michigan do indicate that the problem is real.

See Republic Supply Corp. v. Lewyt Corp., 160 F. Supp. 949 (E.D. Mich. 1958); and Geiger v. Keilani, 270 F. Supp. 761 (E.D. Mich. 1967). The Model Act adopts the policy that the Michigan court should give effect to the agreement of the parties to proceed in another court, unless proceeding in the agreed court would be inconvenient, ineffective or otherwise unfair or unreasonable. This is the rule which has been developed by the better considered decisions in those states where the problem has been confronted, and its incorporation into the Michigan statutes dealing with jurisdiction will avoid what otherwise might be a troublesome problem.

The Appendix includes the text of the Model Act with official commentary. Also appended is a study report from Professor James A. Martin of the University of Michigan Law School recommending adoption of the Model Act.

The proposed bill follows:

PROPOSED BILL

AN ACT to amend Act No. 236 of the Public Acts of 1961, entitled "An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of such courts, and of the judges and other officers thereof; the forms and attributes of civil claims and actions, the time within which civil actions and proceedings may be brought in said courts; pleading, evidence, practice and procedure in civil actions and proceedings in said courts; to provide remedies and penalties for the violation of certain provisions of this act, and to repeal all acts and parts of acts inconsistent with, or contravening any of the provisions of this act," as amended, being sections 600.101 to 600.9930 of the Compiled Laws of 1948, by amending sections 701, 711, 721 and 731 thereof, and by adding section 745 thereto.

The People of the State of Michigan enact:

Section 1. Sections 701, 711, 721 and 731 of Act No. 236 of the Public Acts of 1961, as amended, being sections 600.701, 600.711. 600.721 and 600.731 of the Compiled Laws of 1948, are amended to read as follows:

Sec. 701. The existence of any of the following relationships between an individual and the state shall constitute a sufficient basis of jurisdiction to enable the courts of record of this state to exercise general personal jurisdiction over such individual or his representative and to enable such courts to render personal judgments against such individual or representative.

(1) Presence in the state at the time when process is served.

(2) Domicile in the state at the time when process is served.

(3) Consent, to the extent authorized by the consent.AND SUBJECT TO THE LIMITATIONS PROVIDED IN SECTION 745.

Sec. 711. The existence of any of the following relationships between a corporation and the state shall constitute a sufficient basis of jurisdiction to enable the courts of record of this state to exercise general personal jurisdiction over such corporation and to enable such courts to render personal judgments against such corporation.

(1) Incorporation under the laws of this state.

(2) Consent, to the extent authorized by the consent.AND SUBJECT TO THE LIMITATIONS PROVIDED IN SECTION 745.

(3) The carrying on of a continuous and systematic part of its general business within the state.

Sec. 721. The existence of any of the following relationships between a partnership or limited partnership and the state shall constitute a sufficient basis of jurisdiction to enable the courts of record of this state to exercise general personal jurisdiction over such partnership or limited partnership and to enable such courts to render personal judgments against such partnership or limited partnership.

(1) Formation under the laws of this state.

(2) Consent, to the extent authorized by the consent~~.~~ AND SUBJECT TO THE LIMITATIONS PROVIDED IN SECTION 745.

(3) The carrying on of a continuous and systematic part of its general business within the state.

Sec. 731. The existence of any of the following relationships between a partnership association or unincorporated voluntary association and the state shall constitute a sufficient basis of jurisdiction to enable the courts of record of this state to exercise general personal jurisdiction over such partnership association or unincorporated voluntary association and to enable such courts to render personal judgments against such partnership association or unincorporated voluntary association.

(1) Formation under the laws of this state.

(2) Consent, to the extent authorized by the consent~~.~~ AND SUBJECT TO THE LIMITATIONS PROVIDED IN SECTION 745.

(3) The carrying on of a continuous and systematic part of its general business within the state.

Section 2. Act No. 236 of the Public Acts of 1961, as amended, being sections 600.101 to 600.9930 of the Compiled Laws of 1948, is amended by adding section 745 to read as follows:

SEC. 745. (1) AS USED IN THIS SECTION, "STATE" MEANS ANY FOREIGN NATION, AND ANY STATE, DISTRICT, COMMONWEALTH, TERRITORY OR INSULAR POSSESSION OF THE UNITED STATES.

(2) IF THE PARTIES HAVE AGREED IN WRITING THAT AN ACTION ON A CONTROVERSY MAY BE BROUGHT IN THIS STATE AND THE AGREEMENT PROVIDES THE ONLY BASIS FOR THE EXERCISE OF JURISDICTION, A COURT OF THIS STATE WILL ENTERTAIN THE ACTION IF

(a) THE COURT HAS POWER UNDER THE LAW OF THIS STATE TO ENTERTAIN THE ACTION;

(b) THIS STATE IS A REASONABLY CONVENIENT PLACE FOR THE TRIAL OF THE ACTION;

(c) THE AGREEMENT AS TO THE PLACE OF THE ACTION WAS NOT OBTAINED BY MISREPRESENTATION, DURESS, THE ABUSE OF ECONOMIC POWER, OR OTHER UNCONSCIONABLE MEANS; AND

(d) THE DEFENDANT WAS SERVED WITH PROCESS AS PROVIDED BY COURT RULES.

(3) IF THE PARTIES HAVE AGREED IN WRITING THAT AN ACTION ON A CONTROVERSY SHALL BE BROUGHT ONLY IN ANOTHER STATE AND IT IS BROUGHT IN A COURT OF THIS STATE, THE COURT WILL DISMISS OR STAY THE ACTION, AS APPROPRIATE, UNLESS

(a) THE COURT IS REQUIRED BY STATUTE TO ENTERTAIN THE ACTION;

(b) THE PLAINTIFF CANNOT SECURE EFFECTIVE RELIEF IN THE OTHER STATE, FOR REASONS OTHER THAN DELAY IN BRINGING THE ACTION

(c) THE OTHER STATE WOULD BE A SUBSTANTIALLY LESS CONVENIENT PLACE FOR THE TRIAL OF THE ACTION THAN THIS STATE;

(d) THE AGREEMENT AS TO THE PLACE OF THE ACTION WAS OBTAINED BY MISREPRESENTATION, DURESS, THE ABUSE OF ECONOMIC POWER, OR OTHER UNCONSCIONABLE MEANS; OR

(e) IT WOULD FOR SOME OTHER REASON BE UNFAIR OR UNREASONABLE TO ENFORCE THE AGREEMENT.

Section 3. This act shall apply to actions commenced after its effective date, even if the cause of action arose prior thereto. Actions commenced prior to the effective date of this act shall not be affected thereby.

RECOMMENDATION RELATING TO ELIMINATION OF APPOINTMENT OF APPRAISERS IN PROBATE COURT

It is recommended that the Probate Code be amended to eliminate the appointment of appraisers by the court. The present Act, being C.L. 1948, Sec. 707.2, provides for the appointment by the judge of probate of two or more persons to appraise the assets of the estate of a deceased person. This provision has long been ingrained in the Michigan law of probate. Act 264 of the Public Acts of 1972 amended the present Act by providing that if "in the opinion of the judge of probate an ascertainable market value" exists as to any property, real or personal, no appraisers need be appointed.

The appointment of appraisers has over the years proven of little use, yet of significant expense in the probating of estates. The need for the appointment of such appraisers has largely vanished in the face of current requirements of federal laws dealing with estate taxes. Such appraisals are rarely accepted by the United States Internal Revenue Service in the valuation of an estate for federal estate tax purposes.

In practice, the judges of the probate courts often use the power to appoint appraisers as a means of political patronage. The appraisers so appointed generally are not experts qualified to determine the valuation of the particular property. Given the incentive to appoint appraisers as a form of political patronage it is hardly likely the probate judges will preponderantly exercise

their discretion in favor of not appointing the appraisers. The only effective solution is to eliminate the appointment of appraisers in the probating of estates.

When the issue of the value of the property is truly in controversy, the federal authorities require proof by expert appraisers. Moreover, the valuations finally arrived at for federal estate tax purposes become controlling in the valuation which is eventually accepted by the state authorities for state inheritance tax purposes. Thus, the use of court appointed appraisers is of no value in those estates which are substantial enough to incur the payment of federal estate taxes, i.e., estates of over $60,000 in value. In smaller estates, the appraisal by court appointed appraisers is at most of only minor significance in the calculation of filing fees and minimal state inheritance taxes, if any.

By the proposed amendment, the inventory will include an estimate by the fiduciary as to the fair market value of the property at the date of death. That valuation can then be used for purposes of filing fees and state inheritance taxes, subject, however, to the right of any party in interest or governmental agency to file objection thereto for final determination by the court.

It is proposed, too, that the present provision for filing an inventory within 30 days be extended to 90 days. The added

time factor should not normally be of significance and should enable the fiduciary to gather the necessary information, particular to support his determination of values at date of death.

The elimination of appointment of appraisers by the courts will be a significant step in the generally recognized need for reducing the expenses for the probating of estates. The present requirement for court appointed appraisers is an anachronism which has long outlived its usefulness. In the past few years there have been presented the proposed Uniform Probate Code as approved by the National Uniform Law Commissioners, as well as proposals by the State Bar and the Courts. All of these proposals have recognized the desirability of eliminating court appointed appraiser Since there is no assurance as to when an entirely new Probate Code will be adopted in this State, it is recommended that immediate action is warranted in effecting this change.

The proposed Bill follows:

PROPOSED BILL

AN ACT to amend section 2 of chapter 7 of Act No. 288 of the Public Acts of 1939, entitled "An act to revise and consolidate the statutes relating to the organization and jurisdiction of the probate courts of this state; the powers and duties of such courts, and the judges and other officers thereof; the statutes of descent and distribution of property, and the statutes governing the probating of estates of decedents, disappeared persons and wards, change of name of adults, the adoption of children and the jurisdiction of the juvenile division of the probate courts; to prescribe the manner and time within which claims against estates and other actions and proceedings may be brought in said courts; pleading, evidence, practice and procedure in actions and proceedings in said courts; appeals from said courts; and to provide remedies and penalties for the violation of this act," as amended, being Sec. 707.2 of the Compiled Laws of 1948.

The People of the State of Michigan enact:

Section 1. Section 2 of chapter 7 of Act No. 288 of the Public Acts of 1939, as amended, being Sec. 707.2 of the Compiled Laws of 1948, is amended to read as follows:

Chapter 7

Sec. 2 ~~(1)~~ Every fiduciary shall, within 90 days after his appointment, make under oath and return into the probate court a true inventory of the real estate, and of all the goods, chattels, rights and credits of the deceased, or of the ward, which shall have come to his possession or knowledge. If any property of the deceased or ward is encumbered, said inventory shall include a statement of the nature and amount of each such lien. THE INVENTORY OF AN ESTATE SHALL INCLUDE A STATEMENT OF FAIR MARKET VALUE AT DATE OF DEATH FOR EACH ASSET LISTED THEREIN. SUCH FAIR MARKET VALUATION SHALL BE USED FOR PURPOSES OF CALCULATION OF FEES AND TAXES, SUBJECT, HOWEVER, TO REVALUATION BY THE COURT UPON OBJECTION OF ANY PARTY IN INTEREST, INCLUDING ANY GOVERNMENTAL AGENCY.

~~(2) The estate and effects, other than cash or money on deposit in such inventory shall be appraised by 2 or more disinterested persons, appointed by the judge of probate for that purpose. The appraisers shall be sworn to the faithful discharge of their trust; and if any part of such estate or effects shall be in any other county, appraisers may be appointed either by the judge of probate having jurisdiction of the case, or by the judge of probate~~

~~of-such-other-county.--The-appraisers-shall-be-competent-persons residing-in-the-county-of-the-court-of-original-jurisdiction-or in-such-other-county-in-which-real-estate-belonging-to-such-estate may-be-located.--To-the-extent-that-the-assets-shall-consist-of cash,-obligations-of-the-United-States-of-America,-or-stocks, bonds,-notes-or-debentures-listed-on-recognized-securities exchanges,-or-other-personal-or-real-property-having-in-the-opinion of-the-judge-of-probate-an-ascertainable-market-value,-no-appraisemer thereof-shall-be-required-or-made-and-the-fiduciary-shall-designate opposite-such-items-the-market-value-thereof-as-of-the-date-of death-of-the-deceased-or-the-date-of-appointment-of-the-guardian. To-the-extent-that-the-assets-consist-of-land-contracts-receivable or-mortgages-receivable,-the-fiduciary-may-elect-to-designate opposite-such-items-the-amount-of-principal-and-interest-owing thereon-as-of-the-date-of-death-of-the-deceased-or-the-date-of appointment-of-a-guardian,-in-which-case-no-appraisement-shall be-required.~~

~~(3) The-fees-of-each-appraiser-so-appointed-shall-be-such amount-as-shall-be-found-by-the-judge-of-probate-to-be-reasonable under-the-particular-circumstances-involved.--Each-appraiser shall-be-entitled-to-mileage-computed-at-10-cents-per-mile-from his-place-of-residence-to-the-place-or-places-of-making-such appraisal-and-return.~~

RECOMMENDATION RELATING TO AMENDMENT OF "DEAD MAN'S" STATUTE

Former section 2160 of the Revised Judicature Act generally prohibited a party from testifying as to matters equally within the knowledge of an opposing party who was unable to testify because of death or incompetency. P.A. 1967, No. 263 repealed this provision and replaced it with a modified prohibition, allowing testimony as to matters equally within the knowledge of the decedent or incompetent if such testimony was supported by other material evidence. M.C.L.A. § 600.2166, as amended by P.A. 1969, No. 63.

If the party incapable of testifying had previously given an affidavit, deposition or testimony, former section 2160(6) expressly provided that such matters could be received in evidence. This provision was not carried forward into the revised section 2166. There was no intent to change the practice of admitting such matters in evidence. It was apparently assumed that they would now be covered by section 2166(3) authorizing "all . . . declarations by the individual so incapable of testifying" to be received in evidence. But inasmuch as some doubts have arisen on that point, it is recommended that the express language of former section 2060(6) be restored, including the proviso that, where such evidence is received, the other party may testify as to all matters mentioned or covered therein. It would be manifestly

unfair to admit in evidence earlier statements by the deceased or incompetent party and not allow the opposite party to give evidence as to what he knows about matters covered in such prior statements.

Former section 2160(6) also contained a provision authorizing the use of the prior deposition or testimony of a witness who had since died or become incompetent. This provision was not carried forward into section 2166. While such matters would normally be admissible under general rules of evidence, this provision should be reinstated in section 2166 to avoid any negative implication that the absence of this provision reflects an intent to make such evidence inadmissible.

The proposed bill follows:

PROPOSED BILL

AN ACT to amend section 2166 of Act No. 236 of the Public Acts of 1961, entitled "An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of such courts, and of the judges and other officers thereof; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in said courts; pleading, evidence, practice and procedure in civil actions and proceedings in said courts; to provide remedies and penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with, or contravening any of the provisions of this act," as amended by Act No. 63 of the Public Acts of 1969, being section 600.2166 of the Compiled Laws of 1948.

The People of the State of Michigan enact:

Section 1. Section 2166 of Act No. 236 of the Public Acts of 1961, as amended by Act No. 63 of the Public Acts of 1969, being section 600.2166 of the Compiled Laws of 1948, is amended to read as follows:

Sec. 2166. (1) In any action by or against a person incapable of testifying, a party's own testimony shall not be admissible as to any matter which, if true, must have been equally within the knowledge of the person incapable of testifying, unless some material portion of his testimony is supported by some other material evidence tending to corroborate his claim.

(2) A "person incapable of testifying" includes any individual who is incapable of testifying by reason of death or incompetency and his heirs, legal representatives or assigns; and includes any individual, corporation or other entity, or the successors thereof, whose agent, having material knowledge of the matter, is incapable of testifying by reason of death or incompetency. A "party's own testimony" includes the testimony of his agents, successors, assigns, predecessors or assignors.

(3) In any such actions, all entries, memoranda and declaration by the individual so incapable of testifying, relevant to the matter, as well as evidence of his acts and habits of dealing tending to disprove or show the improbability of the claims of the adverse party, may be received in evidence.

(4) WHENEVER THE DEPOSITION, AFFIDAVIT OR TESTIMONY OF SUCH A PERSON INCAPABLE OF TESTIFYING WAS TAKEN IN HIS LIFETIME OR WHEN HE WAS MENTALLY SOUND AND IS READ IN EVIDENCE IN THE ACTION, THE AFFIDAVIT OR TESTIMONY OF THE OTHER PARTY SHALL BE ADMITTED IN HIS OWN BEHALF ON ALL MATTERS MENTIONED OR COVERED IN SUCH DEPOSITION, AFFIDAVIT OR TESTIMONY. WHEN THE TESTIMONY OR DEPOSITION OF ANY WITNESS HAS ONCE BEEN TAKEN AND USED (OR HAS HERETOFORE BEEN TAKEN AND USED) UPON THE TRIAL OF ANY CAUSE, AND THE SAME WAS, WHEN SO TAKEN AND USED, COMPETENT AND ADMISSIBLE UNDER THIS SECTION, THE SUBSEQUENT DEATH OR INCOMPETENCY OF SUCH WITNESS OR OF ANY OTHER PERSON SHALL NOT RENDER SUCH TESTIMONY INCOMPETENT UNDER THIS SECTION, BUT SUCH TESTIMONY SHALL BE RECEIVED UPON ANY SUBSEQUENT TRIAL OF SUCH CAUSE.

Section 2. This act shall apply to actions pending on its effective date and to actions commenced thereafter, regardless of whether the cause of action arose prior to the effective date of this act or arose thereafter.

RECOMMENDATIONS ON THE ADOPTION IN MICHIGAN OF THE MODEL CHOICE OF FORUM ACT

James A. Martin*

I recommend passage of the Model Choice of Forum Act in Michigan. The Act has two primary goals: to confer jurisdiction on the courts of this State when the parties have so agreed; and to defer to the parties' agreement when they have agreed to litigate elsewhere. The former is already the subject of Michigan statutory law. The latter is not presently treated in Michigan statutes or court rules and has been raised in only two reported cases, both decided in the U. S. District Court and not appealed.

I. Conferring Jurisdiction by Agreement.

M.C.L.A. §600.701(3) provides:

> The existence of any of the following relationships between an individual and the state shall constitute a sufficient basis of jurisdiction to enable the courts of record of this State to exercise general personal jurisdiction over such individual . . .
>
> (3) Consent, to the extent authorized by the consent.

Thus it is obvious that the present state of Michigan law favors jurisdiction by consent, but lacks some of the safeguards contained in subsections (2)(a)(1) to (2)(a)(4) of the Model Act. Such safeguards could be supplied by judicial interpretation of the present statute, but it is not clear that they would be. In particular, the absence of a developed doctrine of forum non conveniens in Michigan might discourage the courts from reaching the result of section (2)(a)(2), and the absence of any clear contract doctrine concerning the abuse of economic power might discourage the court from reaching the results dictated by section (2)(a)(3). In both cases the Model Act's approach represents a reasonable, and desirable, limitation on the concept of jurisdiction by prior consent.

II. "Ousting" the Michigan Courts of Jurisdiction.

The courts of many states are hostile to attempts to "oust" their jurisdiction by agreement of the parties, although the modern trend, codified in the Model Act, is clearly in the opposite direction. There are only two reported cases on point in Michigan. In one, Republic Supply Corp. v. Lewyt Corp., 160 F. Supp. 949 (1958), the contract between the parties proceeded by indirection, referring not to a choice

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of forum but providing that acts performed in connection with the con tract would be associated with New York or considered interstate commerce. Presumably this was an attempt to avoid Michigan jurisdiction. Without supportive reasoning, the court dismissed the attempt in one sentence: "It does not appear to this Court that by such a provision the defendant corporation could escape the legal consequences of what it was actually doing." 160 F. Supp. at 954. T other case, Geiger v. Keilani, 270 F. Supp. 761 (1967), contains a well-reasoned opinion by Judge Freeman in favor of allowing the parti to choose the forum that will hear their dispute when the choice is reasonable.

The provisions of the Act are in accord with the Keilani opinion and common sense. Those cases from other jurisdictions which invalidate forum-selecting clauses, usually on the vague basis of "public policy," fail to explain the reasons for the policy and fail to make convincing arguments in justifying it. At the same time, they unnecessarily limit freedom of contract.

The trend toward recognition of forum-selecting clauses gained strength recently with the decision of the U. S. Supreme Court in M/S Bremen v. Zapata Off-Shore Company, 92 S.Ct. 1907 (June 12, 1972) which appears to go even farther than the Model Act in supporting the parties' right to choose a forum: the agreement will be honored, at least where federal law is applicable and international trade is concerned, when it is not "unreasonable," and to show that the agreement is unreasonable the complaining party must "show that trial in the contractual forum will be so gravely difficult and inconvenient that he will for all practical purposes be deprived of his day in court." 92 S.Ct. at 1917. Section 3(3) of the Model Act directs the court tc ignore the parties' forum-selecting agreement when "the other state would be a substantially less convenient place for the trial of the action than this state. Although the Zapata decision may give too much deference to the parties' agreement, section 3(3) of the Model Act may give too little. The Comment indicates that the reason for section 3(3) is the assumption that the parties are not likely to hav intended to choose a forum that they knew would be inconvenient. In certain cases the assumption may be untrue. For example, the parties might agree that California is to be the forum for their disputes if one sells industrial equipment from a factory in California and the other is buying the equipment for use in Michigan. The parties might realize that a dispute over a warranty of fitness of the equipment for its intended purpose would find more witnesses (such as engineers employed by the buyer) in Michigan, but nonetheless agree to California, as more convenient forum for the seller, even though less convenient over all, in return for some unrelated concession from the seller. Surely there should be no objection in honoring such an arra ment. The addition of the underlined language, as follows, should be a satisfactory solution: ". . .[T]he court will dismiss or stay the action, as appropriate, unless . . . (3) the other state would be a substantially less convenient place for the trial of the action than this state, and that fact was not contemplated by the parties at the time of their agreement."

An important omission among the limitations enumerated in section 3 of the Model Act is one on choice-of-forum agreements which are intended solely or chiefly to evade the application of Michigan law. Since Michigan law does not recognize the interest analysis approach, however (Abendschein v. Farrell, 382 Mich. 497 (1969)), it would be difficult to formulate language that would preserve the application of Michigan law when there was an important Michigan interest to protect but not otherwise. The fifth limitation to section 3 is a catch-all clause which permits the court to refuse to honor the clause when "it would for some other reason be unfair or unreasonable to enforce the agreement." Presumably this gives the court enough leeway to prevent undesirable law evasion. (The Supreme Court in the M/S Bremen case referred to above raised this point as a limitation on its holding, and did so without the benefit of any guiding legislation at all.)

III. Repeal of Inconsistent Legislation

I have been unable to find any legislation, apart from MCL §600.701(3) which requires modification or repeal as a result of passage of the Model Act. MCL §600.701(3) should be repealed because it is inconsistent with the Model Act in the respects discussed in part I of this recommendation. I would also recommend that the Act be numbered in such a way that it is easily discoverable by one who refers to §600.701(3).

MODEL CHOICE OF FORUM ACT

Prefatory Note

This Act has a twofold purpose, to state the circumstances in which a court: (1) should exercise jurisdiction which has been granted it by the defendant's consent, or (2) should refrain from exercising existing jurisdiction because of an agreement by the parties that suit should be brought in another state.

The consent of a person is a well recognized basis for the exercise of judicial jurisdiction over him. This jurisdiction is customarily exercised by a court even in the absence of express statutory authority. A court, however, should not exercise jurisdiction which is based on consent, if to do so would result in injustice or in substantial inconvenience to the parties. This has been recognized by statutes in many states which regulate the circumstances in which jurisdiction may be exercised by reason of consent contained in a cognovit or arbitration clause or in a clause appointing an agent for the service of process. Section 2 states the circumstances in which jurisdiction should be exercised over a person on the basis of consent in other situations.

Section 3 states the circumstances in which a court should refrain from exercising jurisdiction because the parties had agreed that suit should be brought in another state. The rule announced is essentially the same as that laid down by the New York and Pennsylvania courts and by those of England. *Export Insurance Co. v. Mitsui*, 26 A.D. 2d 436, 274 N.Y.S. 2d 977 (1st Dept't. 1966); *Central Contracting Co. v. Maryland Casualty Co.*, 376 F. 2d 341 (3d Cir. 1966); *Central Contracting Co. v. C. E. Youngdahl & Co.*, 418 Pa. 122, 209 A. 2d 810 (1965); *The Fehmarn*, [1957] 1 W.L.R. 815, *aff'd*, [1958] 1 W.L.R. 159 (C.A.). This section should clarify the status of agreements limiting the place of suit, since these agreements are of doubtful efficacy in some states. The agreements serve several purposes. To the extent that they are effective, they provide a useful device to insure that suit on an existing or future controversy will be brought in a convenient place for the trial of the action. The agreements also provide a natural complement of a choice-of-law clause. An agreement that suit on a contract should be brought only in the state which has been designated as the state whose law should be applied to determine the validity and effect of the contract provides perhaps the best insurance that the chosen law will be correctly applied. For a court is more likely to apply its own law correctly than would the courts of another state. Suit in the state of the chosen law would also obviate the difficulties frequently involved in proving the law of another state.

UNIFORM LAW COMMISSIONERS' MODEL CHOICE OF FORUM ACT

SECTION 1. [*Definitions.*] As used in this Act, "state" means any foreign nation, and any state, district, commonwealth, territory or insular possession of the United States.

SECTION 2. [*Action in This State by Agreement.*]

(a) If the parties have agreed in writing that an action on a controversy may be brought in this state and the agreement provides the only basis for the exercise of jurisdiction, a court of this state will entertain the action if

(1) the court has power under the law of this state to entertain the action;

(2) this state is a reasonably convenient place for the trial of the action;

(3) the agreement as to the place of the action was not obtained by misrepresentation, duress, the abuse of economic power, or other unconscionable means; and

(4) the defendant, if within the state, was served as required by law of this state in the case of persons within the state or, if without the state, was served either personally or by registered [or certified] mail directed to his last known address.

(b) This section does not apply [to cognovit clauses] [to arbitration clauses or] to the appointment of an agent for the service of process pursuant to statute or court order.

COMMENT

This section applies only in situations where the court would have no jurisdiction but for the fact that the parties have consented to its exercise by the choice-of-forum agreement.

The references to cognovit and arbitration clauses have been placed in brackets, because these clauses are regulated by statute in many states, and the special provisions regarding them may be preferred to the general provisions of this Act.

SECTION 3. [*Action in Another Place by Agreement.*] If the parties have agreed in writing that an action on a controversy shall be brought only in another state and it is brought in a court of this state, the court will dismiss or stay the action, as appropriate, unless

(1) the court is required by statute to entertain the action;

(2) the plaintiff cannot secure effective relief in the other state, for reasons other than delay in bringing the action;

(3) the other state would be a substantially less convenient place for the trial of the action than this state;

(4) the agreement as to the place of the action was obtained by misrepresentation, duress, the abuse of economic power, or other unconscionable means; or

(5) it would for some other reason be unfair or unreasonable to enforce the agreement.

COMMENT

Effect should be given a choice of forum agreement, except as stated in clauses (1)-(5). This is true whether the parties have designated a particular court for the trial of the action or have simply provided that suit may be brought only in the courts of another state or states. This is also true whether the agreement relates to existing controversies or to future controversies.

The Act leaves the court free to determine whether to dismiss or to stay the action. Undoubtedly, the court would decide to stay the action whenever there is a possibility that the plaintiff could not secure effective relief in the chosen state, at least for reasons apart from any delay on his part in bringing the action.

Clause (1): This clause takes care of the exceptional situation where a court is required by local statute to deny effect to a particular choice of forum agreement. An example is a statute which gives the plaintiff the right to bring his action in one or more enumerated fora and either expressly or impliedly deprives him of contractual capacity to relinquish the right so given. See *Boyd v. Grand Trunk Western Railroad*, 338 U.S. 263 (1949) (F.E.L.A.); *Krenger v. Pennsylvania Railroad*, 174 F. 2d 556 (2d Cir. 1949) (same). By reason of this clause, an amendment to this Act would not be necessary if, following its enactment, a state should find it desirable to limit the effect of a choice of forum agreement in a particular situation.

Clause (2): The limitation provided by this clause will almost surely be in accord with the intentions of the parties. They can hardly have intended to require the plaintiff to bring suit in a state where he could at no time have obtained effective relief.

This situation may arise when the chosen state has not empowered its courts to entertain the particular sort of action or, if the defendant is outside its territory, has not provided an adequate means of serving him with process. The chosen state may also lack jurisdiction over the subject matter of the action, as where the plaintiff seeks to partition land that is situated in the state of the forum.

Clause (3): On rare occasions, the state of the forum may be a substantially more convenient place for the trial of a particular controversy than the chosen state. If so, the present clause would permit the action to proceed. This result will presumably be in accord with the desires of the parties. It can be assumed that they did not have the particular controversy in mind when they made the choice-of-forum agreement since they would not consciously have agreed to have the action brought in an inconvenient place.

The fact that the state of the forum would be the most convenient place for the trial of the action is not enough to bring the present clause into operation. This clause is applicable only in the rare situation where the chosen state would

provide a substantially less convenient place for the trial of the action than the state of the forum. Among the factors to be considered are the general availability of witnesses in the chosen state, the cost that would be involved in obtaining their attendance at the trial, and the enforceability of any judgment that might be obtained there. Another factor is whether the chosen state is declared in the contract to be the state of the governing law. If so, the chosen state will almost certainly be a convenient place for the suit since it is easier for both judge and counsel to apply their own law, rather than the law of another state.

This clause is unlikely to be applied to a controversy that was already in existence at the time of the making of the choice of forum agreement. Almost certainly the parties would select a convenient place for the trial of the action in such a case.

Clause (4): A significant factor to be considered in determining whether there was an "abuse of economic power or other unconscionable means" is whether the choice of forum agreement was contained in an adhesion, or "take-it-or-leave-it," contract.

SECTION 4. [*Uniformity of Interpretation.*] This Act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

SECTION 5. [*Severability.*] If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 6. [*Repeal.*] [The following acts and parts of acts are repealed:

(1)

(2)

(3) .]

SECTION 7. [*Time of Taking Effect.*] This Act shall take effect . . . . . .

STATE STATUTES EXTENDING PERSONAL
JURISDICTION IN DOMESTIC RELATIONS ACTIONS

Illinois Rev. Stat. (1967).

§ 17. Act submitting to jurisdiction— Process. (1) Any person, whether or not a citizen or resident of this State, who in person or through an agent does any of the acts hereinafter enumerated, thereby submits such person, and, if an individual, his personal representative, to the jurisdiction of the courts of this State as to any cause of action arising from the doing of any of such acts: * * *

(e) With respect to actions of divorce and separate maintenance the maintenance in this State of a matrimonial domicile at the time the cause of action arose or the commission in this State of any act giving rise to the cause of action.

Kansas Stat. Ann. (1971 Supp.).

Sec. 60-308(b).

Any person, whether or not a citizen or resident of this state, who in person or through an agent or instrumentalit does any of the acts hereinafter enumerated, thereby submits said person, and, if an individual, his personal representative to the jurisdiction of the courts of this state as to any cause of action arising from the doing of any of said acts:

* * * * * *

(8) Living in the marital relationship within the state notwithstanding subsequent departure from the state, as to all obligations arising for alimony, child support, or property settlement under article 16, if the other party to the marital relationship continues to reside in the state.

Oklahoma Statutes (1969 Supp.), Title 12 (Civil Procedure):

§ 1701.03 Bases of jurisdiction.—(a) A court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a cause of action or claim for relief arising from the person's: * * *

(7) maintaining any other relation to this state or to persons or property including support for minor children who are residents of this state which affords a basis for the exercise of personal jurisdiction by this state consistently with the Constitution of the United States.

Wisconsin Statutes (1969).

247.055 Jurisdiction over claims for support, alimony or property division. . . .

(1m) PERSONAL JURISDICTION OVER NONDOMICILED DEFENDANT. If personal jurisdiction over the defendant is acquired under s. 247.057, the court may determine claims and enter a judgment in personam against the defendant in an action to determine a question of status under s. 247.05(1), (2) and (3), or in an independent action for support, alimony or property division. Such independent action must be commenced in the county in which the plaintiff resides at the commencement of the action.

247.057 Actions in which personal claims are asserted against nondomiciled defendant. If a personal claim is asserted against the defendant in an action under s. 247.05(1), (2) or (3) or 247.055 (1m), the court has jurisdiction to grant such relief if:

(1) The defendant resided in this state in marital relationship with the plaintiff for not less than 6 consecutive months within the 6 years next preceding the commencement of the action;

(2) After the defendant left the state the plaintiff continued to reside in this state;

FAMILY SUPPORT FROM FUGITIVE FATHERS: A PROPOSED AMENDMENT TO MICHIGAN'S LONG ARM STATUTE

*Robert L. Nelson**

I. Introduction

During the fiscal year ending June 1969, $10.3 million was spent on aid to 54,000 Michigan families with dependent children.[1] This represents an increase of ten percent in the number of recipient families in Michigan and an increase in cost of nearly sixteen percent over the previous fiscal year.[2] The corresponding national increases over the past year are even greater.[3] A substantial portion of this growing public burden is attributable to fathers who have deserted their families and are not providing their support:

> In June 1969, 10.2 million persons [in the United States] received money payments under five public assistance programs—1.1 million more than in June 1968. [Aid to Families With Dependent Children is one of these programs.] The year's rise was attributable largely to the increase of 949,000 in the number receiving aid to families with dependent children. For that program, only 5,000 of the additional recipients were in families aided because of a parent's unemployment. Most of the others were in families in which the father was absent.[4]

Approximately two-thirds[5] of those fathers who are absent and

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*Mr. Nelson is a member of the staff of *Prospectus*.

[1]U.S. DEPT. OF HEALTH, EDUCATION & WELFARE, PUBLIC ASSISTANCE STATISTICS JUNE 1969, Table No. 7 (National Center for Social Statistics Report A-2, June 1969).

[2]*Id.*

[3]*Id.* Nationally, the number of recipient families has increased 16.9 percent since June 1968. Since that time, the annual expenditure has increased 22.5 percent.

[4]*Id.* Introductory comments.

[5]R. MUGGE, *Aid to Families with Dependent Children: Initial Findings of the 1961 Report on the Characteristics of Recipients*, 26 SOC. SEC. BULL. No. 3, 3 at 8 (March 1963)

not supporting their families are married.[6] Of this group, more than one-half have simply deserted the family, or are separated without a court decree.[7] The balance of the absent fathers are divorced or legally separated from their families, deceased, in prison, or absent for other miscellaneous reasons.[8]

In order to assure economic security for abandoned families and to reduce the public cost of family support payments, Michigan has created judicial machinery for obtaining financial relief from husbands who have illegally left their families.[9] In assessing the probability of obtaining payments under the Michigan apparatus, however, it is important to recognize that in many cases the husband's whereabouts is unknown.[10] This fact is crucial because a deserted wife is currently barred from using any remedy that

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(Hereinafter cited as 1961 *Report*). While this figure is taken from a 1961 report, it is believed that nothing has transpired since 1961 to materially change the trend that this report revealed. In any event, the precise figure today is not crucial to the point the author wishes to make.

[6]This article is addressed only to the problem of getting payments from fathers who are married but who are not supporting their wives and/or children. The area of paternity adjudication and the problems of support arising therein are outside the scope of this article. In Michigan, a man has an obligation to provide necessary and proper shelter, food, care, and clothing to his wife and/or minor children under the age of 17. Failure to do so is a felony punishable by imprisonment in the state prison for not more than 3 years, nor less than 1 year, or by imprisonment in the county jail for not more than 1 year and not less than 3 months. MICH. COMP. LAWS § 750.161 (1968)

[7]1961 *Report supra* note 5, at 8.

[8]*Id.*

[9]For a discussion of the various support remedies presently available in Michigan, see text of Pt. II *infra*.

W. BROCKELBANK, in the Introduction to his book, INTERSTATE ENFORCEMENT OF FAMILY SUPPORT (1960) [hereinafter cited as BROCKELBANK], cites the Tenth Amendment of the United States Constitution as authority for the proposition that the problem of getting support from absent fathers is the concern of the states and not the federal government. A cogent reason for the same conclusion is that the history of Federal family support bills has not been a happy one. Such proposed legislation has been introduced by numerous congressmen from time to time, but hearings have never been held, nor has the legislation ever been reported out of the House or Senate Committees. Four such bills are presently pending in the House of Representatives, all of which are nearly one year old at this writing. H.R. 750, H.R. 1284, H.R. 7972, H.R. 9942, 91st Cong., 1st Sess. (1969). There are no immediate prospects for action on any of them. If history is any indication, these bills will suffer the same fate as their predecessors, only to be reintroduced *pro forma* at the opening of the 92nd Congress.

[10]In 75 percent of the cases in the United States in which law enforcement officials were unable to gain support payments from the defendant, the reason was that his whereabouts was unknown. SOCIAL SECURITY ADMINISTRATION, U.S. DEP'T OF HEALTH, EDUCATION AND WELFARE, SUPPORT FROM ABSENT FATHERS OF CHILDREN RECEIVING ADC 14 (Public Assistance Report No. 41, 1961)

will impose *in personam* obligations upon her husband unless he has been personally served with process. This is the rule whether the husband is in Michigan,[11] or is out of this jurisdiction and the action is brought under the provisions of the Uniform Reciprocal Enforcement of Support Act (URESA).[12] Because the deserted wife in many cases does not know where her spouse can be found,[13] personal service is impossible and therefore she may be precluded from bringing an action for her support. The impact of this situation on the public purse is reflected in the increasing welfare costs that society is forced to assume.

It is the purpose of this article to propose and discuss an amendment to Michigan's long arm statute[14] which will allow the entry of extraterritorial alimony, separate maintenance, or child support decrees when Michigan is the state of the marital domicil and the defendant-spouse cannot be located for personal service of process.[15] A plaintiff employing the proposed provision

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[11]MICH. COMP. LAWS §§ 600.701-775 (1968) prescribes the relationships with Michigan which will provide a basis for personal jurisdiction in this state. The manner of serving process is left to the determination of the Michigan Supreme Court. Pursuant to its rule making powers, the court has promulgated MICH. GEN. CT. R. 105.1, which provides: "Service of process may be made upon an individual by leaving a summons and a copy of the complaint with the defendant personally." *But see* MICH. GEN. CT. R. 105.8 allowing the court some discretion in determining the manner of service that it may deem sufficient to comply with currently required standards. For the rules governing notice generally, *see* MICH. GEN. CT. R. 105-106.

[12]MICH. COMP. LAWS § 780.161 (1968). URESA is discussed and explained in the text accompanying notes 24-34, *infra*.

[13]*See* note 10 *supra*.

[14]MICH. COMP. LAWS § 600.705 (1968) as set forth in note 15 *infra*.

[15]The proposed amendment specifically provides for service of process in any manner authorized by the court in accordance with MICH. GEN. CT. R. 105.8 that is calculated to give the defendant-spouse actual notice of the proceedings and an opportunity to be heard. This provision will be an alternative to the use of MICH. GEN. CT. R. 105.1, *supra* note 11, which shall apply in those cases where the residence of the defendant is known or could be ascertained with reasonable diligence.

Service of process pursuant to MICH. GEN. CT. R. 105 will give rise to personal jurisdiction over any person having any of the jural connections with Michigan prescribed in MICH. COMP. LAWS §§ 600.701 and 600.705 (1968). MICH. GEN. CT. R. 105.9. Section 600.705 provides:

> The existence of any of the following relationships between an individual or his agent and the state shall constitute a sufficient basis of jurisdiction to enable the courts of record of this state to exercise limited personal jurisdiction over such individual and to enable such courts to render personal judgments against such individual or his representative arising out of the act or acts which create any of the following relationships:

in a divorce action will be able to seek alimony, separate maintenance, or support payments *as if* the defendant were before the court, and the court will have the authority to grant her the necessary relief. If and when the wife later finds her husband, she will be able to take *immediate* steps to enforce the order outstanding without having to employ the judicial system a second time to consider essentially the same case presented in the original divorce action. The need for such a provision becomes evident upon a brief review of remedies currently available to a wife deserted by her husband.

II. Remedies Currently Available to the Deserted Wife

A. Michigan Remedies

1. In Personam and In Rem Jurisdiction

Under present Michigan law, a deserted wife is not totally without recourse in seeking support for herself and her family when her husband cannot be found for personal service of pro-

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1) The transaction of any business within the state.
2) The doing or causing any act to be done, or consequences to occur, in the state resulting in an action for tort.
3) The ownership, use, or possession of any real or tangible personal property situated within the state.
4) Contracting to insure any person, property, or risk located within the state at the time of contracting.
5) Entering into a contract for services to be rendered or for materials to be furnished in the state by the defendant.
6) Acting as a director, manager, trustee, or other officer of any corporation incorporated under the laws of, or having its principal place of business within, the state of Michigan.

[16]At the risk of oversimplification, it may be helpful to think of domicil as that place which the layman considers to be his "home". Thus, for example, a person may be temporarily in Ohio for any number of reasons, but nevertheless be domiciled in Michigan for purposes of service of process. The concept of marital domicil is not clear. *See* Williams v. North Carolina, 325 U.S. 226 (1944). Thirty-three sections of the RESTATEMENT OF THE LAW OF CONFLICT OF LAWS (1934) defined domicil, but none of them expressly define marital domicil. RESTATEMENT OF THE LAW OF CONFLICT OF LAWS, §§ 9-41 (1934). Section 9 states:

> . . . domicil is the place with which a person has a settled connection for certain legal purposes, either because his home is there, or . . . because that place is assigned to him by the law.

cess. If the husband is temporarily residing outside Michigan, but is nevertheless domiciled[16] in this State at the time process is served, he is subject to general personal jurisdiction in Michigan courts.[17] This provision applies even if the summons is served on the defendant outside Michigan.[18] If the defendant owns property that is within the State, the circuit courts have the power to attach that property and thereby obtain jurisdiction, notwithstanding that the defendant is not himself subject to personal jurisdiction in Michigan.[19] Attachment is available whether the property is real[20] or personal.[21]

When the defendant has no property subject to the jurisdiction of the Michigan courts, and he is not a domiciliary of Michigan or otherwise subject to general personal jurisdiction here,[22] significant difficulties confront the deserted wife when she attempts to obtain support payments from her wandering spouse. A possible solution to this unhappy circumstance is for the wife to go to the state in which her husband can be found for service of process and begin litigation in that forum. The practicality of this solution, however, is premised upon two assumptions which are in most cases unfounded. First, the plaintiff may not know where her

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Comment a to § 9 explains that

> . . . a person may be a 'resident' or an 'inhabitant' or a 'citizen' of a place without being domiciled therein, although such 'residence', 'inhabitancy' or 'citizenship' may be significant for some legal purpose.

Section 27 provides that, with some exceptions, a wife has the same domicil as her husband. It may not be too inaccurate to conclude from these definitions that the state in which the litigants last lived together as husband and wife is the state of the marital domicil.

[17]MICH. COMP. LAWS § 600.701 (1968). The jurisdiction over individuals authorized by this provision results in a binding personal judgment, entitled to full faith and credit in other states, regardless of whether the cause of action arose in Michigan. *See* Practice Commentary following MICH. COMP. LAWS § 600.701 (1968).

[18]Milliken v. Meyer, 311 U.S. 457 (1940); *see also* McDonald v. Mabee, 243 U.S. 90 (1917).

[19]MICH. COMP. LAWS § 600.4001 (1968) and Practice Commentary thereafter. For the procedure to be followed in attachment proceedings, *see* MICH. GEN. CT. R. 735.

[20]MICH. COMP. LAWS § 600.751 (1968); Stewart v. Eaton, 287 Mich. 466, 283 N.W. 651 (1939).

When it is impossible to get personal jurisdiction over the defendant and jurisdiction is predicated solely on MICH. COMP. LAWS §§ 600.751 (1968) or MICH. COMP. LAWS § 600.755 (1968) governing attachment of personalty) and 600.4001, the action is quasi-in-rem and the judgment is enforceable only against the property itself.

[21]MICH. COMP. LAWS § 600.755 (1968).

[22]*See* MICH. COMP. LAWS § 600.701 (1968) note 15 *supra*.

husband can be located; thus she is barred from attempting recovery via this method.[23] Second, even if the wife does know where her husband can be found, she usually will not be able to bear the expense of interstate litigation.[24] Thus, litigation in the foreign forum appears to offer no real solution to her problem.

2. URESA

If the deserted wife knows where her husband is, she may be able to gain some relief from the provisions of the Uniform Reciprocal Enforcement of Support Act (URESA).[25] This legislation was promulgated in 1950 by the National Conference of Commissioners on Uniform State Laws to help solve the problem created when a husband abandons his family and flees the state to escape his duties of support.[26] URESA provides for reciprocal enforcement of support orders with any state "in which this or a substantially similar reciprocal law has been enacted."[27] URESA, or a law "substantially similar" to it, has been adopted by all fifty states, the Virgin Islands, and Canada.[28]

The mechanics of the legislation are not complex.[29] If a resident wife alleges facts to the circuit court[30] which indicate that her husband owes her a duty of family support,[31] and further

[23]This is often the case. *See* note 10 *supra*.

[24]The 1961 study of the characteristics of recipients of aid to families with dependent children, a group with an extremely high rate of "suitcase divorces", noted that: "The mothers receiving aid to dependent children are concentrated heavily in those occupational groups in which requirements for training and education are at a minimum, remuneration is low, turnover is high, and there is little economic security." *1961 Report*, *supra* note 5, at 14.

[25]MICH. COMP. LAWS § 780.151 (1968).

[26]*See* BROCKELBANK, *supra* note 9, at 3; *See also* Uniform Reciprocal Enforcement of Support Act, Commissioner's Prefatory Note to 1950 Act, 9C U.L.A. at 3.

[27]MICH. COMP. LAWS § 780.153(1)(1968).

[28]The scope of the enforcement arrangement with Canada is limited to reciprocal enforcement of support orders issuing only from Michigan or Ontario courts. BROCKELBANK, *supra* note 9, at 81-83.

[29]This article is concerned only with the civil enforcement provisions of the Michigan version of URESA. The fact that Michigan URESA does not have separate headings entitled "Civil Enforcement" and "Criminal Enforcement" does not mean that the legislature intended to provide only for criminal enforcement of support. OP. ATT'Y. GEN. 430(1952-54). The Act, as promulgated by the Conference of Commissioners on Uniform State Laws, was divided into four parts: I. General Provisions; II. Criminal Enforcement; III. Civil Enforcement; IV. Regulation of Foreign Support Orders. BROCKELBANK, *supra* note 9 at 7.

[30]MICH. COMP. LAWS § 780.160(1968).

[31]The duty of support imposed by URESA is contained in MICH. COMP. LAWS §§ 780.155 and 780.158 (1968).

alleges that the courts of a second named state can obtain personal jurisdiction over the defendant,[32] the petitioning state court shall forward the petition to the courts of that state in which the defendant is alleged to reside.[33] It is then incumbent upon the prosecutor in the proper county of the second (responding) state to represent the interest of the out-of-state plaintiff in the ensuing action for alimony, separate maintenance, or child support.[34]

Behind this apparent simplicity, however, lie complications that in many cases substantially reduce the effectiveness of this legislation. The most evident of these problems is that before an action may be brought under URESA, the wife, in effect, must know where her husband can be found for personal service.[35] Even in the unlikely case that the wife has this knowledge,[36] her chances of obtaining a money judgement are not good. A survey of county prosecutors conducted by the author in the Fall of 1969 revealed that in Michigan in 1968, for example, only about sixty percent of the URESA cases filed with the county prosecutors' offices by non-resident plaintiffs were ever pursued.[37] Of those cases that were pursued by the county prosecutors, most resulted in a support order for the out-of-state plaintiff.[38] The *enforcement* of those orders, however, varied from county to county, ranging from "[enforced] very poorly, . . ." to "[enforced] in every case. . . "[39]

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[32]MICH. COMP. LAWS § 780.161 (1968).

[33]MICH. COMP. LAWS § 780.162 (1968).

[34]MICH. COMP. LAWS § 780.160(a) (1968).

[35]MICH. COMP. LAWS § 780.161 (1968) provides, in part:

> The petition shall be verified and shall state the name and, so far as known to the petitioner, the addresses and circumstances of the respondent, his dependents for whom support is sought and all other pertinent information.

MICH. COMP. LAWS § 780.163(a) (1968) contains the provisions for proceeding with the petition if the responding state cannot get jurisdiction over the defendant as alleged in the petition, such as when the defendant is not, in fact, residing in the place alleged.

[36]*See* note 10 *supra*.

[37]Questionnaires were sent to every county prosecutor's office in Michigan, with approximately 1/3 of them responding (26/83) [hereinafter cited as *Survey*]. While the statistical significance of this survey has not been calculated, this factor is not crucial. The responses that were received were sufficiently similar to indicate a trend which would appear to hold true generally for any county over a period of time.

[38]*Id.* Of the 60% of the cases filed which were pursued, approximately 89% resulted in judgments in favor of plaintiff.

[39]*Id.*

Of the URESA cases that were filed in Michigan but not pursued,[40] the reason given in most instances for failure to pursue the case was that the court did not have jurisdiction over the defendant as alleged in the petition. This was usually because the defendant had changed his place of residence between the time the complaint was filed and service of process was attempted.[41] Other reasons given for not pursuing the cases were that the plaintiff withdrew the petition or refused to further cooperate with the county prosecutor, and that the prosecutor's case load demanded that a low priority be given to URESA cases as opposed to criminal matters and other county business.[42] These facts point to a significant problem: URESA will be effective only if there is a common attitude among the courts and prosecutors with respect to support orders for non-resident plaintiffs and enforcement of those orders.[43] The effectiveness of reciprocal laws depends upon an even-handed enforcement of available remedies by all of the subscribing states. Michigan county prosecutors will understandably lose their enthusiasm for reciprocal legislation if they learn that other states cannot be relied upon to assist them when Michigan is the petitioning rather than the responding state. It is evident that in Michigan, at least, there is a lack of uniformity in the enforcement of URESA orders.[44] Thus, even if a URESA case is *pursued* by the county prosecutor and an order is entered for the out-of-state wife, it is entirely possible that the decree will never be *enforced*. If Michigan is illustrative of the fate of URESA cases generally, URESA is frequently a waste of the court's time, attorney's time, and taxpayer's money, because no benefit accrues to the impoverished wife and family.

Insofar as a uniform attitude toward out-of-state alimony, separate maintenance, and support orders is crucial to the effective operation of URESA, determination by the foreign forum of the

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[40]*Id.* Approximately 40%.

[41]*Id.*

[42]*Id.*

[43]Seaman, *Making the Reciprocal Support Law Work*, 23 OKLA. B. ASS'N. J. 2284 (1952).

[44]*Survey*, note 37 *supra*. Enforcement of URESA support orders in Michigan varied widely between the extremes cited in the text accompanying note 37 *supra*. The extent of enforcement of URESA orders seemed to relate directly to the size of the county and the resources available to each prosecutor's office, with the smaller counties usually enforcing a smaller percentage of their orders than the larger counties would enforce.

amount of alimony, separate maintenance, or child support that the defendant must pay might create an additional problem for the plaintiff. If the defendant is not flourishing financially in his new environment, the courts of the responding state may be reluctant to enter an order that would place the defendant on their own welfare roles when the benefit of those payments will be going to another state. This possibility may be mitigated by the fact that the legislation is reciprocal and the role of the states as "petitioning" or "responding" is constantly shifting. This fact, however, may not be a sufficient incentive to some courts. Therefore, judicial reluctance to enter an adequate order must also be considered in evaluating present remedies.

Examination of the family support remedies currently available in Michigan reveals that the use of each alternative presents the deserted wife with practical difficulties which she may be unable to surmount. As a result, the wife and children may become public charges, and the "suitcase divorce" is perpetuated. The need for an additional remedy that will facilitate the process of obtaining support payments from fugitive fathers is evident.

B. Remedies Available in Other States

To avoid many of the practical problems that accompany the remedies mentioned above, at least two states, Kansas[45] and Illinois,[46] have enacted statutes which authorize the entry of extraterritorial alimony, separate maintenance, and child support decrees against non-resident defendants. One element common to both statutes is the requirement of personal service of process on the defendant before an *in personam* decree can be entered.[47] Because these statutes both require that the defendant be personally served before any action for family support can be commenced, it is difficult to imagine what practical advantages have been gained over already existing remedies, particularly URESA. One of the commentators on the Illinois long arm statute asserts the virtue of this provision to be that it allows the

[45] KAN. STATS. ANN. § 60-308(b)(6)(1964).

[46] ILL. STATS. ANN. Civil Practices Act Chap. 110, § 17(e)(1968).

[47] Personal service on the defendant in the case of family desertion is thought to be necessary to comply with due process rights of the Fourteenth Amendment as enunciated by the U.S. Supreme Court. But see discussion in text at pp. 415 ff.

"Plaintiff . . . [to] . . . remain in the forum and obtain a money judgment against the wandering spouse who can be located for personal service of process."[48] This appears merely to duplicate the URESA remedies which were in effect[49] at the time of this addition to the Illinois long arm statute.[50] One of the primary purposes of the URESA legislation is to allow the plaintiff to do precisely that for which the Illinois statute is heralded.[51] If the statutes in Kansas and Illinois cannot more nearly attain this goal than URESA, or if they are not a useful supplement to it, they are a needless addition to the already crowded arena of civil jurisdiction.

The statutes adopted in Kansas and Illinois may have had as their purpose the retention of authority in the respective forums to decide the amount of alimony, separate maintenance, or support for which the non-resident defendant is to be held responsible. This is a salutary goal, but one which may not be easily attained. Because an alimony decree is not a final order as to support payments that have not accrued, it is to that extent not enforceable in a foreign forum under the full faith and credit clause of the United States Constitution.[52] If the order is to be at all enforced in the state in which the defendant does reside, it

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[48]Friedman, *Extension of the Illinois Long Arm Statute: Divorce and Separate Maintenance*, 16 DEPAUL L. REV. 45, 47 (1966).

[49]Illinois URESA became effective July 25, 1949 (Smith-Hurd Annotated Statutes Ch. 68, § 58-59).

[50]The Illinois Legislature merely may have intended to express dissatisfaction with the operation of URESA when it added this provision to ch. 110. It is also possible, that the legislature intended that 17(e) supplant the URESA legislation rather than simply be an addition to it.

[51]*See* BROCKELBANK and Commissioner's Prefatory Note, *supra* note 26.

[52]

> Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general laws prescribe the Manner which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

U.S. Const. art. IV, § 1.

The full faith and credit clause will protect alimony payments presently due and owing and not subject to retroactive modification by the rendering court. Future alimony payments, as well as accrued payments subject to retroactive modification, need not be accorded full faith and credit. Sistare v. Sistare, 218 U.S. 1 (1910).

Chief Justice White, summarizing the state of the law in *Sistare*, noted at 16-17,

> First, that, generally speaking, where a decree is rendered for alimony and is made payable in future in-

will probably be through a comity arrangement which allows the enforcing state to exercise its discretion in deciding which orders it will recognize. If the order entered in the wife's forum offends the "public policy" of the foreign forum, it is likely that the original decree will be modified by the foreign court to comply with what it would have ordered had the action been brought there originally. Thus, while these statutes purport to offer the advantage that the plaintiff's forum can determine what relief the plaintiff shall have, it is largely an empty gesture since the foreign enforcement problems remain undiminished.

There may even be a disadvantage to the plaintiff who chooses to use the long arm statute rather than URESA. Under the former, she will have to hire a private attorney, whereas under the latter the county prosecutor is vested with responsibility for her case.[53] If a private attorney could accomplish more for the wife under the Illinois or Kansas long arm statutes than the prosecutor could accomplish under URESA, the gains might outweigh the added cost of retaining the attorney. However, those statutes give the abandoned wife no remedy beyond that provided by URESA. Therefore, the expense of employing a private attorney is unnecessary. Any plaintiff, regardless of her financial condition, can employ URESA's reciprocal enforcement arrangements, thus avoiding the substantial cost of private litigation.

The above discussion indicates that while a number of family support remedies are available today, none of these remedies will allow a deserted wife to bring an *in personam* action against her husband if she does not know where he can be found for service of process.[54] She may bring an action for her support only after

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> stallments, the right to such installments becomes absolute and vested upon becoming due, and is therefore protected by the Full Faith and Credit Clause, provided no modification of the decree has been made prior to the maturity of the installments. . . .Second, that this general rule, however does not obtain where, by the law of the state in which a judgment for future alimony is rendered, the right to demand and receive such future alimony is discretionary with the court which rendered the decree, (that is, a non-final order).

See also, Justice Frankfurter concurring in May v. Anderson, 345 U.S. 528 (1953), and Justice Rutledge concurring in Halvey v. Halvey, 330 U.S. 610 (1947).

[53] MICH. COMP. LAWS § 680.160(a)(1968).

[54] The only method of obtaining support available to a wife who cannot give her husband

her husband has been located and personally served. Because of the layman's usual confusion as to how to proceed in a legal action, combined with the inability of the judicial system to respond quickly in many cases, a husband who does temporarily return home, thereby exposing himself to *in personam* jurisdiction, can easily disappear again before any steps might be taken against him. Therefore, under a statute providing Michigan courts with the power to enter a binding *in personam* judgment against the nomadic husband when he cannot be found for personal service, the wife will be able to take immediate steps to enforce the order should the husband subsequently return home or be found elsewhere.

III. Extending the Long Arm Statute

A. Proposed Amendment to the Michigan Long Arm Statute

If the plaintiff-wife could obtain an order enforceable against her husband whenever and wherever she may find him, she could use that order as authority for immediately levying execution against any assets he might have[55] (for example, the car that he drove home), or for obtaining a civil arrest,[56] or wage assignment.[57] Thus it will not be necessary to acquire personal jurisdiction over the defendant and to litigate the issue of support prior to obtaining financial redress at a moment when time is at a premium. Even if this limited situation were the only one in which

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personal service of process is quasi-in-rem jurisdiction, notes 19, 20, and 21 supra. (*See* GEN. CT. R. 105.8, allowing the court to exercise its discretion in deciding what method of service it will allow when the plaintiff cannot serve the defendent in any other manner provided for in Rule 105.)

[55]*See* MICH. COMP. LAWS §§ 552.27 and 552.302. *See also* MICH. COMP. LAWS § 552.152, which provides:

> When any such decree or order (relating to alimony or support) shall stipulate payments to be made to the court, and any of such payments shall be in default, the party prejudiced may make a motion before such court showing by records in the clerk's or friend of the court's office, or otherwise, that such default has occurred, and the court may forthwith issue an attachment to arrest the party in default and bring him immediately before the court to answer for such neglect.

[56]MICH. COMP. LAWS § 600.6075 and Practice Commentary thereafter.

[57]MICH. COMP. LAWS § 600.5301 et seq. *See also* MICH. COMP. LAWS § 552.203 for assignment of wages for child support.

the proposed amendment would be useful, a worthwhile end would be achieved by providing immediate financial relief to an otherwise impoverished wife, and concommitantly reducing the public welfare load.

In addition to the preceding, however, the proposed amendment will have the broader effect of at least partially eliminating the incentive for husbands to abandon their families for the sole purpose of avoiding their support obligations. The realization that they will be immediately subject to a court order if their whereabouts are ever discovered might well significantly reduce the number of husbands who leave home for this reason. The fact that the proposed amendment presents no unwieldy administrative problems, in contrast to URESA actions, also argues strongly for its adoption.[58] With these considerations in mind, the author proposes the following amendment to the Michigan long arm statute:

> MICH. COMP. LAWS § 600.705[59]
> Section 705. The existence of any of the following relationships between an individual or his agent and the state shall constitute a sufficient basis of jurisdiction to enable the courts of record of this state to exercise limited personal jurisdiction over such individual and to enable such courts to render personal judgments against such individual or his representative arising out of the act or acts which create any of the following relationships:
>
> . . . (7) WITH RESPECT TO ACTIONS FOR DIVORCE, ALIMONY, SEPARATE MAINTENANCE, OR CHILD SUPPORT, THE MAINTENANCE IN

[58]One of the common complaints about URESA revealed by the *Survey*, *supra* note 37, was that it required much paperwork to carry out its provisions, often without any satisfactory results. An action under the proposed long arm amendment would reduce the paperwork in one major respect because it would not be a bi-state action. *Enforcement* of any order entered under this legislation will concededly involve additional "paperwork," but such "paperwork" would become necessary only when the plaintiff was assured of her recovery rather than at the time of the commencement of the action when payments are only a contingency.

[59]The proposed amendment is printed in upper case. The existing grounds of jurisdition under § 600.705 are listed in note 15 *supra*.

THIS STATE OF A MATRIMONIAL DOMICILE AT THE TIME OF THE CAUSE OF ACTION AROSE.

WITH RESPECT TO THE METHOD OF NOTICE REQUIRED UNDER THIS PROVISION:

A) IF THE RESIDENCE OF THE DEFENDANT IS KNOWN AT THE TIME OF THE COMMENCEMENT OF THE ACTION, OR CAN BE ASCERTAINED WITH REASONABLE DILIGENCE, SERVICE OF PROCESS IN ACCORDANCE WITH GENERAL COURT RULE 105.1 SHALL BE REQUIRED.[60]

B) IF THE RESIDENCE OF THE DEFENDANT IS NOT KNOWN AT THE TIME OF THE COMMENCEMENT OF THE ACTION, AND CANNOT BE DISCOVERED WITH REASONABLE DILIGENCE, SERVICE OF PROCESS MAY BE MADE IN ACCORDANCE WITH GENERAL COURT RULE 105.8[61] BY MAILING A SUMMONS AND A COPY OF THE COMPLAINT TO THE RESIDENCE OF THE DEFENDANT'S PARENTS, IF LIVING, AND BY MAILING A SUMMONS AND A COPY OF THE COMPLAINT TO THE RESIDENCE(S) OF THE DEFENDANT'S BROTHER(S) AND SISTER(S), IF LIVING, AND BY MAILING A

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[60]For the text of MICH. GEN. CT. R. 105.1, see note 11 *supra*.

[61]MICH. GEN. CT. R. 105.8:

> The court in which an action has been commenced may, in its discretion, allow service of process to be made in any other manner which is reasonably calculated to give him actual notice of the proceedings and an opportunity to be heard, if an order permitting such service is entered before service of process is made upon showing to the court that service cannot reasonably be made in the manner provided under the other rules.
> der the other rules.

See also MICH. GEN. CT. R. 105.9, providing that service of process under MICH.

SUMMONS AND A COPY OF THE COMPLAINT TO THE DEFENDANT'S LAST PLACE OF EMPLOYMENT, WHEN ASCERTAINABLE, AND BY MAILING A SUMMONS AND A COPY OF THE COMPLAINT TO THE RESIDENCE OF ANY OTHER PERSON AS ORDERED BY THE COURT. WHEN SERVICE OF PROCESS BY THE ABOVE METHODS IS NOT POSSIBLE, SERVICE OF PROCESS MAY BE MADE IN ANY OTHER MANNER REASONABLY CALCULATED IN THE OPINION OF THE COURT TO GIVE THE DEFENDANT ACTUAL NOTICE OF THE PROCEEDINGS AND AN OPPORTUNITY TO BE HEARD.

C) WHEN PROCESS IS SERVED IN ACCORDANCE WITH SUBPARAGRAPH (A), THE DEFENDANT SHALL BE LIABLE FOR ALL PAYMENTS DUE UNDER THE ORDER FROM THE DATE OF ENTRY, INCLUDING ARREARAGES. WHEN PROCESS IS SERVED IN ACCORDANCE WITH SUBPARAGRAPH (B), THE DEFENDANT SHALL BE LIABLE ONLY FOR PAYMENTS ACCRUING UNDER THE ORDER AFTER HE HAS RECEIVED ACTUAL NOTICE OF THE ORDER OUTSTANDING. LUMP SUM ALIMONY, SEPARATE MAINTENANCE, OR CHILD SUPPORT ORDERS SHALL NOT BE ENTERED BY THE COURT IF NOTICE IS GIVEN SOLELY UNDER THE PROVISIONS OF SUBPARAGRAPH (B).

GEN. CT. R. 105.8 shall confer personal jurisdiction over any defendant having any of the contacts with the State prescribed in MICH. COMP. LAWS § 600.705. For text of § 600.705 *see* note 15 *supra*.

Adoption of this provision would confer on Michigan courts the power to enter a binding *in personam* decree against a non-domiciliary of Michigan who cannot be found for personal service of process and who has no property in the State upon which quasi-in-rem jurisdiction could be predicated.[62] This would be a significant addition to present Michigan family support remedies since the abandoned wife is today most often prevented from bringing an action for support because she does not know where her husband can be found for personal service.[63] Further, since desertion is the "poor man's" divorce, the value of defendant's property subject to attachment in a support proceeding is often insignificant; thus a quasi-in-rem action is usually unsatisfactory. In addition to the advantage that the proposed amendment offers over URESA by not requiring personal service of process before a binding personal decree against defendant can be entered, it will also allow Michigan courts to determine the amount of payments for which the defendant shall be liable. This latter feature will protect the spouse from prejudicial treatment by the courts of another state.[64] Moreover, since enforcement of the orders entered under the amended long arm statute will generally occur when the defendant returns to his home,[65] full faith and credit problems[66] concerning the enforcement of non-final orders will, in most cases, be avoided.

Even if the defendant is found in another state, the Michigan order may nonetheless be enforced in that state under the full faith and credit clause as to payments already accrued, and in equity, under a comity arrangement, as to future payments. If the Michigan court has entered a lump sum alimony award, the entire amount will be enforceable under the full faith and credit clause.[67]

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[62]Even though this provision is an amendment to the Michigan long arm statute, which establishes jurisdiction over non-resident defendants, the efficacy of the order will not be impaired by the fact that the defendant never in fact left Michigan, but simply managed to avoid service of process.

[63]*See* note 10 *supra*.

[64]For a discussion of possible prejudicial treatment, see discussion in text *supra* at 406-407.

[65]Although the author can offer no authority for the proposition that husbands return to the families which they abandoned, the author's conversations with attorneys and county officials concerned with the problem of family support showed a unanimity of opinion that this statement is valid.

[66]*See* text accompanying note 52 *supra*.

[67]Subparagraph (C) of the proposed amendment, *supra*, expressly provides that no lump sum awards shall be made if the defendent was given notice of the action solely under

The authority of a court to enter a binding judgment against a defendant not personally served with process raises significant jurisdictional questions. Whether a court within the state has such power depends upon whether the defendant has had certain minimum contacts[68] with the forum state, and has been extended such notice[69] of the action as is reasonably calculated to give him a chance to appear and defend.[70] It is submitted that the proposed amendment to the Michigan long arm statute does clearly comply with these jurisdictional requirements as they have been explicated by the Supreme Court of the United States.

B. Power to Hear the Case—Minimum Contacts[71]

The permissible scope of state extraterritorial jurisdiction has greatly expanded since the Supreme Court decided *Pennoyer v. Neff* in 1877.[72] Continued adherence to the *Pennoyer* rule that the authority of a court is limited to the geographical boundaries of the state in which it is situated became unrealistic as the American economy assumed an increasingly interstate posture.[73]

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the substituted service provisions of subparagraph (B). Therefore, a lump sum award will be permitted only in those cases in which the defendant was personally served with process as provided under subparagraph (A). The limitation in subparagraph (C) is designed to obviate any questions as to the enforceability of a lump sum award when service of process is made in accordance with subparagraph (B) and the defendant does not receive actual notice of the order until after its entry.

[68] International Shoe v. Washington, 326 U.S. 310 (1945).

[69] Mullane v. Cent. Hanover Bank and Trust, 339 U.S. 306 (1950); Milliken v. Meyer 311 U.S. 457 (1940).

[70]

> Under modern doctrine, the power of a state court to enter a binding judgment against one not served with process within the state depends upon two questions: first, whether he had had certain minimum contacts with the State [cites omitted], and second, whether there has been a reasonable method of notification [cites omitted]. Gray v. Am. Standard Radiator and Standard Sanitary Corp., 22 Ill. 2d 432, 437; 176 N.E. 2d 761, 763 (1961).

[71] For a general discussion of this problem *see* Comment, *Extending "Minimum Contacts" to Alimony: Mizner v. Mizner*, 20 HASTING L.J. 361 (1968).

[72] 95 U.S. 714 (1877).

[73]

> As technological progress has increased the flow of commerce between the states, the need for jurisdiction over non-residents has undergone a similar increase. At the same time, progress in communication and transportation has made the defense of a suit in a foreign tribunal less burdensome. In response to these changes, the require-

When the Court handed down its decision in *International Shoe Co. v. Washington*, [74] it introduced needed flexibility into the existing jurisdictional standard. The test established by the court is whether the contacts that the non-resident, non-domiciliary defendant has had with the forum are sufficient to subject the defendant to an action *in personam* in that forum.[75] The contacts which the absent husband has had with the state of marital domicil clearly meet the minimum contacts requirements set down by the Court in *International Shoe* and subsequent cases. Some of the factors which the courts consider in determining if "minimum contacts" exist in a given situation include whether the contacts that the defendant has established with the forum are "systematic and continuous" and gave rise to the cause of action, whether the state has a legitimate interest in the proceeding, and whether the defendant will be unnecessarily inconvenienced by having to defend in the forum.

The contacts that the defendant spouse would normally develop while living in a state with his wife and family are "continuous and systematic". This factor is of pivotal importance in determining the sufficiency of the contacts in most cases.[76] Such contacts may include employment in the forum state, payment of taxes,

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ments for personal jurisdiction over non-residents have evolved from the rigid rule of Pennoyer v. Neff to a flexible standard of International Shoe Company v. State of Washington. Chief Justice Warren, for the majority, in Hanson v. Denckla, 357 U.S. 235 at 250-51 (1958).

[74]326 U.S. 310 (1945).

[75]The Court stated that:

> . . . now that the *capias ad respondum* has given way to personal service of process or other form of notice, due process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice." 326 U.S. at 316.

[76]"Presence in the state has never been doubted when the activities of the corporation there have not only been continuous and systematic but also give rise to the liabilities sued on. . . ." 326 U.S. at 317. *See also* Hanson v. Denckla, 357 U.S. 235 (1958), Perkins v. Benguet Coal Mining Co., 342 U.S. 437 (1952).

Not withstanding that the "minimum contacts" cases decided by the U.S. Supreme Court have involved judgments against corporations, and not personal judgments for alimony, the Nevada Supreme Court assumed that there is nothing inherent in the "minimum contacts" concept the limits its application to corporations. Mitzner v. Mizner 84 Nev. 268, 439 P. 2d 679 (1968).

In *Mizner*, the court, by a 3-2 vote, refused to set aside a partial summary

and utilization of the state's public facilities. Furthermore, an action for support grows directly out of the contacts which the defendant has established in the forum.

It seems undeniable that the state of the matrimonial domicil has a legitimate interest in taking reasonable steps to assure that its citizens will not be rendered poverty stricken by the acts of the defendant-spouse in leaving the state. One measure of this interest is the amount of money spent each year for the support of those families abandoned by the father.[77]

The fact that the plaintiff's other remedies may well provide no satisfaction also argues for adoption of this remedy, certainly from a practical point of view.[78] The only consideration that militates against this provision is the possible inconvenience caused the defendant by making him defend an action in the state of the marital domicil which is, for him, a foreign forum.[79]

It would seem therefore that a defendant who has lived in a state with his wife and family has surely established sufficient contact with that state such that its courts can assume personal jurisdiction over him in a manner consistent with the Fourteenth Amendment.

C. The Requirement of Reasonable Notice

1. Mullane

In addition to the requirement that a non-resident defendant

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judgment granted in a lower Nevada court which accorded full faith and credit to an alimony award contained in a California interlocutory divorce decree entered upon extraterritorial service of process.

Mr. and Mrs. Mizner lived in California as husband and wife for 18 years, after which they separated. Mr. Mizner subsequently moved to Nevada. Fifteen months after he had left the State, Mrs. Mizner filed suit for divorce in California. Pursuant to CALIF. CODE OF CIV. PRO. §§ 412, 413, and 417, she was awarded an interlocutory decree of divorce and $300 monthly alimony. The Nevada court accorded full faith and credit to this alimony order. It was of the opinion that the activities necessary to the maintenance of a marital domicil were sufficient to satisfy the minimum contacts test and held that California did not violate the substantive due process requirements of the Fourteenth Amendment by ordering Mr. Mizner to pay alimony to his wife. *See* notes 1, 2, 3 *supra*, and section I of text.

[77] *See* text accompanying notes 1, 2, 3 *supra*.

[78] *See generally* sections I and II of text *supra*, as to the practical problems which accompany alternative remedies. This factor has been deemed important in determining whether the defendant has established minimum contacts with the state. *See* McGee v. Int.'l Life Ins. Co., 355 U.S. 220 (1957); Travelers Health Ass'n v. Virginia, 339 U.S. 643 (1950); and *see* note 73 *supra*.

[79] The interests of both litigants should be balanced in this decision.

have certain minimum contacts with the forum state, due process also requires that the defendant be notified of the proceedings in a manner reasonably calculated under all the circumstances to give him a chance to appear and defend.[80] If the defendant is not personally served, the least the plaintiff is required to do is to use that method of service most likely to apprise him of the pendency of the action.[81]

In 1950, the U S. Supreme Court decided *Mullane v. Central Hanover and Trust Co.*,[82] in which the above-stated due process notice rule was applied. In discussing the constitutionality of published notice, the Court suggested a flexible test aimed at balancing the individual interests which the Fourteenth Amend-

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[80] "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated under all of the circumstances to apprise the parties of the pendency of the action and afford them an opportunity to present their objections." Mullane v. Cent. Hanover Bank and Trust Co., 339 U.S. 306, 314 (1950); *See also* Milliken v. Meyer, 311 U.S. 457 (1940) in which the rule was formulated: International Shoe Co. v. Washington, 326 U.S. 310 (1945).

[81] Schroeder v. City of N.Y., 371 U.S. 208 (1962). *Schroeder* involved the attempted acquisition by the City of New York of the right to divert water from a stream that flowed through Mrs. Schroeder's land. The City had not attempted personal service upon Mrs. Schroeder in the original action in spite of the fact that her name and address were readily available in the public records. The Supreme Court held that substituted service in those circumstances was unconstitutional. The Court stated that:

> The general rule that emerges from these cases is that notice by publication is not enough with respect to a person whose name and address are known or easily ascertainable and whose legally protected interests are directly affected by the measures in question.

See also, Walker v. City of Hutchinson, 352 U.S. 112 (1956). This case concerned the condemnation of Walker's land by the City of Hutchinson while Walker was out of the state. Notice of the condemnation proceeding was given by publication in the official city paper of Hutchinson. The Court held that the method of service authorized by the statute was not sufficient to satisfy the Fourteenth Amendment.

> . . . In *Mullane* we pointed out many of the infirmities of [notice by publication] and emphasized the advantage of some kind of personal notice to interested parties. In the present case there seem to be no compelling or even persuasive reasons why such direct notice cannot be given. Appellant's name was known to the city and was on the official records. Even a letter would have apprised him that his property was about to be taken and that he must appear if he wanted to be heard as to its value.

[82] 339 U.S. 306 (1950). *Mullane* involved the final settlement of a common trust fund, the beneficiaries of which were not all known to the administrators of the trust. The central issue was whether published notice of the final adjudication of the trust assets afforded all of the beneficiaries due process as required by the Fourteenth Amendment.

ment seeks to protect with the interest of the state in promoting the welfare of its own citizens.[83] Applying that test, the *Mullane* court decided that personal notice was required as to those known present beneficiaries with a known place of residence. Service by publication was deemed sufficient, however, for those beneficiaries whose addresses were unknown and those whose interests were merely contingent.[84] The *Mullane* test allows the courts to assess all factors involved in each case and to then determine the reasonableness of the manner of the service of process.

2. Mullane and the Proposed Amendment

Substituted service such as was allowed in *Mullane* is peculiarly appropriate in actions for alimony, separate maintenance, and child support when the husband has illegally left his family and cannot be located for personal service of process. The use of a proper form of substituted service in such cases falls within the scope of the due process notice requirements for a number of reasons. First, the defendant does not have to rely solely upon service of process to inform him that an action for alimony or child support is being brought by his wife. Most people would presumably acknowledge that a married man has undertaken some obligation of support for his wife and family. Whether this is recognized as a legal obligation rather than merely a moral obligation is immaterial. A husband's recognition of the fact that he has

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[83]The Court has not committed itself to any formula achieving a balance between these interests in a particular proceeding or determining when constructive notice may be utilized or what test it must meet. 339 U.S. at 314.

[84]339 U.S. at 319. Notwithstanding that the *Mullane* court used broad language to sustain the constitutionality of published notice on the facts then before it, it should be pointed out that alimony, separate maintenance, and support cases differ from *Mullane* in two important respects. First, in *Mullane* the court was concerned only with the question of cutting off absentee defendant's potential claims to the common trust fund, whereas in the alimony context, substituted service will be used in a proceeding to impose affirmative obligations on the absent defendant. Second, in *Mullane* the interests of the parties who were given actual notice of the proceeding were sufficiently similar to the interests of those persons who were not given actual notice, so that it was not unreasonable to assume that the interests of all the parties would be adequately protected. To the extent that these differences between *Mullane* and the support cases are troublesome, it can be answered that the wife's need for support, coupled with the state's interest in facilitating the proceedings, the deserting husband's culpability, and the procedural safeguards afforded the defendant overcome these distinctions.

wrongfully abandoned that obligation affords him a certain natural notice of the possibility that some action for support may be brought against him.[85] This presumption of natural notice is reinforced by the fact that absconding husbands frequently go to great lengths to avoid being located by their wives. It would appear that the fugitive husband is hiding, not because he is unaware of his familial support obligation, but because he is fully aware of that obligation and is intentionally avoiding his acknowledged financial responsibility. This element distinguishes support actions from those in which defendant is being sued on a contract or tort claim.[86] In the alimony, separate maintenance, and support cases, notice to the defendant is inherent in *his own* conduct which alone results in an actionable claim on behalf of the wife.

Second, the reliability of *ex parte*[87] evidence in an action for alimony, separate maintenance, or child support further distinguishes such cases from many other legal actions. In order to be entitled to alimony, a resident wife merely has to allege that she is married, that her husband has deserted her without good and sufficient cause, and that he has refused and neglected to support her.[88] In most cases, substantiation of the necessary allegations is a matter of public record, such as marriage licenses and welfare data. In those instances where public records cannot attest to the validity of the wife's allegations of desertion and need, those assertions will usually admit of accurate evaluation by a disinterested observer. The Office of the Friend of the Court often fills this role and contributes to an objective support order even when *ex parte* evidence is all that is available.[89] In many

[85]For a good discussion of natural notice as it relates to due process with respect to informal probate proceedings under the Uniform Probate Code, *see* Manlin and Martens, *"Informal Proceedings Under the Uniform Probate Code: Notice and Due Process"*, 3 PROSPECTUS 39, 55-58 (1969).

[86]The concept of natural notice is inapplicable to many legal actions. For example, in an ex parte tort or contract action it is impossible for the court to determine at the outset if the plaintiff's allegations are bona fide. The action may be spurious or well-founded. The likelihood that the claim is frivolous is substantial enough, however, that the courts should not presume the defendant has any reason to suspect that an action is being brought against him. It is obvious that a person cannot have natural notice of a legal action stemming from actions which he never in fact committed. This is dissimilar to the desertion case, in which the fact of abandonment is objectively ascertainable, and the husband creates the cause of action by his conduct alone.

[87]*Ex parte* evidence is evidence introduced on behalf of one party only in a proceeding in which the other party does not have an opportunity to present conflicting evidence.

[88]MICH. COMP. LAWS § 552.30 (1968).

[89]MICH. COMP. LAWS §§ 552.251-253 (1968).

Michigan counties, the amount of support recommended by the Friend of the Court is determinative, notwithstanding the pleas and demands of the husband and wife.[90] Thus, even though the husband will not be present at the support hearing, his interests ordinarily will be protected to some degree. This feature distinguishes support proceedings from those actions in which the evidentiary facts are not objectively ascertainable, and where a damage figure is not easily determined.

In evaluating the fundamental fairness of the notice provisions of the proposed amendment, it must be recognized that if only substituted service of process has been used to notify the absent husband of the proceeding, the order will not be effective against him until the date on which he received actual notice of its entry.[91] Thus, arrearages will not accrue during that period in which the husband had no knowledge of the order outstanding.

Another procedural safeguard afforded the husband served with substituted service is that he, as a matter of right under Michigan law, may have the order reopened at any time within one year of the date of entry of the final order.[92] If the one year limit has expired, the defendant may nevertheless petition the court to reopen the order for "good cause".[93]

Finally, the strong interest[94] that the State has in promoting the welfare of its residents must be considered and balanced against the interests of the individual defendant.[95] In the last analysis, the validity of any form of substituted service is to be judged according to whether it is reasonably calculated to give the defendant an

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[90]Conversation with Washtenaw County Friend of the Court.

[91]*See* proposed amendment, *supra*, subparagraph (C). Proving the date on which the defendant received actual notice of the order outstanding may present a difficulty. Of course, if the plaintiff discovers the defendant's residence, she may send him a copy of the order by certified mail. The returned receipt will provide adequate proof of the date on which the defendant received a copy of the order, and, presumably, actual notice thereof. If the defendant is given a copy of the order in another state, an affidavit submitted by the person who delivered the copy should also suffice to establish the date of actual notice. If the plaintiff cannot prove receipt of actual notice in either of the above ways, she will have to satisfy her burden of proof at the trial if the question is ever put in issue by her husband. When the date of actual notice is established, the careful practitioner should ask the court to recite that date in the order itself so that no problem concerning the effective date of the order will arise if it is enforced out of Michigan.

[92]GEN. CT. R. 528.2.

[93]GEN. CT. R. 528.3.

[94]*See* notes 1, 2, 3 *supra*.

[95]*See* text accompanying note 83 *supra*.

opportunity to appear and be heard.[96] It can hardly be said to offend traditional notions of justice to subject a husband who has illegally abandoned his family to an *in personam* proceeding when his wife has employed all the avenues left open by her husband to inform him of the pendency of the action. Those obstacles which prevent personal service of process stem solely from the illegal actions of the husband, hence he should be estopped from using a situation of his own making to invalidate service of process when his wife has in good faith attempted to give him actual notice of the suit. Natural notice, combined with substituted service in a form designed to maximize the possibility that defendant will receive actual notice, and the other aforementioned procedural safeguards, insure that the proposed amendment conforms to Fourteenth Amendment due process requirements.

V. Conclusion

The proposed amendment to the Michigan long arm statute will help reduce the substantial public cost presently attributable to support of abandoned families. Its adoption would give Michigan courts the power to enter a binding decree against a non-domiciliary who cannot be found for personal service of process. When the defendant can be located for service, the statute will offer an alternative to URESA if the plaintiff thinks that URESA would be less effective. Additionally, the statute will close the loophole now existing when the defendant is not a domiciliary of Michigan, has no property in the jurisdiction, and cannot be located for service under existing Michigan court rules or URESA. The provision is designed to supplement, not supplant, existing support remedies.

The amendment gives Michigan courts authority to assume jurisdiction over the defendant, and provides adequate notice to him of the impending action. The concept of minimum contacts is not new, and service of process can be made under generally accepted court rules with which practicing Michigan attorneys are thoroughly familiar. This latter feature, as well as the fact that the statute does not require reliance upon a second state to litigate to obtain a support order, facilitates administration of the provision.

[96]Note 80 *supra*.

An order entered under the amended long arm statute will be enforceable whenever the defendant is located. Notwithstanding that this provision will allow entry of an order against a non-resident defendant upon some form of substituted service, adequate safeguards exist to afford him the due process notice guaranteed by the Fourteenth Amendment.

This provision will also serve the interests of judicial economy in two ways. First, the court that heard the original divorce action will not have to hear the same proofs in a second action for alimony if the wife acquires personal jurisdiction over the defendant. The court can dispose of both the issues of divorce and alimony or support in one action. Of course, the court will have to take subsequent action to enforce the order. Such action will be necessary, however, only when there are *immediate* prospects of obtaining financial relief for the wife and removing her from the welfare roles. The assurance that the court will have to involve itself a second time *only* when some benefit will accrue to the plaintiff and the state must override the additional judicial energy expended.

Finally, unlike an action under URESA, only one court will be involved in the proceeding. Thus, burdensome correspondence and other administrative paperwork will be avoided.