

# final minutes

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## Michigan Law Revision Commission Meeting

Wednesday, May 18, 2017 ▪ 11:00 a.m.  
Legislative Council Conference Room  
3<sup>rd</sup> Floor ▪ Boji Tower Building  
124 W. Allegan ▪ Lansing, Michigan

### Members Present:

Richard McLellan, Chair  
Tony Derezinski, Vice Chair  
Jennifer Dettloff  
Representative Brian Elder  
Representative Peter Lucido  
Senator Tonya Schuitmaker  
George Ward

### Members Absent and Excused:

Senator Bert Johnson  
Judge William C. Whitbeck

### I. Convening of Meeting

Chair McLellan called the meeting to order at 11.05 a.m.

### II. Roll Call

The Chair began with an introduction of those present at today's meeting. The roll was taken and absent members were excused. A quorum was present.

### III. Approval of May 13, 2015 MLRC Meeting Minutes

The Chair asked for a motion to approve the minutes of the May 13, 2015. No corrections or additions were offered. **Commissioner Derezinski moved, supported by Commissioner Ward, to adopt the minutes of the May 13, 2015 Michigan Law Revision Commission meeting. There was no further discussion. The minutes were unanimously approved.**

### IV. 2015-2016 MLRC Annual Report

The Chair called on Ms. Wilensky to present the items to be included in the 2015-2016 Michigan Law Revision Commission Annual Report. She proceeded with an overview of the reports and information to be included in the annual report (see attached report for more details).

A tribute resolution in honor of the Honorable Rose Mary C. Robinson whose service ended in December 2016 was presented for consideration. **Representative Elder moved, supported by Mr. Ward, to approve the tribute resolution to honor Representative Rose Mary C. Robinson and to include the resolution in the 2015-2016 Michigan Law Revision Commission Annual Report. There was no further discussion. The motion was unanimously approved.**

A special report on Same Sex Marriage was presented and discussed. Revisions to the introduction of the report found on page 59 will be made to include Justice of the Peace as an example and will be included in the final report.

A Report on Driver's Licenses for Immigrants was presented and discussed. A memorandum from Jane Wilensky provides details about the report including the recommended action. The Chair offered it would be helpful to have the Secretary of State's office invited to a future meeting to discuss this issue further. It was suggested that Kieran Marion from the Secretary of State's office would be an excellent resource.

A Report on Cyber Business Court was presented and discussed.

The 2015 and the 2016 Report on Recent Court Decisions Identifying Statutes for Legislative Actions and Recommendations to the Legislature were presented and discussed. Ms. Wilensky proceeded with a brief description of each case and the corresponding Commission's recommendation.

**Commissioner Ward moved, supported by Senator Schuitmaker, to approve the proposed 2015-2016 Michigan Law Revision Commission Annual Report that includes the reports as presented. There was no further discussion. The motion was unanimously approved.** The discussed revisions will be made and the MLRC Annual Report will be printed and distributed.

## **V. New Business**

### **Update of Freedom of Information Act**

Ms. Wilensky directed the members' attention to a Report to the Legislature on Recommendations for Revisions to Michigan's Freedom of Information Act (see attached). She noted that recognizing that the House has passed a series of bills, the reports covers five areas—language that has been limited by Court interpretation, improvements to statutory language for clarity, amending FOIA regarding certain private entities that receive public funds, expansion of Michigan's open data portal, and creation of an entity to monitor access to information under FOIA. The Chair asked that the issue of extending the act to the Governor's office and the Legislature be looked at as well. A discussion followed. Another draft will be prepared to include the comments made at today's meeting.

## **VI. Other Business**

### **Comments Submitted by Sean Bennett**

Regarding the comments on governmental immunity submitted by Mr. Sean Bennett at the last Commission meeting, Ms. Wilensky reported that she has reviewed the question Mr. Bennett presented and found that, in the most relevant case Mr. Bennett referenced, both the majority and the dissent were very well-reasoned opinions and, for the purposes of the Law Revision Commission, there wasn't anything in the opinions that would suggest there is a need for further analysis by the Commission.

## **VII. Comments from Commissioners**

The Chair asked if there were any comments from the Commissioners. There were none.

## **VIII. Public Comment**

The Chair asked if there were any public comments. Kahryn A. Riley, Policy Analyst for the Mackinac Center for Public Policy, presented the March 2017 update to the findings of a 2014 study they wrote about the issue of over-criminalization in Michigan. A discussion followed. There were no other public comments.

## **IX. Adjournment**

**Having no further business, the Chair moved, supported by Vice Chair Derezinski, to adjourn the meeting. There was no further discussion. The motion was unanimously approved. The meeting was adjourned at 1:06 p.m.**

*(Minutes approved at the December 5, 2018 MLRC meeting.)*



## **MICHIGAN LAW REVISION COMMISSION**

P.O. Box 30036, LANSING, MI 48909-7536

Web Site: <http://council.legislature.mi.gov/mlrcf.html>

May 18, 2017

To: Members of the Michigan Law Revision Commission

From: Jane Wilensky  
Executive Secretary

Re: Driver's Licenses for Immigrants

### **BACKGROUND**

In August 2015, the Michigan Law Revision Commission held a meeting about Driver's Licenses, State Identification and Michigan Immigrants. The meeting was prompted by a report prepared for the Commission by Susan Reed, Supervising Attorney of the Michigan Immigrant Rights Center, about expanding access to driver's licenses in Michigan for applicants without proof of immigrant status. ("MIRC Report") The meeting was an opportunity for interested individuals and organizations to provide the Commission with any information or materials that might help the Commission's understanding of the issues addressed in the MIRC Report.

It was clear from the attendance and discussion that the issue of driver's licenses for immigrants is important to a wide variety of constituencies. It is also clear that the issue of who gets to drive in Michigan involves more individuals than just those who do not have proof of their immigration status.

The National Conference of State Legislatures uses four categories when considering immigration policy: legal immigrants, migrant and seasonal workers, refugees and unauthorized immigrants (who are also described as illegal or undocumented immigrants or aliens).

Michigan is home to many foreign owned companies, and there is a lawfully present foreign workforce population in the state. Other Michigan and U.S. companies operate in the State and employ lawfully present immigrants. When considering legal immigrants, and others who are legally present in the United States, including those here for a fixed period of time (nonimmigrants), having a Michigan driver's license is a privilege that is essential to working and living in the State.

An issue important to legal nonimmigrants in Michigan, including those holding H1b, L1, TN and O visas, is the inability to renew their driver's licenses notwithstanding being in full

compliance with all immigration laws. This is because the Secretary of State refuses to renew these individual's licenses if it is determined that, although the nonimmigrant filed a timely request to continue his or her current status, the United States Citizenship and Immigration Services (USCIS) has yet to approve the request. This is so even though USCIS itself recognizes that such nonimmigrants are in valid legal presence during the period of the extension request. Extensive delays in USCIS processing plus the suspension of the ability to request premium (expedited) processing have significantly impacted the ability of a nonimmigrant to obtain an approval in time to satisfy the Secretary of State. This handicaps Michigan employers who rely on these nonimmigrants as part of their workforce, and also, as in the case of medical doctors, harms Michigan citizens who rely on the ability of such medical doctors to drive to work in order to treat their patients.

#### **RECOMMENDED ACTION**

The Michigan Law Revision Commission received the Report titled "Driver's Licenses, State ID, and Michigan Immigrants" as part of its charge to identify defects and anachronisms in the law, and bring the laws of this state into harmony with modern conditions.

The Commission does not take a position on any specific recommendation contained in the Report but approves including the Report in its Annual Report in order to make it available for review by the Legislature and the public.

# *47<sup>th</sup> Annual Report 2015-2016*

# *Michigan Law Revision Commission*

JANE O. WILENSKY, *Executive Secretary*

*Term Members:*

RICHARD D. MCLELLAN,  
*Chairperson*

ANTHONY DEREZINSKI,  
*Vice Chairperson*

GEORGE E. WARD

WILLIAM C. WHITBECK

*Legislative Members:*

SENATOR BERT JOHNSON

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REPRESENTATIVE PETER J. LUCIDO

REPRESENTATIVE ROSE MARY ROBINSON

*Ex Officio Member:*

JENNIFER DETTLOFF

*Legislative Council Administrator*

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124 West Allegan

P.O. Box 30036

Lansing, Michigan 48909-7536



Michigan  
Law Revision Commission

FORTY-SEVENTH ANNUAL REPORT  
2015-2016

# MICHIGAN LAW REVISION COMMISSION

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

MICHIGAN LAW REVISION COMMISSION  
FORTY-SEVENTH ANNUAL REPORT TO THE LEGISLATURE  
FOR CALENDAR YEARS 2015 AND 2016

To the Members of the Michigan Legislature:

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

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

Membership

The legislative members of the Commission during 2015 and 2016 were Senator Bert Johnson of Detroit; Senator Tonya Schuitmaker of Lawton; Representative Peter Lucido of Shelby Township; and Representative Rose Mary Robinson of Detroit. Legislative Council Administrator John G. Strand was the ex officio member of the Commission until April 20, 2016. Interim Legislative Council Administrator John C. Bollman was the ex officio member of the Commission from May 4, 2016 to November 9, 2016. Legislative Council Administrator Jennifer Dettloff has been the ex officio member of the Commission since November 9, 2016. The appointed members of the Commission were Richard D. McLellan, Anthony Derezinski, George E. Ward, and William C. Whitbeck. Mr. McLellan served as Chairperson and Mr. Derezinski served as Vice Chairperson. Jane O. Wilensky served as Executive Secretary. Brief biographies of the Commission members and staff are located at the end of this report.

The Commission's Work in 2015 and 2016

The Commission is charged by statute with the following duties:

1. To examine the common law and statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and to recommend needed reform.
2. To receive and consider proposed changes in law recommended by the American Law Institute, the National Conference of Commissioners on Uniform State Laws, any bar association, and other learned bodies.
3. To receive and consider suggestions from justices, judges, legislators and other public officials, lawyers, and the public generally as to defects and anachronisms in the law.
4. To recommend such changes in the law as it deems necessary in order to modify or eliminate antiquated and inequitable rules of law, and to bring the civil and criminal law of this state into harmony with modern conditions.
5. To encourage the faculty and students of the law schools of this state to participate in the work of the Commission.

6. To cooperate with the law revision commissions of other states and Canadian provinces.
7. To issue an annual report.

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

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

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

#### Proposals for Legislative Consideration in 2015 and 2016

In addition to its new recommendations, the Commission recommends favorable consideration of the following recommendations of past years upon which no final action was taken in 2015 and 2016:

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

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

#### Current Study Agenda

Topics on the current study agenda of the Commission are:

- (1) Review of emergency preparedness laws.
- (2) Impact of Immigration Policies on Michigan Laws.
- (3) New Cyber Business Court.

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

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

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

Respectfully submitted,

Richard D. McLellan, Chairperson  
Anthony Derezinski, Vice Chairperson  
George E. Ward  
William C. Whitbeck  
Senator Bert Johnson  
Senator Tonya Schuitmaker  
Representative Peter J. Lucido  
Representative Rose Mary Robinson  
Jennifer Dettloff

**A RESOLUTION HONORING**

**STATE REPRESENTATIVE ROSE MARY C. ROBINSON**

A resolution to commend and thank the Honorable Rose Mary C. Robinson for her service to the Michigan Law Revision Commission.

Whereas, It is a pleasure for the members of the Michigan Law Revision Commission to honor State Representative Rose Mary C. Robinson for her outstanding service to the Commission. Her distinguished efforts for the Commission began in January 2015 and extended until December 31, 2016; and

Whereas, Serving her third term representing Michigan's 4th House District, which comprises Hamtramck and portions of Detroit, Rose Mary Robinson brought with her to Lansing experiences which gave her valuable perspective on the role laws play in all aspects of our society; and

Whereas, a graduate of Wayne State Law School and a former attorney for the American Federation of State, County and Municipal Employees Union Council 25, Representative Robinson was one of the first women ever elected to the Wayne County Commission in 1970. She practiced as a criminal defense lawyer for more than 40 years, and served as a member of the Detroit Charter Revision Commission in 2009; and

Whereas, her diverse experiences have served her well throughout her years as State Representative and made her a respected voice in the efforts of this Commission; now, therefore, be it

Resolved by the membership of the Michigan Law Revision Commission, that we offer this expression of our respect and thanks to Representative Rose Mary C. Robinson for her exemplary work with this body over the past two years.

*Same Sex  
Marriage:  
A Review of  
Michigan's  
Constitutional  
Provisions  
and Statutes*

*A Special Report*

*by the*

*Michigan*

*Law*

*Revision*

*Commission*

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# **Analysis of the Michigan Constitution and Statutes Affected by Obergefell v Hodges**

## **INTRODUCTION**

In June 2015, the United States Supreme Court ruled that under the 14th Amendment to the U.S. Constitution, same sex couples have a constitutionally protected right to marry. *Obergefell v Hodges*, 135 S.Ct. 2584 (2015). Accordingly, states must issue marriage licenses to same sex couples and also must recognize marriages of same sex couples performed in other states.

The Michigan Law Revision Commission has the statutory duty to “Examine the common law and statutes of this state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms”. MCL 4.1403(1)(a). In keeping with this duty, the Commission initiated a review of Michigan laws to identify constitutional provisions and statutes that are implicated by the *Obergefell* decision. This Report contains the results of that review.

The following keywords were used to identify affected constitutional and statutory provisions:

1. Husband(s)
2. Wife
3. Wives
4. Father
5. Mother
6. Marriage
7. Married

The Report contains three sections:

Section 1, Constitutional Law Provisions and Statutes, identifies provisions in the Constitution and statutes that because of gender-specific terms should be changed to gender-neutral terms to conform to the new constitutional standard. Provisions are identified numerically by section and include both the text of the constitutional and statutory provision and the solution to revise the specific text to conform to *Obergefell*.

Section 2, Policy Issues, identifies statutes affected by the decision that require more than simple language changes to conform to *Obergefell*. Rather, the subject matter of these statutes calls for specific review by the Legislature because the particular issue implicates policy considerations beyond just a simple textual solution.

Section 3 contains the Michigan Law Revision Commission’s recommendation to use a single statute to amend multiple provisions of state laws to efficiently bring state statutes into conformity with *Obergefell*, and the authority and rationale relied on by the Commission to support this approach.

As an advisory body to the Legislature, the Commission has traditionally avoided taking a position on matters that are highly divisive, partisan, or adequately addressed by others. This Report adheres to those principles.

# **SECTION 1. CONSTITUTIONAL LAW PROVISIONS AND STATUTES**

## **CONSTITUTION**

### **Michigan Constitution of 1963**

#### **1. Article I Section 25**

- Text:
  - To secure and preserve the benefits of marriage for our society and for future generations of children, the union of one man and one woman in marriage shall be the only agreement recognized as a marriage or similar union for any purpose.
- Solution
  - Remove entirely or, at a minimum, annotate to say: This section was held invalid as in conflict with U.S. Const. Am. XIV and Obergefell v. Hodges, 135 S. Ct. 1039 (2015).

#### **2. Article X Section 1**

- Text:
  - The disabilities of coverture as to property are abolished. The real and personal estate of every woman acquired before marriage and all real and personal property to which she may afterwards become entitled shall be and remain the estate and property of such woman, and shall not be liable for the debts, obligations or engagements of her husband, and may be dealt with and disposed of by her as if she were unmarried. Dower may be relinquished or conveyed as provided by law.
- Solution:
  - Annotate section to recognize the conflict with U.S. Const. Am. XIV and Obergefell v. Hodges, 135 S. Ct. 1039 (2015).

*The Commission thanks Jacob Coate, a student at the University of Michigan Law School, for his work on this report.*

# **STATUTES**

## **TABLE OF STATUTES IDENTIFIED**

MCL	Keyword Used	Topic
28.632j	"husband"	Benefits
28.722p	"husband"	Criminal
35.21	"wives"	Veterans
35.802	"husband"	Veterans
35.803	"wife"	Veterans
35.83	"wife"	Veterans
35.924a	"father"	Veterans
36.11	"wife"	Veterans
141.641	"husband"	Tax
169.261	"husband"	Campaign
205.221	"father"	Property
206.3	"husband"	Tax
206.311	"husband"	Tax
206.504	"husband"	Tax
206.522	"husband"	Tax
207.505	"husband"	Tax
207.526	"husband"	Property
211.27a	"husband"	Tax
211.7cc	"husband"	Tax
211.762	"husband"	Tax
211.764	"husband"	Property
280.381	"wife"	Misc.
280.74	"wife"	Misc.
290.428	"husband"	Misc.
290.662	"husband"	Misc.
319.104	"wives"	Misc.
324.36109	"husband"	Tax
330.1800h	"father"	Parental
333.1073	"father"	Parental
333.2822	"father"	Parental
333.2824	"husband"	Parental
333.2824	"father"	Parental
400.32	"husband"	Benefits
418.118	"wife"	Benefits

418.335	"wife"	Marriage
419.102	"father"	Benefits
419.203	"father"	Benefits
436.1801	"husband"	Licenses
436.1801	"father"	Licenses
449.6	"husband"	Business
450.4504	"husband"	Property
455.208	"husband"	Misc.
493.17	"husband"	Property
500.2207	"husband"	Insurance
500.2209	"husband"	Insurance
500.311	"husband"	Insurance
500.3402	"husband"	Insurance
551.1	"marriage"	Marriage
551.101	"marriage"	Marriage
551.2	"marriage"	Marriage
551.201	"marriage"	Marriage
551.271	"marriage"	Marriage
551.272	"marriage"	Marriage
551.3	"wife"	Marriage
551.4	"husband"	Marriage
551.9	"husband"	Marriage
552.101	"husband"	Divorce
552.102	"husband"	Divorce
552.122	"alimony"	Divorce
552.1328	"husband"	Parental
552.23	"husband"	Divorce
552.27	"husband"	Divorce
552.34	"husband"	Divorce
552.36	"husband"	Divorce
552.37	"husband"	Divorce
552.391	"husband"	Divorce
552.9f	"husband"	Divorce
554.45	"husband"	Property
557.101	"husband"	Property
557.151	"husband"	Property
557.21	"husband"	Property
557.24	"husband"	Contracts
557.25	"husband"	Contracts
557.253	"husband"	Property
557.254	"husband"	Property
557.26	"husband"	Contracts
557.71	"husband"	Property

557.81	"husband"	Property
558.1	"husband"	Dower
558.12	"husband"	Dower
558.13	"husband"	Dower
558.14	"husband"	Dower
558.16	"husband"	Dower
558.2	"husband"	Dower
558.21	"husband"	Dower
558.24	"husband"	Dower
558.26	"husband"	Dower
558.27	"husband"	Dower
558.28	"husband"	Dower
558.29	"husband"	Dower
558.4	"husband"	Dower
558.5	"husband"	Dower
558.52	"husband"	Dower
558.6	"husband"	Dower
558.7	"husband"	Dower
558.81	"husband"	Dower
558.91	"husband"	Dower
565.602	"husband"	Property
600.141	"husband"	Marriage
600.2005	"husband"	Court
600.2162	"husband"	Court
600.2807	"husband"	Property
600.2931	"husband"	Dower
600.2933	"husband"	Dower
600.332	"husband"	Parental
600.3344	"husband"	Property
600.5451	"husband"	Property
600.6023a	"husband"	Property
600.6131	"wife"	Court
700.1303	"wife"	Property
700.2114	"husband"	Parental
700.2801	"husband"	Divorce
700.2806	"husband"	Divorce
710.24	"husband"	Probate
710.36	"husband"	Parental
711.1	"married"	Probate
722.1003	"father"	Parental
722.1006	"father"	Parental
722.101	"father"	Court

722.1309	"husband"	Court
722.853	"husband"	Parental
722.954a	"father"	Parental
750.162	"wife"	Criminal
750.163	"wife"	Criminal
750.166	"husband"	Court
750.30	"married"	Criminal
750.335	"married"	Criminal
750.9	"husband"	Criminal
780.159a	"husband"	Parental
780.169	"husband"	Court
780.401	"husband"	Court

## STATUTES

### Public Safety Officers Benefit Act (Act 46 of 2004)

#### MCL 28.632 (j) (Definitions)

- Text:
  - “Surviving spouse” means the husband or wife of the deceased officer at the time of the officer's death, and includes a spouse living apart from the officer at the time of the officer's death for any reason.
- Solution:
  - “means the husband or wife” to “means the spouse”

### Sex Offenders Registration Act (Act 295 of 1994)

#### MCL 28.722 (p) (Definitions)

- Text:
  - "Residence", as used in this act, for registration and voting purposes means that place at which a person habitually sleeps, keeps his or her personal effects, and has a regular place of lodging. If a person has more than 1 residence, or if a wife has a residence separate from that of the husband, that place at which the person resides the greater part of the time shall be his or her official residence for the purposes of this act. If a person is homeless or otherwise lacks a fixed or temporary residence, residence means the village, city, or township where the person spends a majority of his or her time. This section shall not be construed to affect existing judicial interpretation of the term residence for purposes other than the purposes of this act.

- Solution:
  - “or if a wife has a residence separate from that of the husband” to “or if a person has a residence separate from that of their spouse”

**MCL 32.924a (Payment to parents of deceased veteran; maximum appropriation)**

- Text:
  - (4a) There shall be paid **on application of the mother and father**, or the surviving parent, of each veteran heretofore or hereafter deceased from service connected causes arising during the period of service a sum equal to the difference between any payments received by the veteran or his beneficiary under section 3 and the sum of \$500.00. In the event the veteran or his beneficiary has not received payment under section 3, the entire sum of \$500.00 shall be **paid to the mother and father**, or the surviving parent. Any person or persons claiming payment under this section shall not be required to prove dependency. There is hereby appropriated from the general fund of the state the sum of \$200,000.00, to be credited to the veterans' military pay fund, to pay benefits under the provisions of this section.
- Solution:
  - “application of the mother and father” to “application of the parents”
  - “paid to the mother and father” to “paid to the parents”

**Veteran’s Relief Fund**  
**Act 214 of 1899**

**MCL 35.21 (Veteran’s relief fund; levy and collection of annual tax; emergency appropriations; disposition)**

- Text:
  - The county board of commissioners of each county shall annually levy, a tax not exceeding 1/10 of a mill on each dollar, to be levied and collected as provided by law, upon the taxable property of each township and city, for their respective counties, for the purpose of creating a fund for the relief of honorably discharged indigent members of the army, navy, air force, marine corps, coast guard, and women's auxiliaries of all wars or military expeditions in which the United States of America has been, is, or may hereafter be, a participant as prescribed in section 1 of Act No. 190 of the Public Acts of 1965, being section 35.61 of the Michigan Compiled Laws, and the indigent spouses, minor children, and parents of each such indigent or deceased member. Funds raised in accordance with the provisions of this section may be expended for the relief of **indigent wives** and children of active duty soldiers, sailors, marines, airmen, coast guardsmen, nurses, and members of the women's auxiliaries during the continuance of present hostilities and prior to their discharge. However, in any year which, in the opinion of the board, an emergency justifying the same exists, the board may appropriate a sum not to exceed 2/10 of a mill on each dollar for said purpose. The sums, when collected, shall be paid to the county treasurer of the county where such tax is levied in each of the counties in this state, to be paid out by the treasurer upon the order of the soldiers' relief commission duly signed by the chairperson and secretary of the commission. If any money in the fund is not necessary for the purpose for which it was raised, the money

shall remain in the treasury of the county as a soldiers' relief fund, and shall be considered in raising future sums therefor.

- Solution:
  - “relief of indigent wives” to “relief of indigent spouses”

### Funeral Expenses of Veterans (Act 235 of 1911)

#### **MCL 35.802 (Soldier’s Relief commission; investigation of application for reimbursement, compensation)**

- Text:
  - It shall be the duty of the members of the soldiers' relief commission of each county, whenever application is made for reimbursement by the county for such funeral expenses paid or advanced, or incurred for the burial of such deceased person, to make an investigation of such claim and report their action to the clerk of the board of supervisors of the county, or to the clerk of the board of county auditors as the case may be, in all cases setting forth all the facts, together with the name, rank and command to which such soldier, sailor, marine, nurse or member of the women's auxiliary belonged, **and in case of such wife or widow, the rank and command to which her husband or deceased husband belonged**, the name and service rendered as such army nurse, the date of his or her death, place where buried, and his or her residence and occupation while living. They shall require such person or persons who paid, advanced or incurred such burial expenses for such deceased person to furnish the board of supervisors, or board of county auditors in counties having a board of county auditors, with a sworn itemized statement of the expense incurred in the burial of the deceased person mentioned in the application. The members of the commission, except where they are paid a salary, shall receive from the county the sum of \$2.00 per day for the time actually and necessarily employed by them in the performance of their duties.
- Solution:
  - “In case of such wife or widow, the rank and command to which her husband or deceased husband belonged” to “in case of such spouse the rank and command to which their spouse or deceased spouse belonged”

#### **MCL 35.803 (Duties of county clerk; record of application and reimbursement; headstones)**

- Text:
  - It shall be the duty of the clerk of the board of supervisors or board of county auditors as the case may be upon receiving the report and statement of expenses provided for in the preceding section, to transcribe in a book kept for that purpose all the facts contained in said report respecting such deceased soldier, sailor or marine, **or the deceased wife** or widow of the same, or such deceased army nurse, and to report such application and statement to the board of supervisors or the board of county auditors, as the case may be, at the next meeting thereof. It shall be the further duty of said clerk upon the death and burial of any such soldier, sailor or marine, and upon request therefor, to make application to the proper authorities under the government of the United States for a suitable headstone as is now or may hereafter be provided by act of congress, and to cause the same to be placed at the head of the grave of such deceased soldier, sailor or

marine. And also, to cause a suitable headstone to be placed at the head of the grave of the **deceased wife** or widow of such soldier, sailor or marine or army nurse if the same shall now or hereafter be provided by act of congress.

- Solution:
  - Change both references of “wife” to “spouse”

**Uniform Veterans’ Guardianship Act**  
**Act 321 of 1937**

**MCL 35.83 (Maintenance and support of ward)**

- Text:
  - Maintenance and support. A guardian shall not apply any portion of the estate of **his** ward for the support and maintenance of any person other than said ward, **his** minor children **and his wife (if she and the ward be living together)** except upon petition to and order of the court after a hearing, notice of which has been given the proper office of the veterans administration in the manner and within the time provided in section 9 of this act.
- Solution:
  - “His ward” should be “their ward”
    - Note: not strictly required but seemingly appropriate.
  - “His minor children” should be “their minor children”
    - Note: not strictly required but seemingly appropriate
  - “wife” should be “spouse”

**Michigan Veterans’ Facility**  
**Act 152 of 1885**

**MCL 36.11 (Veterans’ Facility; eligibility for admission; maintenance charges; dismissal; creation of veteran’s facilities operation fund; credit of money to fund; expenditures; assignment of money to board of managers as condition of admission; expenditure of assigned money; creation of posthumous funds; expenditures)**

- Text:
  - (3) The board of managers of the facilities may make a condition for admission to a facility that all applicants shall assign to the board of managers any balance of money accumulated while a member of the facility, or due to the applicant or on deposit with any bank, trust company, corporation, or with any individual, at the time of the death of the applicant. All such sums shall first be expended to **pay for all residual maintenance costs attributable to the deceased individual and shall then be paid to the wife**, minor children, or dependent mother or father, in the order named. If no such relative shall be found within a period of 2 years, or if no claim for the sums has been made within a period of 2 years, the balance of the money shall be paid into the posthumous fund, which is hereby created by this subsection. The posthumous fund shall be expended as prescribed by 1905 PA 313, MCL 36.61.

- Solution:
  - “paid to the wife” should “paid to the surviving spouse”.

**Act 284 of 1964 (City Income Tax Act)**

**MCL 141.641 (annual return; joint return)**

- Text:
  - (2) **A husband and wife may file** a joint return and, in such case, the tax liability is joint and several.
- Solution:
  - “A husband and wife may file” to “Spouses may file”

**Act 388 of 1976 (Michigan Campaign Finance Act)**

**MCL 169.261 (State campaign fund; creation; administration; tax designation; appropriation; distribution of money; transfer to general fund)**

- Text:
  - (2)“An individual whose tax liability under the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532, for a taxable year is \$3.00 or more may designate that \$3.00 be credited to the state campaign fund. In the case of a **joint return of husband and wife** having an income tax liability of \$6.00 or more, each spouse may designate that 3.00 be credited to the state campaign fund.”
- Solution:
  - “joint return of husband and wife” to “joint return of spouses”

**Michigan Estate Tax Act**  
**Act 188 of 1899**

**MCL 205.221 (Definitions)**

- Text:
  - (g)“Qualified heir” means an individual entitled to any beneficial interest in property who is the grandfather, grandmother, **father**, mother, husband, wife, child, legally adopted child, stepchild, brother, sister, **wife or widow of a son**, or **husband or widower of a daughter** of the decedent grantor, donor, or vendor, or for the use of a person to whom the decedent grantor, donor, or vendor stood in the mutually acknowledged relation of a parent, if the relationship began at or before the child's seventeenth birthday and continued until the death of the decedent grantor, donor, or vendor, or to or for the use of a lineal descendant of or a lineal descendant of a stepchild of the decedent grantor, donor, or vendor, or farm business partner, or to or for the use of any person to whom the decedent grantor, donor, or vendor stood in the mutually acknowledged relation of a farm business partner.

- Solution:
  - “wife or widow of a son” to “spouse or deceased spouse of a son”
  - “husband or widower of a daughter” to “spouse of a daughter”

**Act 281 of 1967 (Income Tax of 1967)**

**MCL 206.30 (“Taxable income” defined; personal exemption; single additional exemption; deduction not considered allowable federal exemption for purposes of subsection (2); allowable exemption or deduction for non-resident or part-year resident; subtraction of prizes under MCL 432.1 to 432.47 from adjusted gross income prohibited; adjusted personal exemption; adjustment on and after January 1, 2013; “retirement or pension benefits” defined; limitations and restrictions; “oil and gas” defined.)**

- Text:
  - (C)“Beginning January 1, 2013, for a person born in 1946 through 1952 who receives retirement or pension benefits from employment with a governmental agency that was not covered by the federal social security act, chapter 531, 49 Stat. 620, the sum of the deductions under subsection (1)(f)(i), (ii), and (iv) is limited to \$35,000.00 for a single return and, except as otherwise provided under this subdivision, \$55,000.00 for a joint return. **If both the husband and wife filing a joint return** receive retirement or pension benefits from employment with a governmental agency that was not covered by the federal social security act, chapter 531, 49 Stat. 620, the sum of the deductions under subsection (1)(f)(i), (ii), and (iv) is limited to \$70,000.00 for a joint return. After that person reaches the age of 67, the deductions under subsection (1)(f)(i), (ii), and (iv) do not apply and that person is eligible for a deduction of \$35,000.00 for a single return and \$55,000.00 for a joint return, or \$70,000.00 for a joint return if applicable, which deduction is available against all types of income and is not restricted to income from retirement or pension benefits. A person who takes the deduction under subsection (1)(e) is not eligible for the unrestricted deduction of \$35,000.00 for a single return and \$55,000.00 for a joint return, or \$70,000.00 for a joint return if applicable, under this subdivision.”
- Solution:
  - “If both the husband and wife filing a joint return” to “If both spouses filing a joint return”
- Text:
  - (D) “For a person born after 1952 who has reached the age of 62 through 66 years of age and who receives retirement or pension benefits from employment with a governmental agency that was not covered by the federal social security act, chapter 532, 49 Stat. 620, the sum of the deductions under subsection (1)(f)(i), (ii), and (iv) is limited to \$15,000.00 for a single return and, except as otherwise provided under this subdivision, \$15,000.00 for a joint return. **If both the husband and the wife filing a joint** return receive retirement or pension benefits from employment with a governmental agency that was not covered by the federal social security act, chapter 532, 49 Stat. 620, the sum of the deductions under subsection (1)(f)(i), (ii), and (iv) is limited to \$30,000.00 for a joint return.”

- Solution:
  - “If both the husband and the wife filing a joint return” to “If both spouses filing a joint return”

**MCL 206.311 (Tax return; form; content; verification; transmittal; remittance; extension, computation, and remittance of estimated tax due; interest; penalties; tentative return; payment of estimated tax; joint return; effect of filing copy of federal extension; automatic extension based on service in combat zone.)**

- Text:
  - (3) Taxpayers who are husband and wife and who file a joint federal income tax return pursuant to the internal revenue code shall file a joint return.
- Solution:
  - “Taxpayers who are husband and wife” to “Taxpayers who are married”

**MCL 206.504 (“Blind” and “claimant” defined)**

- Text:
  - (2) “Claimant” means an individual natural person who filed a claim under this chapter and who was domiciled in this state during at least 6 months of the calendar year immediately preceding the year in which the claim is filed under this chapter and includes a husband and wife if they are required to file a joint state income tax return. The 6-month residency requirement does not apply to a claimant who files for the home heating credit under section 527a.
- Solution:
  - “and includes a husband and wife” to “and includes spouses”

**MCL 206.522 (Determination of amount of claim; election of classification in which to make claims; single claimant per household entitled to credit; “totally and permanently disabled” defined; computation of credit by senior citizen; reduction of claim; tables; maximum credit; total credit allowable.)**

- Text:
  - (3) Only 1 claimant per household for a tax year is entitled to the credit, unless both the husband and wife filing a joint return are blind, then each shall be considered a claimant.
- Solution:
  - “unless both the husband and wife filing a joint return are blind” to “unless both spouses filing a joint return are blind”

**Act 134 of 1966 (Real Estate Transfer Tax)**

**MCL 207.505 (Exemptions to the Real Estate Transfer Tax)**

- Text:
  - (i)“Conveyances from a husband or wife **or husband and wife** creating or disjoining a tenancy by the entireties in the grantors or the grantor and his or her spouse.”
- Solution:
  - “or husband and wife” to “or both spouses”

**MCL 207.526 (Written instruments and transfers of property exempt from tax)**

- Text:
  - (i)“A conveyance from a husband or wife or **husband and wife** creating or disjoining a tenancy by the entireties in the grantors or the grantor and his or her spouse.”
- Solution:
  - “husband and wife” to “both spouses”

**MCL 211.27a (Property tax assessment; determining taxable value; adjustment; exception; "transfer of ownership" defined; qualified agricultural property; notice of transfer of property; applicability of subsection (10); definitions.)**

- Text:
  - (7b) “Transfer of ownership does not include the following: a transfer from a husband, a wife, **or a husband and wife** creating or disjoining a tenancy by the entireties in grantors or the grantor and his or her spouse.”
- Solution:
  - “or a husband and wife” to “or both spouses”

**MCL 211.7cc (principal residence; exemption from tax levied by local school district for school operating purposes; procedures; definitions)**

- Text:
  - (3) Except as otherwise provided in subsection (5), **a husband and wife who are required to file** or who do file a joint Michigan income tax return are entitled to not more than 1 exemption under this section. For taxes levied after December 31, 2002, a person is not entitled to an exemption under this section if any of the following conditions occur.
- Solution:
  - “a husband and wife who are required to file” to “spouses who are required to file”

**MCL 211.762 (Deferment of special assessments on homesteads; conveyance or transfer of or contract to sell homestead; termination of deferment; interest charge; notice.)**

- Text:
  - (1)The payment of special assessments assessed and due and payable on a homestead in any year in which the owner meets all of the terms and conditions of this act shall be deferred until 1 year after the owner's death, subject to further order by the probate court or until the homestead or any part of the homestead is conveyed or transferred to another or a contract to sell is entered into. The death of a spouse shall not terminate the deferment of special assessments for a homestead **owned by husband and wife under tenancy by the entirety** as long as the surviving spouse does not remarry. Special assessments deferred under this act may be paid in full at any time.”
- Solution:
  - “owned by husband and wife under tenancy by the entirety” to “owned by spouses under tenancy by the entirety” (note: the change presupposes that tenancy by the entirety has already been extended to same sex couples.)

**MCL 211.764 (Application for deferment; affidavit form; signature; contents; consent of mortgagee or land contract vendor; filing.)**

- Text:
  - An owner may apply to the local assessing officer for deferment of the payment of special assessments on the owner's homestead. The application shall be made upon an affidavit form to be furnished and made available by the department at convenient locations throughout the state. The affidavit form shall contain the following statement in 10-point boldface type located immediately above the affiant's signature: “If this deferment is authorized the state will place a lien on your property.” A person making a false affidavit for the purpose of obtaining deferment of special assessments under this act is guilty of perjury. **If the homestead is owned jointly by husband and wife,** each spouse shall sign and file the affidavit. If the homestead is encumbered by a mortgage or an unpaid balance on a land contract, a deferment of special assessments shall not be made without the written consent of the mortgagee or the land contract vendor, which shall be filed with the affidavit. The affidavit shall be filed with the local assessing officer at least 30 days after the due date of a special assessment or installment of a special assessment for which deferment is requested.
- Solution:
  - “If the homestead is owned jointly by husband and wife” to “If the homestead is owned jointly by both spouses”

**The Drain Code of 1956**  
**Act 40 of 1956**

**MCL 280.381 (Disqualification of commissioner; petition filed with probate judge)**

- Text:
  - Whenever the commissioner of any county shall receive a petition asking for the laying out, construction, cleaning out, deepening or widening of any drain, or a petition asking proceedings by virtue of which any assessment upon lands for benefits received would result, wherein such commissioner shall be interested by reason of himself, wife or child, owning lands that would be liable to an assessment for benefits upon the work or proceeding proposed to be done or had, and in cases where such commissioner may be otherwise disqualified to act in the making of apportionment of benefits, such commissioner shall file a copy of such petition with the judge of probate of the county, together with a statement signed by him, showing that he is disqualified to act in making such apportionment of benefits.
  
- Solution:
  - “himself” should be “themselves”
    - Note: not strictly required but seemingly appropriate
  - “wife” should be “spouse”

**MCL 280.74 (Release of right of way; acknowledgements; oaths, form, area, signature of wife, resolution covering street or public place; open drain)**

- Text:
  - Commissioners may take acknowledgments of releases of right of way and administer oaths in all proceedings in any way pertaining to drains under this act. A simple form of release of right of way and damages that shall set forth by reference to the survey of the drain, or by other convenient description, the particular land to be conveyed and signed and acknowledged by the person having the right to convey, shall be deemed a sufficient conveyance under the provisions of this act. All releases for rights of way shall be deemed to include sufficient ground on each side of the center line of such drain for the deposit of the excavations therefrom. It shall not be necessary for the wife to sign the release of right of way unless she has an interest in the land other than her inchoate right of dower. Whenever a portion of a drain shall be located within any street, highway or public place, then a resolution adopted by a majority vote of the governing body having jurisdiction over such street, highway or public place granting leave to construct such drain therein, designating the place to be traversed by said drain, shall be a sufficient release of the right of way, and shall be deemed a sufficient conveyance under this act, and said governing body may permit the construction of an open drain if such consent be set forth in such resolution.
  
- Solution:
  - “wife” should be “spouse”
  - “she has an interest” should be “they have an interest”

**Act 29 of 1970 (State Potato Industry Commission)**

**MCL 290.428 (Referendum; votes; rules; petition to terminate shipper assessments; referendum by mail; conditions for termination of shipper assessments; adoption of assessment increase; public hearing; findings and recommendations; assent to proposal.)**

- Text:
  - (6)For the purpose of referenda under this act, a grower is entitled to 1 vote representing a single firm, individual proprietorship, corporation, company, association, partnership, or husband-wife or family ownership.”
- Solution:
  - “or husband-wife” to “or spousal ownership”

**Act 232 of 1965 (Agricultural Commodities Marketing Act)**

**MCL 290.662 (referendum; director to establish procedures for determination of volume)**

- Text:
  - “The director shall establish procedures for determination of volume for the conduct of referendums and other necessary procedures. For the purpose of referendums under this act, a producer is entitled to 1 vote representing a single firm, individual proprietorship, corporation, company, association, partnership, husband-wife or family ownership.”
- Solution:
  - “husband-wife” to “spousal ownership”

**Oil and gas Mining**  
**Act 178 of 1941**

**MCL 319.104 (Fiduciaries; right to prosecute and defend suits; parties)**

- Text:
  - Executors, administrators and administrators with will annexed, receivers and trustees, may institute or defend such suits on behalf of their respective estates and trusts and the heirs, devisees, legatees, successors and assigns thereof. Infants and persons under legal disability may institute or defend suits by guardian or next of friend. Every person, including wives of owners, having any interest in such lands, whether in possession or otherwise, who is not a party plaintiff, shall be made a party defendant to such suit. In case of persons interested in such lands whose names are unknown, the bill of complaint shall so state, and such persons may be made parties to such suits by the name and description of “unknown owners.”
- Solution:
  - Technically there is no issue, “every person” is an inclusive phrase which would include same-sex couples.
  - If a change was still desired: “including wives of owners” to “including spouses of owners”

**Act 451 of 1994**  
**(Natural Resources and Environmental Protection Act)**

**MCL 324.36109 (Credit against state income tax or state single business tax.)**

- Text:
  - (3)If the farmland and related buildings covered by a development rights agreement under section 36104 or an agricultural conservation easement or purchase of development rights under section 36111b or 36206 are owned by more than 1 owner, each owner is allowed to claim a credit under this section based upon that owner's share of the property tax payable on the farmland and related buildings. The department of treasury shall consider the property tax equally apportioned among the owners unless a written agreement signed by all the owners is filed with the return, which agreement apportions the property taxes in the same manner as all other items of revenue and expense. If the property taxes are considered equally apportioned, a husband and wife shall be considered 1 owner, and a person with respect to whom a deduction under section 151 of the internal revenue code of 1986, 26 USC 151, is allowable to another owner of the property shall not be considered an owner.
- Solution:
  - “a husband and wife shall be considered 1 owner” to “spouses shall be considered 1 owner”

**Mental Health Code**  
**Act 258 of 1974**

**MCL 330.1800 (Definitions)**

- Text:
  - (h) “Parents” means the legal father and mother of an unmarried individual who is less than 18 years of age.
- Solution:
  - “the legal father and mother” to “the legal parents”

**Act 280 of 1939**  
**Social Welfare Act**

**MCL 400.32 (Continuation of assistance if person moves or is taken to another county; transfer of records; “resident of state” defined; continued absence from state as abandonment of residence; inapplicability of certain rules; requirements applicable to medical assistance eligibility; residence of husband and wife living separate and apart.)**

- Text:
  - (4)The residence of a husband shall not be considered to be the residence of the wife if they are living separate and apart. If a husband and wife are living separate and apart, each may have a separate residence dependent upon proof of the fact and not upon legal

presumption. This subsection shall not be construed to prohibit a person from acquiring or retaining a legal residence.

- Solution:
  - “The residence of a husband shall not be considered to be the residence of the wife” to “The residence of one spouse shall not be considered to be the residence of the wife”
  - “If a husband and wife are living separate and apart” to “If spouses are living separate and apart”

**Worker’s Disability Compensation Act of 1969**  
**Act 317 of 1969**

**MCL 418.118 (Domestic Servants)**

- Sec. 1 Text:
  - No household domestic servant shall be considered an employee if the person is a wife, child or other member of the employer's family residing in the home, and no householder shall be deemed a statutory principal within the meaning of section 171 for the purposes of this section.
- Solution:
  - “wife” should be “spouse”
    - Note: because of the clause: “other member of the employer’s family” this change is not strictly necessary but semantic in nature.

**MCL 418.335 (Cessation of payments upon remarriage of dependent wife or upon dependent person reaching certain age; reinstatement of dependency; persons to whom section is applicable)**

- Text:
  - Upon the remarriage of a dependent wife receiving compensation, such payments shall cease upon the payment to her of the balance of the compensation to which she would otherwise have been entitled but not to exceed the sum of \$500.00, and further compensation, if any, shall be payable to the person either wholly or partially dependent upon deceased for support at his death as provided in section 331(b). A worker's compensation magistrate shall determine the amount of compensation or portion thereof that shall be payable weekly to such wholly or partially dependent person for the remaining weeks of compensation. Where, at the expiration of the 500-week period, any such wholly or partially dependent person is less than 18 years of age, a worker's compensation magistrate may order the employer to continue to pay the weekly compensation, or some portion thereof, until such wholly or partially dependent person reaches the age of 18. The payment of compensation to any dependent child shall cease when the child reaches the age of 18 years, if at the age of 18 years he or she is neither physically nor mentally incapacitated from earning, or when the child reaches the age of 16 years and thereafter is self-supporting for 6 months. If the child ceases to be self-supporting thereafter, the dependency shall be reinstated. Such remaining compensation, if any, shall be payable to the person either wholly or partially dependent upon the deceased employee for support at the time of the employee's death, as provided in the case of the remarriage of a dependent wife.

- Solution:
  - “dependent wife” to “dependent spouse”
  - “Payment to her” to “payment to them”
  - “to which she would” to “to which they would”
  - “of a dependent wife” to “of a dependent spouse”

**Compensation of Injured Peace Officers**  
**Act 329 of 1937**

**MCL 419.102 (Peace officers; surviving spouse or dependents; compensation; last sickness and burial expenses.)**

- Text:
  - The surviving spouse or dependents of a peace officer of this state or of a political subdivision of this state who is killed as the result of active duty in enforcing the laws of this state or the laws of an adjoining state shall receive the sum of \$1,000.00 for defraying the expense of last sickness and burial and \$18.00 a week until a total sum of \$5,000.00 is paid. As used in this section, (a) “surviving spouse” means the spouse of the peace officer, if living, and until remarriage (b) “dependent” means the children of the peace officer, if dependent; **the mother, father, or both**, of the peace officer, if dependent; and the brothers and sisters of the peace officer, if dependent; in the order named. If the peace officer does not leave a surviving spouse or any dependents as defined in this section, the estate of the peace officer shall receive the sum of \$1,000.00 for the expense of the peace officer's last sickness and burial.
- Solution:
  - “the mother, father, or both” to “the mother, father, or both parents”

**Compensation of Injured Firefighters**  
**Act 9 of 1942**

**MCL 419.203 (Death benefits equivalent to amount provided under worker's disability compensation act; compensation of dependents.)**

- Text:
  - The surviving spouse and dependents of a fire fighter who is killed in safeguarding life or property outside his or her jurisdiction from damage due to an explosion, fire, or other disaster, however caused, or in transportation to or from a fire, explosion, or other disaster, however caused, outside his or her jurisdiction, shall receive the sum of \$500.00 for defraying the expense of burial, and compensation equivalent to the amount provided at the time of death of the fire fighter under the worker's disability compensation act of 1969, Act No. 317 of the Public Acts of 1969, being sections 418.101 to 418.941 of the Michigan Compiled Laws. Compensation shall be payable to the spouse of the fire fighter, if living, and until remarriage; the children of the fire fighter, while dependent; **the mother, father, or both**, of the fire fighter, while dependent; and the brothers and sisters of the fire fighter, while dependent; in the order named. If the fire fighter does not leave a surviving spouse or any dependents as defined in this section, the estate of the fire fighter shall receive the sum of \$500.00 for the expense of the fire fighter's burial.

- Solution:
  - “The mother, father, or both” to “the mother, father, or both parents”

**Michigan Liquor Control Code of 1998**  
**Act 58 of 1998**

**MCL 436.1801 (Granting or renewing license; surety; selling, furnishing, or giving alcoholic liquor to minor or to person visibly intoxicated; right of action for damage or personal injury; actual damages; institution of action; notice; survival of action; general reputation as evidence of relation; separate actions by parents; commencement of action against retail licensee; indemnification; defenses available to licensee; rebuttable presumption; prohibited causes of action; section as exclusive remedy for money damages against licensee; civil action subject to revised judicature act.)**

- Text:
  - (4)An action under this section shall be instituted within 2 years after the injury or death. A plaintiff seeking damages under this section shall give written notice to all defendants within 120 days after entering an attorney-client relationship for the purpose of pursuing a claim under this section. Failure to give written notice within the time specified shall be grounds for dismissal of a claim as to any defendants that did not receive that notice unless sufficient information for determining that a retail licensee might be liable under this section was not known and could not reasonably have been known within the 120 days. In the event of the death of either party, the right of action under this section shall survive to or against his or her personal representative. In each action by a husband, wife, child, or parent, **the general reputation of the relation of husband and wife** or parent and child shall be prima facie evidence of the relation, and the amount recovered by either the **husband**, wife, parent, or child shall be his or her sole and separate property. The damages, together with the costs of the action, shall be recovered in an action under this section. If the parents of the individual who suffered damage or who was personally injured are entitled to damages under this section, the father and mother may sue separately, but recovery by 1 is a bar to action by the other.
- Solution:
  - “the general reputation of the relation of husband and wife” to “the general reputation of spouses”

**Uniform Partnership Act**  
**Act 72 of 1917**

**MCL 449.6 (partnership; definition; effect of act as to prior and limited partnerships)**

- Text:
  - (1) A partnership is an association of **2 or more persons, which may consist of husband and wife**, to carry on as co-owners a business for profit; any partnership heretofore established **consisting of husband and wife only**, formed since January 10, 1942 shall constitute a valid partnership.
- Solution:
  - “which may consist of husband and wife” to “which may consist of spouses”

- Note: This change is primarily semantic, “may consist” is not exclusive so a change is not technically required.
- “consisting of husband and wife only” to “consisting of spouses only”

**Act 23 of 1993**  
**Michigan Limited Liability Company Act**

**MCL 450.4504 (membership interest as personal property)**

- Text:
  - (1) A membership interest is personal property and may be held in any manner in which personal property may be held. A husband and wife may hold a membership interest in joint tenancy in the same manner and subject to the same restrictions, consequences, and conditions that apply to the ownership of real estate held jointly by a husband and wife under the laws of this state, with full right of ownership by survivorship in case of the death of either.”
- Solutions:
  - “A husband and wife may hold a membership interest in joint tenancy” to “Spouses may hold a membership interest in joint tenancy”
  - “ownership of real estate held jointly by a husband and wife under the laws of this state” to “ownership of real estate held jointly by spouses under the laws of this state”

**Incorporation of Summer Resort Owners**  
**Act 137 of 1929**

**455.208 (Annual meeting; trustees, election, report)**

- Text:
  - The annual meeting of such association shall be held in its own county between June first and August thirty-first of each year, at such time and place as may be fixed by the board of trustees and such meeting may adjourn from day to day as may be necessary for the transaction of its business. At each annual meeting there shall be elected such number of trustees as shall be necessary to fill the places of trustees whose terms of office then expire, and all vacancies on such board. Such election shall be by ballot and choice of trustees shall be by a majority of all votes cast. Members may vote in person or by proxy filed with the secretary. Each member shall be entitled to 1 vote. Husbands and wives, owning property by entireties, shall each be entitled to 1 vote. Membership shall terminate upon the alienation of the property of a member. At each annual meeting the trustees shall make a report, in writing, of the management of the business of the corporation, the condition of its property, its assets and liabilities, and upon such other matters as may be proper and of general interest to the members.
- Solution:
  - “Husbands and wives” to “Spouses”
    - Note: this change presupposes that same-sex couples can own property by the entireties which is likely the case.

**Act 21 of 1939**  
**Regulatory Loan Act**

**MCL 493.17 (Assignment or order for payment of compensation to secure loan invalid; validity of chattel mortgage or lien in household goods' married borrower; signatures; written assent of spouse)**

- Text:
  - (2) “If the borrower is married, a chattel mortgage or other lien on household goods shall not be valid unless it is signed in person by both husband and wife. The written assent of a spouse under this section shall not be required when husband and wife have been living separate and apart for a period of not less than 5 months before the making of the chattel mortgage or other lien.”
- Solution:
  - “signed in person by both husband and wife” to “signed in person by both spouses”
  - “section shall not be required when husband and wife have been living separate” to “section shall not be required when spouses have been living separate”

**Act 218 of 1956**  
**The Insurance code of 1956**

**MCL 500.2207 (Insurable interest; personal insurance; rights of beneficiaries, creditors)**

- Text:
  - (1) “It shall be lawful for any husband to insure his life for the benefit of his wife, and for any father to insure his life for the benefit of his children, or of any one or more of them; and in case that any money shall become payable under the insurance, the same shall be payable to the person or persons for whose benefit the insurance was procured, his, her or their representatives or assigns, for his, her or their own use and benefit, free from all claims of the representatives of such husband or father, or of any of his creditors; and any married woman, either in her own name or in the name of any third person as her trustee, may cause to be insured the life of her husband, or of any other person, for any definite period, or for the term of life, and the moneys that may become payable on the contract of insurance, shall be payable to her, her representatives or assigns, free from the claims of the representatives of the husband, or of such other person insured, or of any of his creditors; and in any contract of insurance, it shall be lawful to provide that on the decease of the person or persons for whose benefit it is obtained, before the sum insured shall become payable, the benefit thereof shall accrue to any other person or persons designated; and such other person or persons shall, on the happening of such contingency, succeed to all the rights and benefits of the deceased beneficiary or beneficiaries of the policy of insurance, notwithstanding he, she or they may not at the time have any such insurable interest as would have enabled him, her or them to obtain a new insurance; and the proceeds of any policy of life or endowment insurance, which is payable to the wife, husband or children of the insured or to a trustee for the benefit of the wife, husband or children of the insured, including the cash value thereof, shall be exempt from execution or liability to any creditor of the insured; and said exemption shall apply to insurance heretofore or hereafter issued; and shall apply to insurance payable to the above enumerated persons or classes of persons, whether they shall have become entitled thereto as originally designated beneficiaries, by beneficiary designation

subsequent to the issuance of the policy, or by assignment (except in case of transfer with intent to defraud creditors).”

- Solutions:
  - “benefit of his wife” to “benefit of his spouse”
  - “life of her husband” to “life of her spouse”
    - Note: While a change to the statute may not necessarily be required, language that authorizes benefits regardless of gender is preferable.

#### **MCL 500.2209 (Insurable interest; married woman; right to proceeds, devise.)**

- Text:
  - (1) “It shall be lawful for any married woman, by herself, and in her name or in the name of any third person, with his assent, as her trustee, to cause to be insured for her sole use, **the life of her husband** or the life of any other person, in any life insurance company of any nature whatever, located in either of the states of the United States of America or in Great Britain, for any definite period, or for the term of his natural life; **and in case of her surviving her husband,** or such other person insured in her behalf, the sum or net amount of the policy of insurance due and payable by the terms of the insurance, shall be payable to her, to and for her own use, free from the claims of the representatives of her **husband,** or of such other person insured, or of any of his creditors, but such exemption shall not apply where the amount of premium annually paid shall exceed the sum of \$300.00.”
- Solution:
  - “the life of her husband” to “the life of her spouse”
    - Note: this is not strictly required given the inclusive clause: “or the life of any other person”.
  - “in case of her surviving her husband” to “in case of her surviving her spouse”
    - Note: this is not strictly required given the inclusive clause: “or such other person”
- Text:
  - (2) “In case of the death of the wife before the **decease of her husband, or of such other person insured,** the amount of the insurance may be made payable after her death to her children, for their use, and to their guardian, if under age, or the amount of the policy may be disposed of by such married woman by a last will and testament.”
- Solution:
  - “decease of her husband” to “decease of her spouse”
    - Note: not strictly required given the inclusive clause: “of such other person insured”

#### **MCL 500.3110 (dependents of deceased person; termination of dependency; accrual of personal protection benefits)**

- Text:
  - (1a) “**a wife is dependent on a husband** with whom she lives at the time of his death.”

- Solution:
  - “a wife is dependent on a husband” to “a wife is dependent on a spouse”
- Text:
  - (1b) “A husband is dependent on a wife with whom he lives at the time of her death.”
- Solution:
  - “a husband is dependent on a wife” to “a husband is dependent on a spouse”

**MCL 500.3402 (Disability insurance policy; provisions required.)**

- Text:
  - (3) It purports to insure only 1 person, except that a policy may insure, originally or by subsequent amendment, upon the application of an adult member of a family who shall be deemed the policyholder, any 2 or more eligible members of that family, including husband, wife, dependent children or any children under a specified age which shall not exceed 19 years and any other person dependent upon the policyholder;
- Solution:
  - “including husband, wife, dependent children” to “including spouses, dependent children”

**Revised Statutes of 1846**  
**Of marriage and the solemnization thereof**

**551.1 (marriage between individuals of same sex an invalid contract)**

- Text:
  - Marriage is inherently a unique relationship between a man and a woman. As a matter of public policy, this state has a special interest in encouraging, supporting, and protecting that unique relationship in order to promote, among other goals, the stability and welfare of society and its children. A marriage contracted between individuals of the same sex is invalid in this state.
- Solution:
  - Repeal entire section
  - At a minimum annotate section to say: “this section was held invalid as in conflict with U.S. Const. Am. XIV.”

**Foreign Marriages**  
**Act 168 of 1939**

**551.271 (Marriages solemnized in another state validated)**

- Text:
  - (1) Except as otherwise provided in this act, a marriage contracted between a man and a woman who are residents of this state and who were, at the time of the marriage, legally

competent to contract marriage according to the laws of this state, which marriage is solemnized in another state within the United States by a clergyman, magistrate, or other person legally authorized to solemnize marriages within that state, is a valid and binding marriage under the laws of this state to the same effect and extent as if solemnized within this state and according to its laws.

- Solution:
  - “between a man and a woman” to “between two parties”
- Text:
  - (2) This section does not apply to a marriage contracted between individuals of the same sex, which marriage is invalid in this state under section 1 of chapter 83 of the revised statutes of 1846, being section 551.1 of the Michigan Compiled Laws.
- Solution:
  - Section 2 needs to be removed entirely
  - At a minimum annotate section to say: “this section was held invalid as in conflict with U.S. Const. Am. XIV.”

**Revised Statutes of 1846**  
**Chapter 83. Of marriage and the solemnization thereof**

**MCL 551.3 (Incapacity; persons man prohibited from marrying)**

- Text:
  - A man shall not marry his mother, sister, grandmother, daughter, granddaughter, stepmother, grandfather's wife, son's wife, grandson's wife, wife's mother, wife's grandmother, wife's daughter, wife's granddaughter, brother's daughter, sister's daughter, father's sister, mother's sister, or cousin of the first degree, or another man.
- Solution:
  - “another man”- remove entirely
  - The following reflect changes that are not technically required by Obergefell but are necessary to maintain the intent of the statute in light of Obergefell.
    - “Grandfather’s wife” to “grandfather’s spouse”
    - “son’s wife” to “son’s spouse”
    - “Grandson’s wife” to “grandson’s spouse”
    - “wife’s mother” to “spouse’s mother”
    - “wife’s grandmother” to “spouse’s grandmother”
    - “wife’s daughter” to “spouse’s daughter”
    - “wife’s granddaughter” to “spouse’s granddaughter”

**Revised Statutes of 1846, Ch. 83**  
**Of Marriage and the solemnization thereof**

**MCL 551.4 (Incapacity; persons woman prohibited from marrying.)**

- Text:
  - “A woman shall not marry her father, brother, grandfather, son, grandson, stepfather, grandmother's husband, daughter's husband, granddaughter's husband, husband's father, husband's grandfather, husband's son, husband's grandson, brother's son, sister's son, father's brother, mother's brother, or cousin of the first degree, or another woman.”
- Solution:
  - Change to “a woman shall not marry her father, brother, grandfather, son, grandson, stepfather, grandmother’s spouse, daughter’s spouse, granddaughter’s spouse, spouse’s father, spouse’s grandfather, spouse’s son, spouse’s grandson, brother’s son, sister’s son, father’s brother, mother’s brother, or cousin of the first degree.”

**MCL 551.9 (Solemnization of marriage; form; declaration by parties; witnesses).**

- Text:
    - In the solemnization of marriage, no particular form shall be required, except that the parties shall solemnly declare, in the presence of the person solemnizing the marriage and the attending witnesses, that they take each other as husband and wife; and in every case, there shall be at least 2 witnesses, besides the person solemnizing the marriage, present at the ceremony.
  - Solution:
    - “that they take each other as husband and wife” to “that they take each other as spouses”
- Act 259 of 1909

**MCL 552.101 (Judgment of divorce or separate maintenance; provision in lieu of dower; determining rights of wife or husband in and to policy of life insurance, endowment, or annuity; discharge of liability on policy; determination of rights; assignment of rights.)**

- Text:
  - (2)“Each judgment of divorce or judgment of separate maintenance shall determine all rights of the wife in and to the proceeds of any policy or contract of life insurance, endowment, or annuity upon the life of the husband in which the wife was named or designated as beneficiary, or to which the wife became entitled by assignment or change of beneficiary during the marriage or in anticipation of marriage. If the judgment of divorce or judgment of separate maintenance does not determine the rights of the wife in and to a policy of life insurance, endowment, or annuity, the policy shall be payable to the estate of the husband or to the named beneficiary if the husband so designates. However, the company issuing the policy shall be discharged of all liability on the policy by payment of its proceeds in accordance with the terms of the policy unless before the payment the company receives written notice, by or on behalf of the insured or the estate of the insured, 1 of the heirs of the insured, or any other person having an interest in the policy, of a claim under the policy and the divorce.”
- Solutions:
  - “all rights of the wife” to “all rights of the spouse”

- “upon the life of the husband in which the wife” to “upon the life of their spouse in which the spouse”
  - “or to which the wife became entitled” to “or to which the spouse became entitled”
  - “determine the rights of the wife” to “determine the rights of the spouse”
  - “the policy shall be payable to the estate of the husband or to the named beneficiary if the husband so designates” to “the policy shall be payable to the estate of their husband or to the named beneficiary if their spouse so designates”
- Text:
    - (3) “Each judgment of divorce or judgment of separate maintenance shall determine all rights of the husband in and to the proceeds of any policy or contract of life insurance, endowment, or annuity upon the life of the wife in which the husband was named or designated as beneficiary, or to which he became entitled by assignment or change of beneficiary during the marriage or in anticipation of marriage. If the judgment of divorce or judgment of separate maintenance does not determine the rights of the husband in and to the policy of life insurance, endowment, or annuity, the policy shall be payable to the estate of the wife, or to the named beneficiary if the wife so designates. However, the company issuing the policy shall be discharged of all liability on the policy by payment of the proceeds in accordance with the terms of the policy unless before the payment the company receives written notice, by or on behalf of the insured or the estate of the insured, 1 of the heirs of the insured, or any other person having an interest in the policy, of a claim under the policy and the divorce.”
  - Solution:
    - In light of the changes to the preceding section, this section should likely be removed entirely.
  - Text:
    - (4) “Each judgment of divorce or judgment of separate maintenance shall determine all rights, including any contingent rights, of the husband and wife in and to all of the following:”
  - Solution:
    - “including any contingent rights, of the husband and wife” to “including any contingent rights, of the spouses”

**MCL 552.102 (Realty owned jointly or by entireties; effect of divorce without determination of ownership in decree.)**

- Text:
  - Every husband and wife owning real estate as joint tenants or as tenants by entireties shall, upon being divorced, become tenants in common of such real estate, unless the ownership thereof is otherwise determined by the decree of divorce.
- Solution:
  - “Every husband and wife” to “Spouses”

**Act 310 of 1996**  
**Uniform interstate family support act**

**MCL 552.1328 (physical presence of petitioner not required; documents admissible as evidence; testimony)**

- Text:
  - (8)The defense of immunity based on the relationship of husband and wife or parent and child does not apply in a proceeding under this act.
  
- Solution:
  - “based on the relationship of husband and wife” to “based on the relationship as spouses”

**MCL 552.23 (judgment of divorce or separate maintenance; further award of real and personal estate; transmittal of payments to department of human services; service fee; failure or refusal to pay service fee; contempt; “state disbursement unit or “SDU” defined.)**

- Text:
  - (3) If the court appoints the friend of the court custodian, receiver, trustee, or escrow agent of assets owned by a husband and wife, or either of them, the court may fix the amount of the fee for such service, to be turned over to the county treasurer and credited to the general fund of the county. The court may hold in contempt a person who fails or refuses to pay a fee ordered under this subsection.
  
- Solution:
  - “assets owned by a husband and wife” to “assets owned by spouses”

**MCL 552.27 (Alimony or allowance for support and education of children as lien; default; powers of court.)**

- Text:
  - (D) Award a division between the husband and wife of the real and personal estate of either party or of the husband and wife by joint ownership or right as the court considers equitable and just.
  
- Solution:
  - “division between the husband and wife” to “division between the spouses”
  - “of the husband and wife by joint ownership” to “of the spouses by joint ownership”

**MCL 552.34 (action to annul marriage of a minor)**

- Text:
  - “An action to annul a marriage on the ground that 1 of the parties was under the age of legal consent, as provided in section 3 of Act No. 128 of the Public Acts of 1887, being section 551.103 of the Michigan Compiled Laws, may be brought by the parent or

guardian entitled to the custody of the minor or by the next friend of the minor, but the marriage shall not be annulled on the application of a party who was of the age of legal consent at the time of the marriage, or when it appears that the parties, after they had attained the age of consent, **had freely cohabited as husband and wife.**"

- Solution:
  - “had freely cohabited as husband and wife” to “had freely cohabited as spouses”

#### **MCL 552.36 (Marriage annulment; action by party to marriage)**

- Text:
  - A party to a marriage who, at the time of the marriage, was not capable in law of contracting and who later becomes capable in law of contracting may bring an action to annul the marriage. The court shall not, however, annul the marriage if the court finds that the **parties cohabited as husband and wife** after the party became capable in law of contracting.
- Solution:
  - “parties cohabited as husband and wife” to “parties cohabited as spouses”

#### **MCL 552.37 (Marriage annulment; ground of force or fraud; effect of voluntary cohabitation)**

- Text:
  - No marriage shall be annulled on the ground of force or fraud, if it shall appear that, at any time before the commencement of the suit, there was a voluntary cohabitation **of the parties as husband and wife.**
- Solution:
  - “of the parties as husband and wife” to “of the parties as spouses”

#### **Act 299 of 1905** **Change of name of divorced woman**

#### **MCL 552.391 (divorced woman; change of name)**

- Text:
  - “The circuit courts of this state, whenever a decree of divorce is granted, may, at the instance of the woman, whether complainant or defendant, decree to restore to her her [sic] birth name, **or the surname she legally bore prior to her marriage to the husband in the divorce action,** or allow her to adopt another surname if the change is not sought with any fraudulent or evil intent.”
- Solution:
  - “or the surname she legally bore prior to her marriage to the husband in the divorce action” to “or the surname she legally bore prior to her marriage to their spouse in the divorce action”

**MCL 552.9f (Divorce; taking of testimony; minor children; perpetuating testimony; nonresident defendant, residence of plaintiff.)**

- Text:
  - No proofs or testimony shall be taken in any case for divorce until the expiration of 60 days from the time of filing the bill of complaint, except where the cause for divorce is desertion, or when the testimony is taken conditionally for the purpose of perpetuating such testimony. In every case where there are dependent minor children under the age of 18 years, no proofs or testimony shall be taken in such cases for divorce until the expiration of 6 months from the day the bill of complaint is filed. In cases of unusual hardship or such compelling necessity as shall appeal to the conscience of the court, upon petition and proper showing, it may take testimony at any time after the expiration of 60 days from the time of filing the bill of complaint. Testimony may be taken conditionally at any time for the purpose of perpetuating such testimony. When the defendant in any case for divorce is not domiciled in this state at the time of commencing the suit or shall not have been domiciled herein at the time the cause for divorce arose, before any decree of divorce shall be granted the complainant must prove that the parties have **actually lived and cohabited together as husband and wife within this state**, or that the complainant has in good faith resided in this state for 1 year immediately preceding the filing of the bill of complaint for divorce.
- Solution:
  - “actually lived and cohabited together as husband and wife within this state” to “actually lived and cohabited together as spouses within this state”

**Revised Statute of 1846 Ch. 62**

**Of the nature and qualities of estates in real and personal property, and the alienation thereof.**

**MCL 554.45 (Land conveyance; exceptions to preceding section.)**

- Text:
  - The preceding section shall not apply to mortgages, nor to devises or grants made in trust, or made to executors, **or to husband and wife.**
- Solution:
  - “or to husband and wife” to “or to spouses”

**Marriage License**  
**Act 128 of 1887**

**551.101 (marriage license; requirements; place to obtain, delivery to person officiating)**

- Text:
  - It shall be necessary for all parties intending to be married to obtain a marriage license from the county clerk of the county in **which either the man or woman resides**, and to deliver the said license to the clergyman or magistrate who is to officiate, before the marriage can be performed. If both parties to be married are non-residents of the state it shall be necessary to obtain such license from the county clerk of the county in which the marriage is to be performed.

- Solution:
  - “which either the man or woman resides” to “which either party desiring to be married resides”

**Revised Statutes of 1846**  
**Chapter 83. Of Marriage and the solemnization thereof**

**MCL 551.2 (Marriage as civil contract; consent; license; solemnization)**

- Text:
  - So far as its validity in law is concerned, marriage is a civil contract between a **man and a woman**, to which the consent of parties capable in law of contracting is essential. Consent alone is not enough to effectuate a legal marriage on and after January 1, 1957. Consent shall be followed by obtaining a license as required by section 1 of Act No. 128 of the Public Acts of 1887, being section 551.101 of the Michigan Compiled Laws, or as provided for by section 1 of Act No. 180 of the Public Acts of 1897, being section 551.201 of the Michigan Compiled Laws, and solemnization as authorized by sections 7 to 18 of this chapter.
- Solution:
  - “between a man and a woman” to “between two parties”

**Issuance of Marriage license without publicity**  
**Act 180 of 1897**

**MCL 551.201 (issuance of marriage license without publicity; conditions; application; notice; consent; exceptions; order)**

- Text:
  - (1) When a person desires to keep the exact date of his or her marriage **to a person of the opposite sex a secret**, the judge of probate may issue, without publicity, a marriage license to any person making application, under oath, if there is good reason expressed in the application and determined to be sufficient by the judge of probate.
- Solution:
  - Remove words “to a person of the opposite sex”

**Foreign marriages**  
**Act 168 of 1939**

**MCL 551.272 (Marriage not between man and woman invalidated)**

- Text:
  - This state recognizes marriage as inherently a unique relationship between a man and a woman, as prescribed by section 1 of chapter 83 of the Revised Statutes of 1846, being section 551.1 of the Michigan Compiled Laws, and therefore a marriage that is not

between a man and a woman is invalid in this state regardless of whether the marriage is contracted according to the laws of another jurisdiction.

- Solution:
  - This section should be repealed.
    - At a minimum annotate section to say: “This section was held invalid as in conflict with U.S. Const. Am. XIV. Obergefell v Hodges, 135 S. Ct. 1039 (2015).”

**Alimony Awarded by Court of Another State**  
**Act 52 of 1911**

**MCL 552.122 (Stay of proceedings)**

- Text:
  - If the defendant in this state shows **that he has** made proper application in the court of the other state for a reduction or any further order in relation to the alimony in the courts of the other state, the court in this state may stay the proceedings in this state on such terms as it desires to impose.
- Solution:
  - “that he has” to “that they have”

**Act 210 of 1927**

**MCL 557.101 (terminating tenancy by entirety)**

- Text:
  - In all cases **where husband and wife** own any interest in land as tenants by the entirety, such tenancy by the entirety may be terminated by a conveyance from either one to the other of his or her interest in the land so held.
- Solution:
  - “where husband and wife” to “where spouses”

**Act 212 of 1927**

**MCL 557.151 (Evidence of indebtedness payable to husband and wife; ownership in joint tenancy)**

- Text:
  - All bonds, certificates of stock, mortgages, promissory notes, debentures, or other evidences of indebtedness hereafter made payable **to persons who are husband and wife, or made payable to them as endorsees or assignees, or otherwise, shall be held by such husband and wife in joint tenancy** unless otherwise therein expressly provided, in the same manner and subject to the same restrictions, consequences and conditions as are incident to the **ownership of real estate held jointly by husband and wife** under the laws of this state, with full right of ownership by survivorship in case of the death of either.

- Solutions:
  - “to persons who are husband and wife” to “to persons who are spouses”
  - “shall be held by such husband and wife in joint tenancy” to “shall be held by such spouses in joint tenancy”
  - “ownership of real estate held jointly by husband and wife” to “ownership of real estate held jointly by spouses”

**Act 216 of 1981**

**MCL 557.21 (Status of property acquired by woman before or after marriage; earnings of married woman.)**

- Text:
  - If a woman acquires real or personal property before marriage or becomes entitled to or acquires, after marriage, real or personal property through gift, grant, inheritance, devise, or other manner, that property is and shall remain the property of the woman and be a part of the woman's estate. She may contract with respect to the property, sell, transfer, mortgage, convey, devise, or bequeath the property in the same manner and with the same effect as if she were unmarried. The property shall not be liable for the debts, obligations, or engagements of any other person, **including the woman's husband**, except as provided in this act.
- Solution:
  - “including the woman’s husband” to “including the woman’s spouse”
    - Note, because of the inclusive clause “any other person” this change is primarily semantic and not strictly required.

**Act 216 of 1981**

**Rights and Liabilities of Married Women**

**MCL 557.24 (Contract by married woman; liability of husband for breach of contract)**

- Text:
  - (2) **“The husband of a married woman** shall not be liable for breach of a contract which was entered into by the married woman and which relates to the separate property of the married woman as provided in subsection (1) **unless the husband** acted as a surety, co-signor, or guarantor on the contract.”
- Solutions:
  - “The husband of a married woman” to “The spouse of a married woman”
  - “Unless the husband” to “unless the spouse”

**MCL 557.25 (Married woman as surety for debt or obligation of other person; judgment against married woman; satisfaction)**

- Text:
  - A married woman may act as a surety for the debt or obligation of another person, including the debt of her husband, by signing a written instrument providing for the suretyship. A judgment entered against the married woman as a surety may be satisfied out of her separate property as described in section 1, whether or not the contract of suretyship benefits or concerns that separate property.
- Solution:
  - “including the debt of her husband” to “including the debt of her spouse”
    - Note, because “of another person” is inclusive the change is primarily semantic and not strictly necessary.

**Act 39 of 1948**

**MCL 557.253 (Repeal of community property act; community property on effective date of repeal, continuance, notice of claim.)**

- Text:
  - “Any property which, at the time this act takes effect, constitutes community property by virtue of the provisions of Act No. 317 of the Public Acts of 1947 shall continue to be community property and remain subject to the provisions of said act and for such purpose said act shall continue in force: Provided, That, except where the conveyance or other instrument of title under which the same was acquired or other evidence of ownership thereof expressly states the intention that such property shall be community property, any such property shall, upon the expiration of 1 year after the time this act takes effect, be deemed to be the separate property of the husband or the wife, or both, according to the name or names set forth in the conveyance or other instrument of title under which such property was acquired or other evidence of ownership thereof, unless, within such 1 year period, either spouse having an interest therein, or any of the devisees, legatees, heirs or distributes [sic] of either of them who shall have died prior to or during the running of such 1 year period, shall file notice of claim that such property constitutes community property. Such notice of claim, to be effective, shall be in writing, shall contain a description of each item of property to which the same relates, shall be executed by the party making the same in the manner required for the execution of deeds and shall be filed in the office of the register of deeds for the county in which the spouse by whom, or in whose behalf, the same is made resides at the time of the filing thereof, or, in the event that such spouse shall have died, for the county in which such spouse resided at the time of death. In the event that such notice of claim relates to real property located in any other county or counties, to be effective as to such property, a duplicate original of such notice of claim shall also be filed in the office of the register of deeds for each such county. No disability of any kind or lack of knowledge on the part of anyone shall suspend the running of the time for filing such notice of claim, but such notice may be executed and filed by any other person acting in behalf of any party by whom such notice of claim may be filed who is under a disability or otherwise unable to make such claim in his or her own behalf.”

- Solution:
  - “separate property of the husband or wife or both” to “separate property of one or both spouses”

**MCL 557.254 (Repeal of community property act; community property thereafter derived, continuance, notice of claim)**

- Text:
  - “Any property hereafter derived from property which constitutes community property by virtue of the provisions of Act No. 317 of the Public Acts of 1947 shall constitute community property and remain subject to the provisions of said act and for such purpose said act shall continue in force: Provided, That, except where the conveyance or other instrument of title under which the same is acquired or other evidence of ownership thereof expressly states the intention that such property shall be community property, any such property acquired within 1 year after the time this act takes effect shall be deemed to be **separate property of the husband or the wife, or both,** according to the name or names set forth in the conveyance or other instrument of title under which such property is acquired or other evidence of ownership thereof, unless within such 1 year period either spouse having an interest therein, or any of the devisees, legatees, heirs or distributees [sic] of either of them who shall have died prior to or during the running of such 1 year period, shall file notice of claim that such property constitutes community property: And provided further, That any such property acquired after the expiration of such 1 year period shall be deemed to be separate property, as aforesaid, unless the conveyance or other instrument of title under which such property is acquired or other evidence of ownership thereof shall expressly state the intention that such property shall constitute community property. All of the provisions of section 3 of this act with respect to any notice of claim pursuant thereto shall be applicable with respect to any notice of claim under the provisions of this section.”
- Solution:
  - “separate property of the husband or the wife, or both” to “separate property of one or both spouses”

**MCL 557.26 (Pledge or assignment by married woman of interest in separate property as security for debt of other person; contract by married woman giving general guarantee; satisfaction of judgment.)**

- Text:
  - (1) A married woman may enter into a written contract pledging or assigning her interest in her separate property, as described in section 1, as security for the debt of another person, **including the debt of her husband.** If a married woman signs a written contract pledging or assigning an interest in her separate property as security for the debt **of another person or her husband,** a judgment rendered for payment of the debt may be satisfied out of that separate property whether or not the separate property derives a benefit from the pledge or assignment.”
- Solutions:
  - “including the debt of her husband” to “including the debt of her spouse”
  - “of another person or her husband” to “or another person or her spouse”

- Both changes are semantic and not strictly required.
- Text:
  - (2) A married woman may enter into a written contract giving a general guarantee obligating her personally for the debt of another person, including the debt of her husband. If the married woman signs such a written contract, a judgment rendered for payment of the debt may be satisfied out of any of the separate property of the married woman described in section 1, whether or not the separate property derives a benefit from the general guarantee.”
- Solution:
  - “including the debt of her husband” to “including the debt of her spouse”
    - Note: the change is semantic and not strictly required”

**Act 288 of 1975.**

**MCL 557.71 (Equal rights of husband and wife holding property as tenants by entirety).**

- Text:
  - A husband and wife shall be equally entitled to the rents, products, income, or profits, and to the control and management of real or personal property held by them as tenants by the entirety.
- Solution:
  - “A husband and wife” to “Spouses”

**Act 126 of 1925**

**MCL 557.81 (Sale of land held in entirety; survivorship of rights of vendor)**

- Text:
  - “In all cases where a husband and wife shall sell land held as a tenancy by the entirety and accept in part payment for the purchase price the note or other obligation of said purchaser payable to said husband and wife, secured by a mortgage on said land payable to husband and wife, the said debt together with all interest thereon, unless otherwise expressly stated in said mortgage, after the death of either shall be payable to the survivor, and the title to said mortgage shall vest in the survivor, and in case a contract for the sale of property owned by the husband and wife as tenants by the entirety, is entered into by them as vendors, the same provisions herein applying to the rights of the survivor in mortgages as above set forth, shall apply to the survivor of the contract.”
- Solutions:
  - “where a husband wife shall” to “where spouses shall”
  - “purchaser payable to said husband and wife” to “purchaser payable to said spouses”
  - “on said land payable to husband and wife” to “on said land payable to spouses”
  - “property owned by the husband and wife” to “property owned by the spouses”

**Act 21 of 1861**  
**Confirmation of certain deeds and instruments**

**MCL 565.602 (married woman’s joint deed with husband; validity)**

- Text:
  - All deeds of lands situated in this state, heretofore or hereafter made by any **married woman jointly with her husband** by their attorney in fact, under a joint power of attorney, executed and acknowledged as required in the **joint deed of a husband and wife**, and recorded in the office of the register of deeds of the proper county, shall be taken and deemed as between the parties thereto, and all persons claiming under or through them as valid and effectual to convey the legal title of the premises therein described, as if the same had been executed and acknowledged **by the husband and wife in person.**
- Solution:
  - “married woman jointly with her husband” to “married woman jointly with her spouse”
  - “joint deed of a husband and wife” to “joint deed of spouses”
  - “by the husband and wife in person” to “by the spouses in person”

**Act 236 of 1961**  
**Revised Judicature Act of 1961**

**MCL 600.1410 (Legal impediment to marriage as bar to action.)**

- Text:
  - If 2 person have **lived together as husband and wife**, and a legal impediment existed to the marriage of either of the persons, their issue and the person that entered the relation in the good faith belief that the marriage was lawful are entitled to the same damages in a civil action as though no such impediment existed, when the other of such persons or their issue is injured or dies as a result of the negligent act or omission of another.
- Solution:
  - “lived together as husband and wife” to “lived together as spouses”

**MCL 600.2005 (Married women; tort; action against both spouses)**

- Text:
  - “No suit **may be brought against husband and wife**, jointly, **or against the husband alone, for any tort of the wife**, unless such tort was committed under such circumstances as to render them both liable.”
- Solution:
  - “may be brought against husband and wife” to “may be brought against a wife and her spouse”
  - “or against the husband alone, for any tort of the wife” to “or against the spouse alone, for any tort of the wife”

### **MCL 600.2162 (Husband or wife as witness for or against other)**

- Text:
  - (1) In a civil action or administrative proceeding, a husband shall not be examined as a witness for or against his wife without her consent or a wife for or against her husband without his consent, except as provided in subsection (3).
- Solution:
  - Change entire section to: “In a civil action or administrative proceeding, a spouse shall not be examined as a witness for or against their spouse without their consent, except as provided in subsection (3).

### **Revised Judicature Act of 1961** **Act 236 of 1961**

### **MCL 600.2807 (Property owned as tenants by the entirety; priority; exceptions; sale or refinance of property subject to judgement lien; limitation on proceeds)**

- Text:
  - (1) A judgment lien does not attach to an interest in real property owned as tenants by the entirety unless the underlying judgment is entered against both the husband and wife.
- Solution:
  - “against both the husband and wife” to “against both spouses”

### **MCL 600.3344 (Release of interest by married woman; payment from proceeds of sale; effect on rights)**

- Text:
  - Any married woman may release her right, interest, or estate to her husband and lawfully acknowledge this release. If the release is executed outside of this state it shall be executed, acknowledged, and certified as the laws of this state require for the execution, acknowledgment, and certification of deeds in any other state, territory, or district of the United States. Upon the release the shares of the sale arising from her contingent interest shall be paid to her. This release shall be a bar to her right, estate, or claim.
- Solution:
  - “estate to her husband” to “estate to her spouse”

### **MCL 600.5451 (bankruptcy; exemption for property of estate; exception; exempt property sold, damaged, destroyed, or acquired for public use; amounts adjusted by state treasurer; definitions)**

- Text:
  - (1n)Property described in section 1 of 1927 PA 212, MCL 557.151, or real property, held jointly by a husband and wife as a tenancy by the entirety, except that this exemption does not apply with regard to a claim based on a joint debt of the husband and wife.

- Solutions:
  - “jointly by a husband and wife” to “jointly by spouses”
  - “joint debt of the husband and wife” to “joint debt of the spouses”

**MCL 600.6023a (property held jointly by husband and wife; exemption under judgment entered against 1 spouse)**

- Text:
  - Property described in section 1 of 1927 PA 212, MCL 557.151, or real property, held **jointly by a husband and wife** as a tenancy by the entirety is exempt from execution under a judgment entered against only 1 spouse.
- Solution:
  - “jointly by a husband and wife” to “jointly by spouses”

**Revised Judicature Act of 1961**  
**Act 236 of 1961**

**MCL 600.6131 (Prima facie case; burden of proof; proceedings before sale on execution; transfer of property within 1 year prior to commencement of action)**

- Text:
  - (3) Where it appears that the judgment debtor at a time within 1 year prior to the date of the commencement of the action in which the judgment is entered has had title to or has paid the purchase price of any real or personal property to which **at the time of the examination his wife**, or a relative or a person on confidential terms with the judgment debtor may claim title or right of possession, the burden of proof shall be upon the judgment debtor, or person claiming title or right of possession, to establish that the transfer or **gift from him** was not made for the purpose of delaying, hindering, and defrauding creditors.
- Solution:
  - “of the examination his wife” to “of the examination their spouse”
  - “gift from him” to “gift from them”
    - Note: not strictly required by Obergefell but a semantic change reflecting the understanding that this statute applies to both men and women.

**Estates and Protected Individuals Code**  
**Act 386 of 1998**

**MCL 700.2114 (Parent and child relationship)**

- Text:
  - (1a) If a child is born or conceived during a marriage, both spouses are presumed to be the natural parents of the child for purposes of intestate succession. A child conceived **by a married woman with the consent of her husband** following utilization of assisted reproductive technology is considered as their child for purposes of intestate succession.

Consent of the husband is presumed unless the contrary is shown by clear and convincing evidence. If a man and a woman participated in a marriage ceremony in apparent compliance with the law before the birth of a child, even though the attempted marriage may be void, the child is presumed to be their child for purposes of intestate succession.

- Solutions:
  - “by a married woman with the consent of her husband” to “by a married woman with the consent of her spouse”
  - “Consent of the husband is presumed” to “consent of the spouse is presumed”
  - “If a man and a woman” to “If two spouses”

#### **MCL 700.2801 (effect of divorce, annulment, decree of separation, bigamy, and absence)**

- Text:
  - (1) An individual who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, he or she is married to the decedent at the time of death. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section.
- Solution:
  - “does not terminate the statute of husband and wife” to “does not terminate the status as spouses”
- Text
  - (2a) An individual who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is not recognized as valid in this state, unless they subsequently participate in a marriage ceremony purporting to marry each to the other or live together as husband and wife.
- Solution:
  - “together as husband and wife” to “together as spouses”

#### **MCL 700.2806 (definitions relating to revocation of probate and nonprobate transfers by divorce; revocation by other changes of circumstances)**

- Text:
  - (b) “Divorce or annulment” means a divorce or annulment, or a dissolution or declaration of invalidity of a marriage, that would exclude the spouse as a surviving spouse within the meaning of section 2801. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section and sections 2807 to 2809.
- Solution:
  - “does not terminate the status of husband and wife” to “does not terminate the status as spouses”

**Probate Code of 1939**  
**Act 288 of 1939**

**MCL 710.24 (petition for adoption; filing; jurisdiction; verification; contents; preplacement assessment; omission of certain identifying information)**

- Text:
  - (1) Except as otherwise provided in this section, if a person desires to adopt a child or an adult and to bestow upon the adoptee his or her family name, or to adopt a child or an adult without a name change, with the intent to make the adoptee his or her heir, that person, **together with his wife or her husband**, if married, shall file a petition with the court of the county in which the petitioner resides, where the adoptee is found or, where the parent's parental rights were terminated or are pending termination. If both parents' parental rights were terminated at different times and in different courts, a petition filed under this section shall be filed in the court of the county where parental rights were first terminated. If there has been a temporary placement of the child, the petition for adoption shall be filed with the court that received the report described in section 23d(2) of this chapter.
- Solution:
  - “together with his wife or her husband” to “together with their spouse”

**MCL 710.36 (Hearing to determine whether child born out of wedlock and to determine identity and rights of father; filing proof of service of notice of intent or acknowledgment; copy of notice of intent to claim paternity; notice of hearing; contents; filing proof of service of notice of hearing; waiver; evidence of identity; adjournment of proceedings.)**

- Text:
  - (1) If a child is claimed to be born out of wedlock and the mother executes or proposes to execute a release or consent relinquishing her rights to the child or **joins in a petition for adoption filed by her husband**, and the release or consent of the natural father cannot be obtained, the judge shall hold a hearing as soon as practical to determine whether the child was born out of wedlock, to determine the identity of the father, and to determine or terminate the rights of the father as provided in this section and sections 37 and 39 of this chapter.
- Solution:
  - “joins in a petition for adoption filed by her husband” to “joins in a petition for adoption filed by her spouse”

**Act 195 of 2001**

**MCL 722.1309 (delivery of child to petitioner; grounds for exception; expenses; additional relief; refusal to testify; inference; privilege against disclosure)**

- Text:
  - A privilege against disclosure of communications between spouses and a defense of immunity based **on the relationship of husband and wife** or parent and child cannot be invoked in a proceeding under this article.

- Solution:
  - “on the relationship of husband and wife” to “on the relationship as spouses”

**Surrogate Parenting Act**  
**Act 199 of 1988**

**MCL 722.853 (Definitions)**

- Text:
  - (i) "Surrogate parentage contract" means a contract, agreement, or arrangement in which a female agrees to conceive a child through natural or artificial insemination, or in which a female agrees to surrogate gestation, and to voluntarily relinquish her parental or custodial rights to the child. It is presumed that a contract, agreement, or arrangement in which a female agrees to conceive a child through natural or artificial insemination **by a person other than her husband**, or in which a female agrees to surrogate gestation, includes a provision, whether or not express, that the female will relinquish her parental or custodial rights to the child.
- Solution:
  - “by a person other than her husband” to “by a person other than her spouse”

**Foster Care and Adoption Services Act**  
**Act 203 of 1994**

**MCL 722.954a (Placement of child in supervising agency’s care; determination of placement with relative; notification; special consideration and preference to child’s relative; documentation of decision; review hearing)**

- Text:
  - (4b)Provide written notice of the decision and the reasons for the placement decision to the child's attorney, guardian, guardian ad litem, **mother, and father**; the **attorneys for the child's mother and father**; each relative who expresses an interest in caring for the child; the child if the child is old enough to be able to express an opinion regarding placement; and the prosecutor.
- Solution:
  - “mother, and father” to “parents”
  - “Attorneys for the child’s mother and father” to “Attorneys for the child’s parents”

**Uniform child-custody jurisdiction and enforcement act**

**MCL 750.166 (wife may testify against husband)**

- Text:
  - In all prosecutions under this chapter, **the wife may testify against the husband without his consent.**

- Solution:
  - “the wife may testify against the husband without his consent” to “the wife may testify against her spouse without such spouse’s consent”

**The Michigan Penal Code**  
**Act 328 of 1931**

**750.30 (Adultery; punishment)**

- Text:
  - Punishment—Any person who shall commit adultery shall be guilty of a felony; and when the crime is committed between a married woman and a man who is unmarried, the man shall be guilty of adultery, and liable to the same punishment.
- Solution:
  - “between a married woman and a man who is unmarried the man shall” to “between a married woman and person who is unmarried the unmarried person shall”

**750.335 (Lewd and lascivious cohabitation and gross lewdness)**

- Text:
  - Any man or woman, not being married to each other, who lewdly and lasciviously associates and cohabits together, and any man or woman, married or unmarried, who is guilty of open and gross lewdness and lascivious behavior, is guilty of a misdemeanor punishable by imprisonment for not more than 1 year, or a fine of not more than \$1,000.00. No prosecution shall be commenced under this section after 1 year from the time of committing the offense.
- Solution:
  - “Any man or woman not being married to each other” to “Any two people not being married to each other”

**MCL 750.90 (Sexual intercourse under pretext of medical treatment)**

- Text:
  - Sexual intercourse under pretext of medical treatment—Any person who shall undertake to medically treat any female person, and while so treating her, shall represent to such female that it is, or will be, necessary or beneficial to her health that she have sexual intercourse with a man, and shall thereby induce her to have carnal sexual intercourse with any man, and any man, not being the husband of such female, who shall have sexual intercourse with her by reason of such representation, shall be guilty of a felony, punishable by imprisonment in the state prison not more than 10 years.
- Solution:
  - “with any man, and any man, not being the husband” to “with any person, and any person, not being their spouse”
    - Note: the suggested change extends beyond what is strictly required but seems appropriate given other changes suggested in the report.

**Revised Uniform Reciprocal Enforcement of Support Act**  
**Act 8 of 1952**

**MCL 780.159a (enforcement of duties of support; defense of immunity not available)**

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

**MCL 780.169 (husband and wife; privilege against disclosure inapplicable; competent witnesses; compelling testimony)**

- Text:
  - Laws attaching a privilege against the disclosure of communications **between husband and wife** are inapplicable to proceedings under this act. **Husband and wife are competent** witnesses and may be compelled to testify to any relevant matter, including marriage and parentage.
- Solution:
  - “between husband and wife” to “between spouses”
  - “Husband and wife are competent” to “Spouses are competent”

**Coercion of married woman by husband**  
**Act 85 of 1935**

**MCL 780.401 (presumption of coercion by husband prohibited)**

- Text:
  - In the prosecution of any complaint or indictment charging a criminal offense, no presumption shall be indulged that a married woman committing an offense does so under coercion **because she commits it in the presence of her husband**.
- Solution:
  - “because she commits it in the presence of her husband” to “because she commits it in the presence of her spouse”

## SECTION 2. POLICY ISSUES

### **1. ESTATES IN DOWER**

“Dower”, at common law, is a wife’s right, upon her husband’s death, to a life estate in one-third of the land that he owned. Black’s Law Dictionary. Michigan still has laws that recognize a wife’s dower rights. No similar laws exist for a husband. The following statutory provisions relate to dower and should be reviewed, particularly in the event the Legislature repeals Michigan’s dower laws. See SB 558, 559 and 560.

#### **MCL 558.1 (Right of widow to dower)**

- Text: “The widow of every deceased person, shall be entitled to dower, or the use during her natural life, of 1/3 part of all the lands whereof her husband was seized of an estate of inheritance, at any time during the marriage, unless she is lawfully barred thereof.”

#### **MCL 558.12 (alternative dower rights before assignment; occupation, profits and rents receipt)**

- Text: “When a widow is entitled to dower in the lands of which her husband died seized, she may continue to occupy the same with the children or other heirs of the deceased, or may receive 1/3 part of the rents, issues and profits thereof, so long as the heirs or others interested do not object, without having the dower assigned.”

#### **MCL 558.13 (barring of dower; joining in conveyance, release)**

- Text: “A married woman residing within this state may bar her right of dower in any estate conveyed by her husband or by his guardian, if he be under guardianship, by joining in the deed of conveyance and acknowledging the same as prescribed in the preceding chapter, or by joining with her husband in a subsequent deed, acknowledged in like manner; or by deed executed by the wife alone to one who has theretofore acquired and then holds the husband's title, provided the intent to bar her right of dower shall be expressed in said deed.”

#### **MCL 558.14 (barring dower; jointure)**

- Text: “A woman may also be barred of her dower in all the lands of her husband by a jointure settled on her with her assent before the marriage, provided such jointure consists of a freehold estate in lands for the life of the wife at least, to take effect in possession or profit immediately on the death of the husband.”

#### **MCL 558.16 (barring of dower; antenuptial pecuniary provisions)**

- Text: “Any pecuniary provision that shall be made for the benefit of an intended wife, and in lieu of dower, shall, if assented to as provided in the preceding section, bar her right of dower in all the lands of her husband.”

#### **MCL 558.2 (dower in lands exchanged; election)**

- Text: “If a husband seized of an estate of inheritance in lands, exchange them for other lands, his widow shall not have dower of both, but shall make her election to be endowed of the lands given, or of those taken in exchange; and if such election be not evinced by

the commencement of proceedings to recover her dower of the lands given in exchange, within 1 year after the death of her husband, she shall be deemed to have elected to take her dower of the lands received in exchange.”

**MCL 558.21 (Dower right of aliens and nonresidents)**

- Text: A woman being an alien, shall not on that account be barred of her dower, and any woman residing out of the state, shall be entitled to dower of the lands of her deceased husband, lying in this state, of which her husband died seized, and the same may be assigned to her, or recovered by her, in like manner as if she and her deceased husband had been residents within the state at the time of his death.

**558.24 (damages upon recovery of dower; widow’s rights)**

- Text: Whenever in any action brought for the purpose, a widow shall recover her dower in lands of which her husband shall have died seized, she shall be entitled also to recover damages for the withholding of such dower.

**558.26 (Damages upon recovery of dower; use of added improvements)**

- Text: Such damages shall not be estimated for the use of any permanent improvements made after the death of her husband by his heirs, or by any other person claiming title to such lands.

**558.27 (Damages upon recovery of dower; against heir alienating lands)**

- Text: When a widow shall recover her dower in any lands alienated by the heir of her husband, she shall be entitled to recover of such heir, in an action on the case, her damages for withholding such dower, from the time of the death of her husband to the time of the alienation by the heir not exceeding 6 years in the whole; and the amount which she shall be entitled to recover from such heir, shall be deducted from the amount she would otherwise be entitled to recover from such grantee, and any amount recovered as damages, from such grantee, shall be deducted from the sum she would otherwise be entitled to recover from such heir.

**558.28 (Assignment of dower; effect of acceptance)**

- Text: When the widow shall have accepted an assignment of dower, in satisfaction of her claim upon all the lands of her husband, it shall be a bar to any further claim of dower against the heir of such husband, or any grantee of such heir, or any grantee of such husband, unless such widow shall have been lawfully evicted of the lands so assigned to her as aforesaid.

**558.29 (Collusive recovery by widow; effect on rights of infants or others entitled to land)**

- Text: When a widow not having right to dower, shall during the infancy of the heirs of the husband, or any of them, or of any person entitled to the lands, recover dower by the default or collusion of the guardian of such infant, heir or other person, such heir or other person so entitled shall not be prejudiced thereby, but when he comes of full age, he shall have an action against such widow, to recover the lands so wrongfully awarded for dower.

**MCL 558.4 (dower in mortgaged lands; purchase money mortgage given after marriage)**

- Text: “When a husband shall purchase lands during coverture, and shall at the same time mortgage his estate in such lands to secure the payment of the purchase money, his widow shall not be entitled to dower out of such lands, as against the mortgagee or those claiming under him, although she shall not have united in such mortgage, but she shall be entitled to her dower as against all other persons.”

**MCL 558.5 (dower in surplus of proceeds from foreclosure of mortgage)**

- Text: “Where in either of the cases mentioned in the 2 last preceding sections, or in case of a mortgage in which she shall have joined with her husband, the mortgagee, or those claiming under him shall after the death of the husband cause the mortgaged premises to be sold by virtue of such mortgage, and any surplus shall remain after payment of the moneys due thereon and the costs and charges of the sale, such widow shall be entitled to the interest or income of 1/3 part of such surplus, for her life, as dower.”

**Act 63 of 1847**

**Dual Claim to, or discharge of, dower**

**558.52 (dower claimed by two or more widows; liability of land to claims after discharge of dower)**

- Text: Where dower in any lands may be claimed by 2 or more widows, the 1 whose husband was first seized therein, shall be first entitled thereto, and in all cases where dower in any land shall have been assigned, or where it shall appear that the owner or owners, or person or persons having an interest therein, shall have made full satisfaction to, and has obtained a discharge from the person recovering or having a prior right to dower therein by reason of the prior seizure of her husband, the said land shall not be subject to any other claim for dower during the lifetime of the person so recovering or who has received satisfaction and given a discharge as aforesaid.

**MCL 558.6 (dower in lands released by payment of mortgage)**

- Text: “If, in either of the cases above specified, the heir or other person claiming under the husband, shall pay and satisfy the mortgage, the amount so paid shall be deducted from the value of the land, and the widow shall have set out to her, for her dower in the mortgaged lands, the value of 1/3 of the residue after such deduction.”

**MCL 558.7 (dower in alienated lands; estimation)**

- Text: “When a widow shall be entitled to dower out of any lands which shall have been alienated by the husband in his lifetime, and such lands shall have been enhanced in value after the alienation, such lands shall be estimated, in setting out the widow's dower, according to their value at the time when they were so alienated.”

**Act 58 of 1917**  
**Filing claim of Dower**

**558.81 (Claim of dower; filing, contents)**

- Text: All persons having or claiming dower, whether inchoate or consummate, in lands conveyed, or otherwise disposed of, more than 25 years prior to the time this act shall take effect, by the person who is or was the **husband** of the person claiming such dower, shall, within 6 months after this act shall take effect, file in the office of the register of deeds of the county in which such lands are situated, a claim of dower under oath setting forth the name and address of the persons claiming such dower and the name of the person who is or was her **husband** and through whom she claims to have obtained dower in such lands and a description of the lands in which dower is claimed.

**Act 105 of 1939**  
**Filing of Claim of Dower**

**558.91 (Claim of dower; filing, contents)**

- Text: All persons having or claiming dower, whether inchoate or consummate, in lands heretofore or hereafter conveyed, or otherwise disposed of, by the person who is or was the husband of the person claiming such dower, shall, within 25 years from the time of such conveyance or other disposal of said lands, or within 6 months after this act shall take effect, file in the office of the register of deeds of the county in which such lands are situated, a claim of dower under oath setting forth the name and address of the persons claiming such dower and the name of the person who is or was her husband and through whom she claims to have obtained dower in such lands and a description of the lands in which dower is claimed: Provided, however, That this act shall apply only to persons having or claiming dower, inchoate or consummate, in lands conveyed or otherwise disposed of subsequent to a time 25 years prior to August 10, 1917, that being the time Act No. 58 of the Public Acts of 1917 became effective.

**600.2931 (barring dower of incompetent wife; action by husband; determination by court; disposition of proceeds; action by guardian; proceedings)**

- Text:
  - (1) **The husband of an insane or otherwise incompetent wife** or any other person who has an interest in the real estate in which she has a right of dower may maintain an action to bar her of her right of dower in the premises.
- Text:
  - (2) If the court finds that **the wife** is incurably insane or for more than 2 years has remained insane or otherwise incompetent so that she has been unable from **defective intellect to join her husband** in the conveyance of the real estate, and that it is proper or necessary to sell the real estate or bar the **wife's right of dower** in it, then the court shall determine the cash value of the wife's dower interest in the premises, taking into consideration **the respective ages of the husband and wife**, and order that the **wife shall be barred of her dower** by the payment of this sum to a guardian other **than her husband** who shall receive and invest this sum for her sole use and support subject to the supervision of the court. On her becoming sound in mind the court shall direct the remainder to be

delivered to her. On her death, the court shall direct the remainder to be delivered to her husband, if living, or if not, to her personal representatives.

- Text:
  - (3) The guardian, after posting bond approved by the court, may sell at private sale the interest of his ward at a sum not less than the value of the dower as fixed by the court or he may, in a conveyance with the husband, or by separate conveyance, transfer the interest of the ward in the property to the husband's grantee or grantees, or their heirs and assigns but to no other person. Such conveyance shall bar dower as if the ward had, being in sound mind, joined her husband in a deed of the premises.

**600.2933 (dower; admeasurement procedure; award of money in lieu of dower; actions equitable in nature)**

- Text:
  - (1) A widow entitled to dower, or a woman entitled to dower and her husband, may maintain a claim to recover her dower in lands, tenements, and hereditaments under section 2932 after the expiration of 6 months from the time her right to dower accrued. If an action is brought to recover the dower of any widow which has not been admeasured to her before the commencement of such action, instead of a writ of possession being issued, such plaintiff shall proceed to have her dower assigned to her in the following manner:
- Text:
  - (2) In any action commenced by any widow for the recovery of dower in lands which were aliened by her husband in his lifetime, if dower cannot be assigned in the land by metes and bounds without injustice or manifest injury to the widow or to the owners or persons in possession of the land or some one of them, the court having cognizance of the matter may award a sum of money in lieu of dower to be paid to the widow, or may assign to her, as tenant in common, a just proportion of the rents, issues, and profits of the lands. In all cases the court shall consider the true value of the lands at the time of their alienation by the husband, and of the probable duration of the life of the doweress at the time the sum of money is awarded or the rents, issues, and profits are assigned to her.

**2. STATUTES THAT REFERENCE “MOTHER” AND “FATHER”, AND/OR “HUSBAND” AND “WIFE”.**

The following statutes include references to “father” and “mother”, and/or “husband” and “wife”, and do not recognize that parents of children may be same sex couples. The subject matters of these statutes implicate family law considerations beyond just simple changes to the text and are identified separately in this section for that reason.

**Born Alive Infant Protection Act**  
**Act 687 of 2002**

**MCL 333.1073 (Abortion resulting in live birth; surrender of newborn to emergency service provider; medical care; report; confidentiality of newborn’s mother and father; transmission of information to newborn’s mother)**

- Text:
  - (4) If a newborn is considered a newborn who has been surrendered to an emergency service provider under the safe delivery of newborns law, chapter XII of the probate code of 1939, 1939 PA 288, MCL 712.1 to 712.20, as provided in subsection (1), **the identity of the newborn's mother and father becomes confidential** and shall not be revealed, either orally or in writing.

**Public Health Code**  
**Act 368 of 1978**

**MCL 333.2822 (Persons required to report live birth occurring in state; “abortion defined”)**

- Text:
  - (1)(b)(iii) **The father, the mother, or, in the absence of the father and the inability of the mother,** the individual in charge of the premises where the live birth occurs.

**MCL 333.2824 (Registering name of husband as father of child; registering surname of child; consent; acknowledgment of parentage; designating surname of child; entering name of father and surname of child on birth certificate; father not named on birth registration; utilization of assisted reproductive technology; reference to legitimacy or illegitimacy prohibited.)**

Text:

- (1) The name of the husband at the time of conception or, if none, the husband at birth shall be registered as the **father** of the child. The surname of the child shall be registered as designated by the child's parents.
- (2) If the child's mother was not married at the time of conception or birth, the name of the **father** shall not be entered on the certificate of birth without the written consent of the mother and without the completion, and filing with the state registrar, of an acknowledgment of parentage by the mother and the individual to be named as the **father**. The acknowledgment of parentage shall be completed in the manner provided in the acknowledgment of parentage act. For a certificate of birth completed under this subsection and upon the written request of both parents, the surname of the child shall be designated by the child's parents.
- (3) If the name of the child's **father** cannot be shown under subsection (1) or (2), the child shall be given the surname designated by the mother.
- (4) If the paternity of a child is determined by a court of competent jurisdiction, the name of the **father** shall be entered on the certificate of birth as found and ordered by the court. The surname of the child shall be entered on the certificate of birth as designated by the child's mother.
- (5) If the child's **father** is not named on the birth registration, no other information about the **father** shall be entered on the registration.
- (6) “A child conceived by a married woman with consent of **her husband** following the utilization of assisted reproductive technology is **considered to be the legitimate child of the husband and wife.**”

**Act 259 of 1909**

**MCL 552.101 (Judgment of divorce or separate maintenance; provision in lieu of dower; determining rights of wife or husband in and to policy of life insurance, endowment, or annuity; discharge of liability on policy; determination of rights; assignment of rights.)**

- Text:
  - (1)When any judgment of divorce or judgment of separate maintenance is granted in any of the courts of this state, the court granting the judgment shall include in it a provision **in lieu of the dower of the wife in the property of the husband**, which shall be in full satisfaction of all claims **that the wife may have in any property that the husband** owns or may own in the future or in which he may have any interest.

**600.3320 (Guardian; authority to agree to division; report; infants; infant as married woman; delivery of guardianship property to probate court guardian; discharge of circuit court guardian)**

- Text:
  - (4) If the infant is a married woman the court may, upon petition, **appoint her husband as her guardian** and he shall be subject to the provisions of this section.
- Solution:
  - “appoint her husband as her guardian” to “appoint her spouse as her guardian”
    - Although Obergefell doesn’t require any additional changes, the Legislature may take this as an opportunity to re-examine the seemingly needless gender specificity in this section.

**Estates and Protected Individuals Code**  
**Act 386 of 1998**

**MCL 700.1303 (Concurrent Jurisdiction; removal; policy)**

- Text:
  - (1) In addition to the jurisdiction conferred by section 1302 and other laws, the court has concurrent legal and equitable jurisdiction to do all of the following in regard to an estate of a decedent, protected individual, ward, or trust:
    - Sec. K:
      - Bar an incapacitated or **minor wife of her dower right**.

**Probate Code of 1939**  
**Act 288 of 1939**

**MCL 711.1 (Order Changing name of adult, minor, or spouse and minor children)**

- Text:
  - (5) Except as provided in subsection (7), if the petitioner is a minor, the petition shall be **signed by the mother and father jointly**; by the surviving parent if 1 is deceased; if both parents are deceased, by the guardian of the minor; or by 1 of the minor's parents if there is only 1 legal parent available to give consent. If either parent has been declared mentally incompetent, the petition may be signed by the guardian for that parent. The written consent to the change of name of a minor 14 years of age or older, signed by the minor in the presence of the court, shall be filed with the court before an order changing the name of the minor is entered. If the court considers the child to be of sufficient age to express a preference, the court shall consult a minor under 14 years of age as to a change in his or her name, and the court shall consider the minor's wishes.

- Text:
  - (6) If the petitioner is married, the court, in its order changing the name of the petitioner, may include the name of the spouse, if the spouse consents, and may include the names of minor children of the petitioner of whom the petitioner has legal custody. The written consent to the change of name of a child 14 years of age or older, signed by the child in the presence of the court, shall be filed with the court before the court includes that child in its order. Except as provided in subsection (7), the name of a minor under 14 years of age may not be changed unless he or she is the natural or adopted child of the petitioner and unless **consent is obtained from the mother and father jointly**, from the surviving parent if 1 is deceased, or from 1 of the minor's parents if there is only 1 legal parent available to give consent. If the court considers the child to be of sufficient age to express a preference, the court shall consult a minor under 14 years of age as to a change in his or her name, and the court shall consider the minor's wishes.

**Acknowledgement of Parentage Act**  
**Act 305 of 1996**

**MCL 722.1003 (Acknowledgment of parentage; form; validity; signatures; witness; copy.)**

- Text:
  - (2) An acknowledgment of parentage form is valid and effective **if signed by the mother and father** and those signatures are each notarized by a notary public authorized by the state in which the acknowledgment is signed or witnessed by 1 disinterested, legally competent adult. The witness must be an employee of 1 of the following: a hospital, publicly funded or licensed health clinic, pediatric office, friend of the court, prosecuting attorney, court, department of human services, department of community health, county health agency, county records department, head start program, local social services provider, county jail, or state prison. The witness must sign and date the acknowledgment of parentage form and provide his or her printed name, address, and place of employment. An acknowledgment may be signed any time during the child's lifetime.
- Text:
  - (3) **The mother and father** shall be provided a copy of the completed acknowledgment at the time of signing.

**MCL 722.1006 (Grant of initial custody)**

- Text:
  - **After a mother and father** sign an acknowledgment of parentage, the mother has initial custody of the minor child, without prejudice to the determination of either parent's custodial rights, until otherwise determined by the court or otherwise agreed upon by the parties in writing and acknowledged by the court. This grant of initial custody to the mother shall not, by itself, affect the rights of either parent in a proceeding to seek a court order for custody or parenting time.

### **MCL 722.1010 (Consent to court jurisdiction)**

- Text:
  - Except as otherwise provided by law, a mother and father who sign an acknowledgment that is filed as prescribed by section 5 are consenting to the general, personal jurisdiction of the courts of record of this state regarding the issues of the support, custody, and parenting time of the child.

### **Michigan Penal Code** **Act 328 of 1931**

### **MCL 750.162 (Payments for care and support of wife or children; sworn statement)**

- Text:
  - When any person is convicted under section 161 and sentenced to serve a term of imprisonment either in 1 of the state prisons or other penal institution, the warden of the prison or superintendent of said penal institution in which said person shall be confined shall, in case funds are available for such purpose, at the end of each and every week during the period of said term of imprisonment, pay over to any of the superintendents of the poor of the city or county in which the wife or children of such person resides, the sum of 2 dollars and 50 cents per week, if there be only a wife, and 75 cents per week additional for each minor child under the age of 17 years; if there be no wife and there are children under the age of 17 years, the sum of 2 dollars and 50 cents per week for the oldest child, and an additional sum of 1 dollar per week for each of the other children under said age in lieu of any earnings of such person while an inmate therein, said sums to be expended by said superintendent of the poor for the care and support of the wife or children of said person, as the case may be; and it shall be the duty of the superintendent of the poor of the city or county from which such person shall be committed to furnish the warden of the prison or superintendent of the penal institution in which said person is confined with a sworn statement, showing the names of the wife and children who are left dependent upon the city or county for support, their ages and the relation they bear to such convicted person.
- Solution:
  - Note: the statute is currently written in such a way that only incarcerated men need to provide such support.

### **MCL 750.163 (Complaints)**

- Text:
  - Complainants—Any of the superintendents of the poor of the city or county or the county agent of the state welfare commission for the county wherein the wife or minor children of the person complained of reside, may make the complaint under the first section of this chapter.
- Solution:
  - Note: the statute is currently written in such a way that only incarcerated men need to provide such support. Therefore there are two potential changes, with different policy implications.

**SECTION 3. AUTHORITY FOR USE OF A SINGLE PUBLIC ACT TO  
AMEND MULTIPLE SECTIONS OF MICHIGAN STATUTES AND  
RECOMMENDED TEXT**

**I.. Authority for Use of a Single Public Act to Amend Multiple Sections of Michigan Statutes**

Bills that amend more than one statute are introduced infrequently because of the restrictions imposed by the “Title/Object” provision of the Michigan Constitution, Const 1963, art IV, § 24, There are, however, instances where one statute having a single purpose references and affects other related statutes. See, for example, the Age of Majority Act of 1971, 1971 PA 79, MCL 722.51 et seq.; and the Executive Organization Act of 1965, 1965 PA 380, MCL 16.101 et seq. And bills that amend more than one act are permissible if the bill concerns a single object and if the bill request has been recommended by the Michigan Law Revision Commission. The use of a single public act to amend multiple statutes is permitted by the following authority.

**1. CONSTITUTIONAL PROVISIONS**

A. Const 1963, art IV, § 15

There shall be a bi-partisan legislative council consisting of legislators appointed in the manner prescribed by law. The legislature shall appropriate funds for the council’s operations and provide for its staff which shall maintain bill drafting, research and other services for the members of the legislature. The council shall periodically examine and recommend to the legislature revision of the various laws of the state.

B. Const 1963, art IV, § 24 Laws; object, title, amendments changing purpose

No law shall embrace more than one object, which shall be expressed in its title. No bill shall be altered or amended on its passage through either house so as to change its original purpose as determined by its total content and not alone by its title.

**2. STATUTORY PROVISIONS**

Legislative Council Act (Excerpt), 1986 PA 268

MCL 4.1403 Duties of commission; availability of writings to public

The Michigan law revision commission shall do each of the following:

Examine the common law and statutes of this state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms.

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Recommend changes in the law it considers necessary in order to modify or eliminate antiquated and inequitable rules of law, and bring the law of this state into harmony with modern conditions.

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Report its findings and recommendations to the council and annually, before January 2 of each year, to the legislature. If the commission considers it advisable, it shall accompany the commission's report with proposed bills to implement the recommendations.

### **3. LEGISLATIVE COUNCIL RULES (as adopted through October 23, 2003).**

#### Chapter 7: Drafting; General Rules

The Bureau shall not accept a bill request unless the request is sufficiently specific to determine the subject and the purpose of the bill to be prepared.

The Bureau shall accept a bill request that will amend more than one act in a single bill if both of the following apply:

The purpose of the request has been formally approved or recommended by the Michigan Law Revision Commission pursuant to its duties as provided in Section 403 of the Legislative Council Act, Act No. 268 of the Public Acts of 1986, being section 4.1403 of the Michigan Compiled Laws.

The Bureau has determined that the sections to be amended are necessarily or properly related, or otherwise meet the requirements of Const. 1963, Art. IV, 24.

## **II. Michigan Law Revision Commission Recommendation and Proposed Statutory Language for Single Act to Address OBERGEFELL V HODGES.**

The Michigan Law Revision Commission has the statutory duty to “Examine the common law and statutes of this state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms”. MCL 4.1403(1). The recent decision of the U.S. Supreme Court in *Obergefell v Hodges*, 135 S.Ct. 2584 (2015) has direct implications on the text of more than one hundred Michigan laws involving a wide range of subjects, rendering those statutes anachronistic in light of the Supreme Court decision.

The Commission believes that changes are necessary to bring the laws of this State into harmony with modern conditions, and, in the interest of legislative efficiency, believes that this is a situation in which a single bill that directs the use of gender-neutral terms rather than gender-specific references may effectively be used to amend multiple acts.

For these reasons, the Commission has determined that the sections to be amended are necessarily and properly related and meet the requirements of Const. 1963, art IV, § 24.

### **PROPOSED TEXT FOR BILL REQUEST:**

#### **Revised Statutes of 1846 (EXCERPT)**

#### **CHAPTER 83. Of marriage and the solemnization thereof.**

Sec 551.1(A). ALL PROVISIONS OF LAW THAT UTILIZE GENDER-SPECIFIC TERMS IN REFERENCE TO THE PARTIES TO A MARRIAGE SHALL BE CONSTRUED IN A GENDER-NEUTRAL MANNER AS NECESSARY TO EFFECTUATE THE INTENT OF THE UNITED STATES SUPREME COURT DECISION IN OBERGEFEGELL V HODGES, 135 S.CT. 2584 (2015).

# MICHIGAN LAW REVISION COMMISSION REPORT ON DRIVER'S LICENSES, STATE ID, AND MICHIGAN IMMIGRANTS

## **Introduction**

Since 2008, Michigan has required applicants for driver's licenses and state identification to provide proof of U.S. citizenship or immigration status. This change was part of a series of post-9/11 changes, and has had significant consequences for all Michiganders who use the roads. Ten states, plus the District of Columbia, have already changed their laws to permit some form of legal driving without proof of immigration status.<sup>1</sup> States have chosen to restore access to driver's licenses irrespective of immigration status to address significant economic and public safety-related challenges posed by greatly-increased numbers of unlicensed drivers, including reductions the agricultural workforce, exclusion from the insurance market,

This report highlights the economic and safety benefits to all Michigan residents of expanding access to driver's licenses for all otherwise-eligible Michigan drivers. Section One describes the legal background, the federal REAL ID Act and states' relationship to it; Section Two explores potential benefits to the State of Michigan by allowing more individuals to be eligible for state driver's licenses and identification cards; and Section Three states specific recommended changes to Michigan law.

## **Section 1: Background**

### ***A. Background of Michigan Driver's Licenses & REAL ID Act Compliance***

Prior to 2008, Michigan law contained no requirement that an applicant for a driver's license or state ID card needed a specific immigration or citizenship status in order to be eligible. Applicants did have to submit documents that were sufficient to prove identity and establish state residency. A 1995 Michigan Attorney General opinion concluded that there was no law precluding an "illegal alien" from establishing residence in Michigan.<sup>2</sup> The relevant statute defined a resident as: "[one who] resides in a settled or permanent home or domicile with the intention of remaining in this state," and it contained no reference to citizenship or immigration status.<sup>3</sup> In December 2007, Attorney General Mike Cox issued a superseding opinion.<sup>4</sup> The 2007 Attorney General opinion stated that an unauthorized immigrant cannot be considered a Michigan resident and, in fact, only a Lawful Permanent Resident, commonly called a "green card" holder, could be considered a Michigan resident under the law.<sup>5</sup>

The Secretary of State implemented the late-2007 AG opinion in early 2008 and excluded from eligibility tens of thousands of lawfully present noncitizens as well as all unlawfully present immigrants.<sup>6</sup> To address the concerns raised by the sudden change in circumstances for so many individuals who relied on the ability to drive to live, work, and study in the state, often for many years at a time, the Michigan

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1 National Conference of State Legislatures, *States Offering Driver's Licenses to Immigrants* (2014). Available at: <http://www.ncsl.org/research/immigration/states-offering-driver-s-licenses-to-immigrants.aspx>

2 Attorney General Frank J. Kelly, *Ability of an Illegal Alien to Obtain a Michigan Driver's License*, Opinion No. 6883, (December 14, 1995). Available at: <http://www.ag.state.mi.us/opinion/datafiles/1990s/op06883.htm>

3 *Id.*

4 Attorney General Mike Cox, *Permanent Residency Requirement for Driver's Licenses*, Opinion No. 7210, (December 27, 2007). Available at: <http://www.ag.state.mi.us/opinion/datafiles/2000s/op10286.htm>

5 *Id.*

6 *See, e.g.* McFarland, Jodi, *Foreigners Pinched by Driver's License Law*, Saginaw News, (February 4, 2008) available at: [http://blog.mlive.com/saginawnews/2008/02/legal\\_immigrants\\_pinched\\_by\\_dr.html](http://blog.mlive.com/saginawnews/2008/02/legal_immigrants_pinched_by_dr.html).

Legislature changed the statute in February of 2008 to specify that driver's license and state ID applicants who are not U.S. citizens must be "legally present" in the U.S., including both temporary and permanent forms of legal immigration status.<sup>7</sup> The definition of "legally present" has been slightly changed by lawmakers since 2008, but at this point, it refers to federal law to determine who is "legally present." Michigan law does not currently reflect the requirements of the federal "REAL ID Act."<sup>8</sup>

In June 2012, the Obama Administration announced a program called Deferred Action for Childhood Arrivals (DACA), which grants temporary relief from deportation and employment authorization documents for young people who entered the U.S. as children and meet certain education and background requirements<sup>9</sup> (These young people are often referred to as "DREAMers" because they would benefit from the federal DREAM Act if it were to become law.) Initially, Michigan Secretary of State Ruth Johnson indicated that the Department of State did not consider DACA beneficiaries to be "legally present" and would not issue driver's licenses or state identification cards to them.<sup>10</sup> However, after she was sued by a group of DACA beneficiaries and the federal government provided clarification about their legal presence, the Secretary of State reversed her decision and began issuing driver's licenses and state IDs to DACA beneficiaries in February of 2013.<sup>11</sup>

Michigan law does not currently provide driver's licenses to individuals with no legal status, and many people who are U.S. citizens or in lawful immigration status have struggled to prove it or obtain verification. Significant delay may occur while the Secretary of State verifies certain categories of immigration documents with United States Citizenship and Immigration Services through their Systematic Alien Verification for Entitlements (SAVE) program and noncitizens who hold those statuses are unable to hold driver's licenses during verification or reverification periods.

### ***B. Background of REAL ID Act***

Signed into law on May 11, 2005, the federal REAL ID Act provides that driver's licenses and state IDs that do not meet the Act's requirements will not be accepted for specifically defined federal purposes. Since the enactment of REAL ID, the Department of Homeland Security (DHS) has repeatedly extended the deadline by which state driver's licenses must meet its criteria to be accepted for federal purposes.<sup>12</sup> Most recently, in December 2014, DHS extended the full compliance deadline to October 1, 2020.<sup>13</sup> Until compliance is required, Michigan licenses and state ID may be used as identification for the specified federal purposes. Some of these federal purposes include accessing federal facilities, boarding federally-regulated commercial aircraft, and entering nuclear power plants.<sup>14</sup>

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7 Michigan Legislature, Public Act 7 of 2008 (Effective: 2/15/2008). Available at:

[https://www.legislature.mi.gov/\(S\(23egotfxeffsoslth0obhi3\)\)/mileg.aspx?page=GetObject&objectName=2007-HB-4505](https://www.legislature.mi.gov/(S(23egotfxeffsoslth0obhi3))/mileg.aspx?page=GetObject&objectName=2007-HB-4505)

8 See Department of Homeland Security website, <http://www.dhs.gov/real-id-enforcement-brief>

9 U.S. Citizenship and Immigration Services, Consideration of Deferred Action for Childhood Arrivals (DACA).

<http://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-daca>

10 Charlise Dewey, State will not grant driver's licenses to DACA immigrants (2012).

<http://www.grbj.com/articles/74634-state-will-not-grant-drivers-licenses-to-daca-immigrants>

11 <http://www.michigandaily.com/opinion/02daily-immigration-reform07>

12 National Conference of State Legislatures, The History of Federal Requirements for State Issued Driver's Licenses and Identification Cards (2013). <http://www.ncsl.org/research/transportation/history-behind-the-real-id-act.aspx>. See also <http://www.dhs.gov/real-id-faqs-states>

13 Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes, 79 Fed. Reg. 248 (December 29, 2014).

14 Roy Maurer, DHS Extends REAL ID Compliance Dates to 2020 (2015).

<http://www.shrm.org/hrdisciplines/safetysecurity/articles/pages/dhs-extends-real-id.aspx>

### *C. Two-tiered States' Driver's Licenses*

One of the REAL ID's requirements is that the applicant for a license must prove, and state agencies must verify, his or her U.S. citizenship or immigration status. However, states are not required to issue licenses that meet the Act's criteria nor must states exclusively issue licenses that meet the Act's criteria. If states decline to issue any form of REAL ID Act-compliant licenses, however, their residents must produce another identity document, such as a passport, or be subjected to additional screening for any of the specified federal purposes.<sup>15</sup> In order to provide as many residents as possible with legally regulated access to the roads and access to government-issued identity documentation, many states have created two categories of driver's licenses and state identification: residents may either prove U.S. citizenship or immigration status and apply for an Act-compliant document which allows use for "federal" purposes, *or* residents may apply for a non-Act-compliant document for state and local purposes only. Residents unable to prove or verify citizenship or immigration status could choose the non-Act compliant license. In 2013, eight states and the District of Columbia followed other states in passing laws that enable residents to obtain driver's licenses and state identification cards regardless of their citizenship or immigration status.<sup>16</sup>

## **Section Two: Potential Benefits to the State of Michigan**

### *A. Citizens may lack proof of citizenship*

Immigrants are not the only individuals in Michigan who are currently harmed by our existing driver's license and identification restrictions. In addition to assisting noncitizens residing in Michigan, providing a non-Act-compliant form of driver's license would benefit U.S. citizens who cannot prove their citizenship. According to a 2006 study by the Brennan Center for Justice at New York University School of Law, as many as 7% of U.S. citizens nationwide did not have ready access to citizenship documents for a variety of reasons including older African Americans whose births were never registered due to discriminatory practices, U.S. citizens born abroad to American parents (common in military families), and foreign adoptees.<sup>17</sup> Under current Michigan law, inability to prove citizenship results in inability to drive legally.

Advocates for successful prisoner reentry often cite lack of access to driver's licenses and state ID as an obstacle to successful prisoner reentry. While a 2008 Memorandum of Understanding between the Michigan Department of State and Michigan Department of Corrections allows a former prisoner's Department of Corrections ID to be used as an identity document, a prisoner must still have access to documents establishing proof of U.S. citizenship or immigration status to obtain a license under current law.<sup>18</sup> Increasing access to driver's licenses could increase workforce participation by ex-offenders, and workforce participation is a key factor in reducing recidivism.<sup>19</sup>

### *B. Insurance Savings to Consumers and Private Sector Profits*

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15 National Immigration Law Center, *The REAL ID Act: Questions and Answers* (2015)

17 Brennan Center for Justice, *Citizens Without Proof*, (November 28, 2006). Available at: <http://www.brennancenter.org/analysis/citizens-without-proof>

18 *Memorandum of Understanding between the Michigan Department of State and the Michigan Department of Corrections Regarding Use of Prisoner Identification Cards for the Purpose of Applying for Driver's Licenses and Personal Identification Cards* (January 8, 2008), available at: [http://reentry.mplp.org/reentry/images/7/70/MOU\\_State\\_%26\\_MDOC-1.pdf](http://reentry.mplp.org/reentry/images/7/70/MOU_State_%26_MDOC-1.pdf)

19 Christy A. Visher and Jeremy Travis, "Transitions from Prison to Community: Understanding Individual Pathways," *Annual Review of Sociology*, Vol. 29 (2003), pp. 89–113.

Michigan requires all individuals who want to register a car and get license plates to provide proof of insurance. Despite this, Detroit has one of the highest car insurance rates of all American cities, and Michiganders in general also pay relatively high rates.<sup>20</sup> An insurance pool widened by re-licensed undocumented immigrants would hold down premium costs for all Michigan residents. Costs accruing to all Michigan residents in the insurance market could be further mitigated by fewer claims originating with unlicensed uninsured drivers, which otherwise, would be paid for by insured drivers. Michigan insurance companies will also receive increased per capita revenues from the addition of new drivers required to purchase auto insurance.

### C. Enhanced Public Safety

Michigan residents will be safer if drivers are licensed and insured irrespective of immigration status because some part of the population that is unlicensed due to inability to prove citizenship or immigration status still drives. Unlicensed drivers in general are five times more likely to be in a fatal crash as licensed drivers.<sup>21</sup> Although drivers who have lost driver's licenses or cannot obtain them because they lack proof of citizenship or immigration status are not entirely representative of the overall unlicensed population, excluding them from driver's training, screening and testing means missing opportunities to address problems. Ensuring that all Michigan drivers are knowledgeable of traffic laws will decrease accidents, decrease the number of uninsured drivers who flee the scene of an accident, and consequently better the health and well-being of all Michigan residents. For example, since New Mexico began issuing non-status dependent driver's licenses in 2003, alcohol-related crashes decreased 32%, and traffic fatalities fell 23%.<sup>22</sup> Licensing eligible individuals who cannot prove immigration status will also make communities safer in general. Studies show that by creating a more inclusive community and improving relations between immigrant communities and law enforcement, members of these communities will be more comfortable contacting the police to report and cooperate in the investigation of accidents and crimes.<sup>23</sup> Allowing regulated access to official identity documents to the broadest group of people also has the tendency to reduce the risk of corruption among government staff and discourage the production of fraudulent documents.

Driver's licenses assist law enforcement officers to more quickly identify the drivers they stop and evaluate if there is a threat to the officer's safety, as well as check the driver's traffic and criminal record. Police can use their resources more efficiently when residents have identity documents with accurate data, as it can take significant resources to identify an individual who doesn't possess any government-issued identification.<sup>24</sup> In addition, the driver's license database is the largest law enforcement database in the country, providing vast personal information, including photographs, that is

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20 Diane Bukowski, Michigan, Detroit Car Insurance Rates Highest in Nation (2014).

<http://voiceofdetroit.net/2014/02/10/michigan-detroit-car-insurance-rates-highest-in-nation/>

21 American Automobile Association Foundation, Unlicensed to Kill Research Update (2008), available at:

<https://www.aaafoundation.org/sites/default/files/UnlicensedToKillResearchUpdate.pdf>

22 See "Driver's Licenses for All: Economic and Safety Benefits," Illinois Highway Safety Coalition (Nov. 17, 2012).

23 See, e.g., Police Foundation, *The Role of Local Police: Striking a Balance Between Immigration Enforcement and Civil Liberties*, (April 2009), available at <http://www.policefoundation.org/content/local-police-immigration-enforcement>

24 *Voices from Across the Country: Local Law Enforcement Officials Discuss the Challenges of Immigration Enforcement* (Police Executive Research Forum, 2012),

[www.policeforum.org/library/immigration/VoicesfromAcrossTheCountryonImmigrationEnforcement.pdf](http://www.policeforum.org/library/immigration/VoicesfromAcrossTheCountryonImmigrationEnforcement.pdf), p. 15.; National Immigration Law Center, "Why it Makes Law Enforcement Sense for All California Drivers to Be Eligible for Driver's Licenses," available at: <http://www.nilc.org/document.html?id=1036>.

updated regularly as drivers renew their licenses. State driver's license databases are more complete than the IRS database, the Social Security database, or state birth certificate databases – it is thus an invaluable tool for police investigation. A more complete database benefits law enforcement.<sup>25</sup>

#### ***D. Stronger Workforce Participation***

Studies have found that individuals who lack the ability to obtain driver's licenses have more difficulty maintaining steady employment, as they do not always have access to public transportation or other transit opportunities. This makes it less attractive for job creators to want to hire these individuals, as well as more likely that employers will fire people who often show up late or miss work shifts. Having a driver's license enables job seekers to be able to drive at any time--whether planned in advance or spur of the moment. This affords people much more flexibility, allowing for advanced planning for work shifts and overall a greater ability to work more frequently. The approximately 150,000 unauthorized residents in Michigan play a large role in the farming, auto, and manufacturing industries.<sup>26</sup> By allowing this workforce to lawfully drive to and from work, they will be better workers by arriving to work consistently and on time.

#### ***E. Other Contributions to the Economy***

In addition, having greater access to automobile transportation increases purchasing power and consumer activity.<sup>27</sup> Michigan residents who obtain driver's licenses will contribute to Michigan's economy by being able to accomplish everyday tasks that require transportation outside the home. These include going to the grocery store, visiting the doctor, dentist, and orthodontist, shopping at the mall, and even attending local community and religious establishments, such as church and holiday affairs. Having a valid driver's license allows people to engage in these activities without worrying about potential consequences or sacrificing other economic activities in their place. In addition, driver's licenses are often used as a standard form of identification for essential daily activities, such as cashing checks, renting an apartment, and purchasing various forms of insurance. Without a valid license, individuals and communities at large are prevented from participating in these economic activities that are both essential to a stable home as well as beneficial to the Michigan economy. The ability to obtain driver's licenses will also promote the purchase of automobiles, a historical and essential industry to the Michigan economy.

Perhaps most significantly, Michigan's agriculture industry depends on a mostly-immigrant workforce for steady, constant production and processing. This industry is particularly profitable in Western Michigan, which produces one-third of the state's total agricultural sales--about \$1.5 billion of the regional economy. Since the 2008 changes in Michigan's driver's license law, Michigan agriculture industry groups have consistently complained of a shortage of agricultural workers in the state.<sup>28</sup> Michigan's

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25 Bruce Schneier, "Giving Drivers Licenses to Illegal Immigrants," *Schneier on Security*, Feb. 13, 2008, [www.schneier.com/blog/archives/2008/02/giving\\_drivers.html](http://www.schneier.com/blog/archives/2008/02/giving_drivers.html); National Immigration Law Center, *Why it Makes Law Enforcement Sense for All California Drivers to Be Eligible for Driver's Licenses*, available at: <http://www.nilc.org/document.html?id=1036>.

26 See *With 150,000 undocumented residents, Michigan has stake in U.S. debate*, Detroit Free Press, May 28, 2013, available at [www.archive.freep.com/article/20130528/NEWS06/305280014/undocument-immigrants-michigan-economy](http://www.archive.freep.com/article/20130528/NEWS06/305280014/undocument-immigrants-michigan-economy).

27 See Mary C. King, et al., *Assessment of the Socioeconomic Impacts of SB 1080 on Immigrant Groups* (Oregon Department of Transportation Research Section, June 2011), available at: [www.oregon.gov/ODOT/TD/TP\\_RES/docs/reports/2011/sb1080.pdf](http://www.oregon.gov/ODOT/TD/TP_RES/docs/reports/2011/sb1080.pdf) (finding that as a result of not having a valid driver's license, unauthorized workers have trouble scheduling hours and accomplishing daily tasks, and reduced their large consumer purchases.)

28 See, e.g., Michigan Farm Bureau policy position citing shortage of farmworkers and need for immigration reform, available at: [https://www.michfb.com/MI/Policy\\_and\\_Politics/Issues/Immigration\\_Reform\\_Quick\\_Facts/](https://www.michfb.com/MI/Policy_and_Politics/Issues/Immigration_Reform_Quick_Facts/)

Migrant and Seasonal Farmworkers Workgroup (MSFW), a collaboration of state agencies and stakeholders created by the Michigan Civil Rights Commission, issued a report in March 2013 highlighting the work done over the past three years to improve the living and working conditions of migrant and season farmworkers in Michigan. One of the recommendations moving forward focuses on driver's licenses. Specifically, the workgroup recommends improving the system in which migrant and seasonal farmworkers go about applying for licenses, as there still remains confusion over what individuals do or do not need to prove. The report makes it clear that access to driver's licenses is extremely important for regular seasonal and migrant farmworkers' ability to participate in the workforce.<sup>29</sup>

#### ***F. Increased State Revenue***

Michigan could generate significant license fee revenue from newly eligible driver's license applicants. State revenues vehicle registrations and taxes on insurance premiums and car purchases would also likely see an increase. New Mexico, which expanded access to driver's licenses in 2003, has thus far generated an estimated \$500 million in new revenue.<sup>30</sup>

### **Section Three: Recommended Changes to Existing Michigan Law**

Current Michigan law conditions driver's license eligibility on proof of citizenship or proof of legal status in the United States. In order to come into eventual compliance with the REAL ID Act to allow the majority of Michigan residents to use Michigan licenses for federal purposes and to provide driver's licenses to those without proof of citizenship or legal immigration status, the State of Michigan should:

1. Provide two forms of driver's licenses: one for those with United States citizenship or proof of legal status ("standard operator's license"); one for individuals without proof of legal status ("limited purpose operator's license");
2. Set standards for documentation required for the limited purpose operator's license;
3. Set standard for documentation required for the standard operator's license to come into compliance with the REAL ID Act;
4. Determine aesthetic differences between the standard operator's license and the limited purpose operator's license, including but not limited to: symbol(s) on the front of each license; disclaimer on back of limited purpose operator's license (e.g., "This card is not acceptable for official federal purposes. This license is issued only as a license to drive a motor vehicle. It does not establish eligibility for employment, voter registration, or public benefits").
5. Increase penalties for providing fraudulent information to the Michigan Department of State, including fraudulent claims of state residency.

### **State Statutes Allowing Driver Licensing Without Proof of Citizenship or Legal Residence**

#### **Washington, DC**

#### **DC ST § 50-1401.05**

- Proof of identity, date of birth, and residency.
- Mayor shall not provide a social security number or any document to prove the absence of a social security number.

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<sup>29</sup> The Migrant and Seasonal Farmworkers' Workgroup report is available at [www.michigan.gov/documents/mdcr/MSFW\\_Progress\\_Report\\_415366\\_7.pdf](http://www.michigan.gov/documents/mdcr/MSFW_Progress_Report_415366_7.pdf).

<sup>30</sup> Erika Nava, *Share the Road: Allowing Eligible Undocumented Residents Access to Driver's Licenses Makes Sense for New Jersey* (2014). Available at: <http://www.njpp.org/reports/share-the-road-allowing-eligible-undocumented-residents-access-to-drivers-licenses-makes-sense-for-new-jersey>

- An applicant shall include a certified translation of a document provided that is not in English.
- Aesthetics
  - Following on the face of the card and in its machine-readable zone in a font size no larger than the smallest font size otherwise appearing on the card: “Not valid for official federal purposes.”
  - The Mayor may incorporate different features but only if doing so would result in a card that appears more similar to regular license.
- License/permit/ID card issued under this section shall not be used to consider an individual's citizenship or immigration status, or as a basis for a criminal investigation, arrest, or detention.

## **Illinois**

### **625 ILCS 5/6-105.1**

- The Secretary of State may issue a temporary visitor's driver's license to an applicant who has:
  - resided in this State for a period in excess of one year,
  - is ineligible to obtain a social security number, and
  - is unable to present documentation issued by the United States Citizenship and Immigration Services authorizing the person's presence in this country.
- The applicant shall submit a valid unexpired passport from the applicant's country of citizenship or a valid unexpired consular identification document.
- Valid for 3 years.
- May not be accepted for proof of the holder's identity.
- Aesthetics
  - Shall contain a notice on its face, in capitalized letters, stating that the temporary visitor's driver's license may not be accepted for proof of identity.
  - The Secretary of State shall adopt rules for design.
- License invalid if unable to provide proof of liability insurance upon the request of a law enforcement officer.

## **Maryland**

### **MD Code, Transportation, § 16-122**

- Have to provide documentation for 2 years of a filed Maryland income tax return or evidence the applicant has resided in Maryland and been claimed as a dependent by an individual who has filed a Maryland income tax return.
- Aesthetics
  - Clearly state on its face and in its machine-readable zone that it is not acceptable by federal agencies for official purposes
  - Have a unique design or color indicator that clearly distinguishes it from the design or color of an identification card
- Expiration date similar to a normal license's expiration date.
- Not valid for federal identification purposes.

## **New Mexico**

### **N. M. S. A. 1978, § 66 -5 -9**

- For foreign nationals applying for driver's licenses, the secretary shall accept the individual taxpayer identification number as a substitute for a social security number regardless of immigration status.
- The secretary is authorized to establish by regulation other documents that may be accepted as a substitute for a social security number or an individual tax identification number.

**California:** Assembly Bill 60 (“AB 60”) (2013), see Cal. Veh. Code §§ 12801, 12801.9. Grants original driver's licenses to applicants who have never received a social security number *and* who are not

presently eligible for a social security number. Applicants must meet all other qualifications for licensure and provide proof of identity and California residency. The statute sets forth a non-exhaustive, enumerated list of acceptable documents for identity and residency purposes, and grants authority to the California Department of Motor Vehicles (“CA DMV”) to adopt emergency regulations specifying additional acceptable documentation. Original driver’s licenses issued pursuant to this program are required to have a small recognizable, distinguishing feature on the front (specifically, the letters “DP” replace the existing “DL”) and a disclaimer on the back (“This card is not acceptable for official federal purposes. This license is issued only as a license to drive a motor vehicle. It does not establish eligibility for employment, voter registration, or public benefits.”). The statute also: prohibits discrimination on the basis of holding a driver’s license issued pursuant to this program; prohibits the CA DMV from disclosing information obtained by applicants (including immigration-related information) except as required by law; prevents employers from disclosing applicant’s driver’s license information; and prevents driver’s licenses issued pursuant to this program from being used to consider an individual’s immigration status or as a basis for investigation or arrest.

**Connecticut:** House Bill 6495 (“HB 6495”) (2013), see Conn. Gen. Stat. Ann. §§ 14-36, 14-36m. Grants driver’s license to applicants who do not have proof of legal presence in the U.S. *or* who do not have a social security number. Applicants must submit proof of Connecticut residency and identity; acceptable residency and identity documents are defined by statute. Applicants must also submit an affidavit attesting that he/she has filed an immigration application *or* that he/she intends to file such application once eligible to do so. Applicants who have been convicted of felonies in Connecticut are not eligible for the license. Driver’s licenses issued pursuant to this section are required to contain a disclaimer that the license is not valid for federal identification purposes. This driver’s license may not be used for voting purposes and is “for driving purposes only.”

**Colorado:** Senate Bill 251 (“SB 251”) (2013), see Colo. Rev. Stat. Ann. § 42-2-505. Grants driver’s licenses to applicants not lawfully present in the U.S. Applicants must: sign an affidavit attesting to Colorado residency and provide proof of residency; apply for and provide proof of an individual taxpayer identification number (“ITIN”) issued by the U.S. IRS; sign an affidavit attesting that the applicant has applied for lawful presence or will do so as soon as eligible; *and* present one of three enumerated identity documents from the applicant’s country of origin (passport, consular ID card, or military ID card). A driver’s licenses issued pursuant to this section must clearly display the following disclaimer on its face: “Not valid for federal identification, voting, or public benefit purposes.”

**Nevada:** Senate Bill 303 (“SB 303”)(2013), see Nev. Rev. Stat. Ann. § 483.291, allows applicants, regardless of status, to obtain driver authorization cards (DACs) by providing foreign birth certificates or passports as proof of age and identity. Applicants must also prove their residency in the state, which can be done by providing two original or certified copies of documents such as a rent receipt or lease, a bank or credit card statement, an employment pay stub, among others. DACs are valid for one year and cost \$22.25 (plus an additional \$25 for testing). DACs appear identical to standard driver’s licenses, except it states “not valid for identification” in the top right and states “Driver Authorization Card” instead of “Driver License.” In addition to DACs and standard driver’s licenses, Nevada began issuing REAL-ID compliant licenses on November 12, 2014. SB 303 also prohibits the release of information relating to one’s legal status for purposes of enforcing immigration laws. See Nev. Rev. Stat. Ann. § 481.063.

**Utah:** Senate Bill 227 (“SB 227”)(2005), see Utah Code Ann. § 53-3-207 provides for the issuance of driving privilege cards for individuals who do not have proof of lawful presence. The card is not valid as proof of age for any government purpose and is valid for one year. To obtain a driving privilege card, applicants must submit fingerprints and a photograph conducted by the Bureau of Criminal Investigation or another applicable law enforcement agency. There is a \$25 licensing fee and fingerprinting costs \$25 as well. Applicants who do not have a social security number must present proof of residency for six

months and provide a tax identification number. The card states “for driving privileges only” on it. After the enactment of the driving privilege card, Utah saw a decline in its uninsurance rate, in alcohol-related car crashes, and in the number of fatal car crashes. The law also requires the Bureau or agency to notify DHS (through ICE) if the applicant has any felony convictions in her criminal history or if there is an outstanding arrest warrant. The Bureau or agency is also required to inform DHS if the applicant is subsequently convicted of a crime for which there was a warrant. See Utah Code Ann § 53-3-205.5.

**Vermont:** Senate Bill 38 (“S38”)(2013), see Vt. Stat. Ann. tit. 23, § 603, allows individuals unable to establish legal presence to obtain an “operator’s privilege card” or alternate identification card. Applicants must have proof of their name, date and place of birth, and Vermont residency. Proof of name and date and place of birth can be achieved through valid foreign passports and certified records of birth, marriage, or divorce. Proof of residency can be established with two pieces of mail received within 30 days with the applicant’s name and address on it, a vehicle title or registration, a bank statement, an insurance card or bill, state or federal tax documents, or medical health bills, receipts, or records. Vermont’s operator’s privilege card is also available to residents who can establish legal presence but who otherwise fail to comply with the REAL ID requirements. The operator privilege card states on its face that it is not valid for federal identification or official purposes. The card expires at midnight on the eve of the applicant’s second birthday following the date of issuance, or, if the applicant pays a fee, on the eve of the applicant’s fourth birthday following the card’s issuance.

**Washington:** House Bill 1444 (“H 1444”)(1993), see Wash. Rev. Code Ann. § 46.20.035, allows applicants for driver’s licenses or “identicards” who lack social security numbers to obtain licenses or cards with alternate documentation to prove Washington residency. Such documentation includes utility bills and tax identification numbers. Washington was the first state to provide licenses for undocumented individuals. It has a uniform license system.

MICHIGAN LAW REVISION COMMISSION  
REPORT TO THE LEGISLATURE ABOUT THE CREATION OF A NEW  
CYBER BUSINESS COURT

Michigan's existing business courts grew out of the now-defunct cyber courts. See 2012 PA 333, MCL 600.8031 *et. seq.* The business courts, however, resolve disputes offline, as subsidiary dockets of traditional circuit courts. See MCL 600.8031. This memo proposes the creation of an online business court: one that would handle large business or commercial claims completely online, rendering dispositive, appealable decisions through online procedures.

First, existing models for online resolution of business disputes are reviewed, starting with Michigan's cyber and business courts and moving on to private models, international and academic models, and state attempts to integrate new technology into traditional courts.

Next, the memo reviews the core values and practical considerations in creating an online business court. Any court should be guided by considerations of efficiency, expertise, legitimacy, finality, and fairness. Building on the success of Michigan's business courts, resolving national commercial suits online would make the business courts more attractive forums, since they would combine greater efficiency and expertise with the trust, finality, and due process traditionally associated with the judicial process.

Finally, the memo makes recommendations about the structure of the new cyber business court.

**I. Background: Michigan's Specialized Cyber and Business Courts**

Michigan has previously established both cyber courts and business courts. Michigan's cyber courts were created in 2001. See 2001 PA 262. The cyber courts, however, were never funded. Toering, *The New Michigan Business Court Legislation: Twelve Years in the Making*, 2013 Bus. L. Today 1 (Jan 2013). The cyber court legislation was repealed in 2012 and replaced by Michigan's currently-functioning business courts. See 2012 PA 333, MCL 600.8031.

Both the cyber and business courts were intended as economic development initiatives—to create a technology-driven process that efficiently resolves business disputes and encourages high-tech companies to come to Michigan. See Shulman, *Cyber Court in Michigan*, 80 Mich. B.J. 45, 46 (Nov 2001); *The New Michigan Business Court Legislation: Twelve Years in the Making*, 2013 Bus. L. Today at 2. This is why the jurisdiction of the two courts is almost identical: both courts governed “business and commercial disputes.” See MCL 600.8005, MCL 600.8035. The business court's jurisdictional definition, at MCL 600.8031, is almost identical to the definition used in the cyber court statute, 2002 PA 663, at MCL 600.8005.<sup>31</sup> The business courts, however, do not live online in the same way the cyber court would have. Compare MCL 600.8001 with MCL 600.8039.

**A. Cyber Court**

The cyber court was “an ambitious experiment,” as “the first courtroom in the nation to fully operate over the Internet.” Koscielniak & Wasson, *Cyber Court*, 82 Mich. B.J. 48 (Jan 2003). All hearings and proceedings were “to be conducted by means of electronic communications,” accommodating “parties or witnesses . . . located outside of” Michigan. MCL 600.8001. Open proceedings would be “broadcast on the internet.” *Id.* The physical and virtual facilities of the cyber courts were separate from

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<sup>31</sup> The business court legislation diverges from the cyber court's jurisdictional provision only in its lists of examples of actions that are and are not included within the court's jurisdiction. Compare MCL 600.8005(4)(c) with MCL 600.8031(2)(c); and MCL 600.8005(5) with MCL 600.8031(3).

the circuit courts. See MCL 600.8001(h); MCL 600.8001(3). The Michigan Supreme Court would have assigned judges to the cyber court under MCL 600.8003.

The cyber court had “concurrent jurisdiction over business or commercial disputes in which the amount in controversy exceeds \$25,000.00.” MCL 600.8005. Participation in the cyber courts was voluntary, so that jurisdiction operated by consent. See MCL 600.8011. By proceeding with an action in the cyber court, the parties also waived the right to a jury trial. MCL 600.8013. The cyber court was a court of record. MCL 600.8001; see also MCL 600.1416 (generally designating courts of record).

### **B. Business Court**

The business court is not a separate court in the same way as the cyber courts were—instead, it is a “special docket” of Michigan’s circuit courts. See MCL 600.8031, MCL 600.8033. The business court docket is similarly defined, however, by reference to subject matter jurisdiction over business and commercial disputes. See MCL 600.8035. For those circuit courts required to have this special docket, jurisdiction is mandatory rather than concurrent. See MCL 600.8033, MCL 600.8035. The Michigan Supreme Court assigns sitting circuit judges to the business court “in a number reasonably reflecting the caseload of the business court.” MCL 600.8037.

The business courts have been functional since 2013, and more information can be found on the Michigan courts’ website. Michigan Judiciary, *Business Courts*, <<http://courts.mi.gov/administration/admin/op/business-courts/pages/business-courts.aspx>> (accessed March 4, 2015). See also Toering, *Michigan's Business Courts and Commercial Litigation*, 93 Mich. B.J. 26 (Aug 2014).

### **C. A New Cyber Business Court**

The business court legislation expresses a purpose to resolve business and commercial disputes within its jurisdiction “with the expertise, technology, and efficiency of the information age economy.” MCL 600.8033. However, the only carryover from the “cyber” portion of the cyber courts is section 600.8039’s direction to file by electronic communications “whenever possible” and to meet any other “minimum standards” for technology prescribed by the state court administrative office. The business courts could resolve national commercial disputes with greater efficiency if they did more to incorporate new technology. By creating a special online court that models the old cyber court, Michigan could realize those benefits and leap to the forefront of legal technology.

## **II. Online Justice: Existing Models**

Michigan is not the only actor to attempt to build a system of justice that incorporates new technologies, but there are no public systems that resolve disputes online. The following review of other high-tech justice systems is not intended to be comprehensive; it simply reflects the models discussed in the literature.

### **a. Private Sector: Online Dispute Resolution**

The private sector has expanded the arena of online dispute resolution (ODR), an online version of alternative dispute resolution. A number of articles canvass these technologies, exploring the various strengths and weaknesses of the models in resolving various kinds of disputes. See, e.g., Schmitz, “*Drive-Thru*” *Arbitration in the Digital Age: Empowering Consumers through Binding ODR*, 62 Baylor L. Rev. 178 (2010). These tools are most appropriately used to resolve small claims that originate online, and usually require consent of both parties to the determination of the mediator. *Id.*

## **b. Virtual Courthouses**

Apart from the never-operational Michigan cyber court, there are not many examples of fully virtual courts. These courts are distinguished from ODR by the traditional and binding nature of the proceedings.

### **i. Academic Model: Courtroom 21**

The Center for Legal and Court Technology, previously known as Courtroom 21, is billed as “the world’s most technologically-advanced courtroom.” Center for Legal and Court Technology <<http://www.legaltechcenter.net>> (accessed March 7, 2015). The Center is located at William & Mary’s Marshall-Wythe Law School and run in partnership with the National Center for State Courts. *Id.* The space models a partially virtual courthouse that can be used by academics and practitioners for training and experimentation. See Ponte, *The Michigan Cyber Court: A Bold Experiment in the Development of the First Public Virtual Courthouse*, 4 N.C. J. L. & Tech. 51, 53 n 5 (2002); Lederer, *The Courtroom 21 Project: Creating the Courtroom of the Twenty-First Century*, 43 No. 1 Judges’ J. 39, 41-42 (2004) (mentioning a test of “fundamental concepts that were then planned for the Michigan CyberCourt”).

### **ii. International Examples**

Though neither Israel nor Singapore has moved to a completely online system, they have gone a long way to transferring case management and courtroom procedures to the virtual realm.

An Israeli court digitization project called the “New Generation Court System” implemented a wide-ranging online case management program in “all courts subject to the jurisdiction of the Court Administration Office.” See Rabinovich-Einy, *Beyond Efficiency: The Transformation of Courts Through Technology*, 2008 UCLA J.L. & Tech. 1. The project includes “five basic features: electronic file, work space, calendar, e-filing and task assignment.” *Id.*

Singapore has also made extensive court reforms to incorporate new technology in all stages of court proceedings. See Magnus, *The Confluence of Law and Policy in Leveraging Technology: Singapore Judiciary’s Experience*, 12 Wm. & Mary Bill Rts. J. 661, 662-663 (2004) (discussing Singapore’s use of “video link [including for witness testimony], electronic data interchange, and broadband technologies,” as well as “systems for judicial-decision support, case management, performance measurement, and public service extension”).

## **c. Integrating Online Procedures into Existing Courts**

There are many examples of states integrating new technologies into brick-and-mortar courts. A few highlighted in the literature are mentioned below.

### **i. Arizona’s Division Two**

Division Two of the Arizona Court of Appeals is “virtually paperless.” Espinosa, *A Word from the Future*, 49 No. 3 Judges’ J. 10, 10 (2010). That court has implemented electronic filing (e-filing) as well as an electronic document management system. *Id.* Further, all judges and staff are encouraged to “give up the paper security blanket,” providing tools such as new display screens and tablets and reaching a “consensus that everyone would have to . . . go ‘paperless.’” *Id.* at 11.

### **ii. Florida’s Courtroom 23**

The Ninth Judicial Circuit Court of Florida worked with William & Mary’s Center for Legal and Court Technology to implement an advanced high-tech courtroom. Technology Support, *Ninth Judicial Circuit Court* <<http://www.ninthcircuit.org/services/technology-support>> (accessed March 7, 2015). The court incorporates a variety of audio and visual equipment, including many evidence presentation devices,

automated reporting, and cameras that can broadcast proceedings on the Internet. The Michigan Cyber Court, 4 N.C. J. L. & Tech. at 54 n 7.

### iii. Michigan E-Filing

Michigan courts do not uniformly allow e-filing. The Michigan Court of Appeals has allowed e-filing for several years, and the system was recently extended to the Michigan Supreme Court. See Administrative Order No. 2014-23 (2014). Additionally, there are a number of successful e-filing pilot projects currently running in the circuit courts. See Administrative Order No. 2014-24 (2014).

#### A. Online Justice: Core Values and Considerations

Any new court should be designed to capture the benefits associated with specializing in business litigation online, most notably, efficiency and expertise, without compromising the core values necessary to traditional court systems: public legitimacy, finality through enforceable judgments, and due process.

Using new technologies almost inherently increases efficiency. Moving disputes online saves parties money and time, and can be significantly more convenient for out-of-state litigants used to conducting business over the Internet. See Fernandez & Masson, *Online Mediations: Advantages and Pitfalls of New and Evolving Technologies and Why We Should Embrace Them*, 81 Def. Couns. J. 395, 399 (2014) (citing flexibility, convenience, and reduced costs among benefits of online mediations); Gilliéron, *From Face-to-Face to Screen-to-Screen: Real Hope or True Fallacy?*, 23 Ohio St. J. on Disp. Resol. 301, 312-315 (2008) (emphasizing convenience, low cost, and speed of online dispute resolution); Schmitz, *“Drive-Thru” Arbitration in the Digital Age: Empowering Consumers through Binding ODR*, 62 Baylor L. Rev. 178, 200-202 (2010) (addressing aspects of online dispute resolution that enhance efficiency); Sommer, *Business Litigation and Cyberspace: Will Cyber Courts Prove an Effective Tool for Luring High-Tech Business into Forum States?*, 56 Vand. L. Rev. 561, 597-601 (2003) (evaluating whether Michigan’s cyber court will improve efficiency).

Specialization of judges in one subject matter—here, national business disputes—should also enhance expertise, hopefully leading to higher quality decisions and more predictable outcomes. See, e.g., *Business Litigation and Cyberspace*, 56 Vand. L. Rev. at 567, 584 (reviewing arguments for specialization in the form of business courts and exploring subsequent increases in the quality of decision making).

Michigan’s online forums, however, must not sacrifice crucial aspects of the judicial process in pursuit of efficiency and expertise. Most important are legitimacy, in the form of public trust; finality, achieved through the binding and enforceable nature of judgments; and fairness, best exemplified by due process concerns.

Litigants must trust the cyber process before they will use and respect it. See *Business Litigation and Cyberspace*, 56 Vand. L. Rev. at 593 (stressing foundational nature of legitimacy of court systems). Relocating judicial processes to the Internet may undermine the trust generally placed in courts in a few ways. Most obviously, online dispute resolution eliminates face-to-face communication, potentially weakening the relationship between the parties by dehumanizing the other side. See *Online Mediations*, 81 Def. Couns. J. at 399 (discussing loss of face-to-face experience). It may also be harder for the judge to act as a mediator, by making it harder to perceive emotions and nonverbal cues. See *id.* at 400; *“Drive-Thru” Arbitration in the Digital Age*, 62 Baylor L. Rev. at 220. These concerns, however, may be less salient in the context of a national business dispute, where the parties are large corporations and the subject of the litigation is, at least theoretically, less personal.

Online procedures must also be secure to be seen as legitimate. Both online and offline judicial proceedings must balance privacy against public access, but online proceedings present both greater

opportunity for access to justice and greater concerns about confidentiality. See Ponte, *The Michigan Cyber Court: A Bold Experiment in the Development of the First Public Virtual Courthouse*, 4 N.C. J. L. & Tech. 51, 85-86 (2002). But see *From Face-to-Face to Screen-to-Screen*, 23 Ohio St. J. on Disp. Resol. at 320 (suggesting encryption technology is a sufficient solution for at least small claims). Authentication procedures for parties and judges can protect sensitive information and ensure parties are interacting with each other, rather than with hackers. See *Online Mediations*, 81 Def. Couns. J. at 401.

Enforceable judgments create finality, supporting the efficiency and legitimacy of a dispute resolution system. See Galves, *Virtual Justice as Reality: Making the Resolution of E-Commerce Disputes More Convenient, Legitimate, Efficient, and Secure*, 2009 U. Ill. J.L. Tech. & Pol'y 1, 3. See also *The Michigan Cyber Court*, 4 N.C. J. L. & Tech. at 73-73 (emphasizing the importance of enforceable decisions for successfully attracting parties). Michigan's cyber courts, even though they were located online, were courts of record. See MCL 600.8001. Any similar system should have the same safeguard.

Arguably, the most important values guiding any judicial system are fairness and due process. If online procedures largely mirror traditional courtrooms, they will likely contain the same due process safeguards. Transparency and predictability of decision making can enhance perceptions of fairness in online systems. See *From Face-to-Face to Screen-to-Screen*, 23 Ohio St. J. on Disp. Resol. at 317. Perhaps the biggest concern of commentators is how differential access to online justice systems can jeopardize due process. See *Online Mediations*, 81 Def. Couns. J. at 400; *"Drive-Thru" Arbitration in the Digital Age*, 62 Baylor L. Rev. at 218-220. However, it seems safe to assume that in a national commercial dispute, both parties will have similar access to the Internet and any other necessary technology.

## **B. Building a Cyber Business Court: Structural Considerations**

Michigan, then, can build on its previous cyber and current business courts, drawing from models elsewhere to create a court that combines the efficiency of the Internet with the expertise of a business court, to achieve the honored judicial goals of legitimacy, finality, and fairness. A new cyber business court must be carefully designed to capture these principles and ensure the new procedures fit within the State's existing judicial framework. A focus on high-tech litigants can differentiate Michigan from the business courts in other states that "already ha[ve] a strong grip" on larger corporations. Sommer, 56 Vand. L. Rev. at 592-93.

### **a. Statutory Locus: Creating Separate Courts or Adding on to Business Courts**

The first question to be answered is whether any new online court should exist separately from the circuit courts, as the cyber court did, or whether it should instead be built into the circuit courts, as the business courts are. See MCL 600.8001 (designating separate facilities of cyber courts); MCL 600.8031 (creating business courts as "special dockets").

The virtual proceedings fit naturally within the current business courts, as they would deal with a subset of business disputes that can be appropriately handled online. Locating the new cyber court within currently operating courts could resolve some of the funding issues that led to the demise of the old cyber court. Compare Toering, *The New Michigan Business Court Legislation: Twelve Years in the Making*, 2013 Bus. L. Today 1 (Jan 2013).

An appropriate first step to locate the new cyber court within the business court docket would be to strengthen the language of MCL 600.8039, the provision of the business court legislation that currently encourages use of e-filing and other electronic communications. Any amendments could pull from the repealed MCL 600.8001, which required the cyber court to "sit in facilities designed to allow all hearings and proceedings to be conducted by means of electronic communications," and to "schedule hearings or other proceedings to accommodate parties or witnesses who are located outside of this state."

Statutory language creating this category of specialized online judicial proceedings should capture and build on the technological advances already being used in Michigan's Court of Appeals and select counties, including e-filing, videoconferencing and phone conferences. See Administrative Order No. 2014-23 (2014); Administrative Order No. 2014-24 (2014). Procedures surrounding e-discovery should be updated. Compare 22 NYCRR 202.70, Appendix A. New York's Commercial Division utilizes e-filing and allows parties to appear at conferences and conduct discovery through electronic means. The Chief Judge's Task Force on Commercial Litigation in the 21st Century, *Report and Recommendations to the Chief Judge of the State of New York* (June 2011); 22 NYCRR 202.70. Upgrades to Michigan's physical courtrooms should implement new audio and visual technologies in the courtroom. See Florida's Courtroom 23, *supra*, which includes evidence presentation devices, automated reporting, and cameras that can broadcast proceedings on the Internet.

**b. Factfinders and Decision Makers**

Adding a new specialized docket might require reassigning judges, and probably training judges and other court personnel on new technology. Any legislation should ensure necessary funding is provided for technological upgrades and capacity. Judges are assigned to the business court dockets from circuit courts. See MCL 600.8037; Michigan Judiciary, *Business Courts* <<http://courts.mi.gov/administration/admin/op/business-courts/pages/business-courts.aspx>> (accessed March 8, 2015). If cyber cases are assigned from the existing jurisdiction of the business court, the judges assigned to the business court docket are more likely to have the capacity to preside over the online disputes. This would take advantage of the expertise those judges have developed in handling complex commercial cases; but, because the business court judges sit within the circuit courts, might also guard against the concerns of overspecialization, or insulation from general legal scholarship. See Sommer, 56 Vand. L. Rev. at 588 (comparing Michigan's cyber courts to Delaware business courts).

The cyber court legislation was less specific on where the assigned judges should be drawn from, but suggested that the Supreme Court should consider the experience, interest, and personal characteristics of the judge. See MCL 600.8003. The statutory language also seemed to invite the courts to utilize retired judges. See *id.*

Retired judges have case management expertise and, perhaps, more capacity than current judges to handle a new load of cases; however, they may need more training on new technologies. Michigan's Constitution and some statutes permit the Michigan Supreme Court to assign retired judges for limited purposes. See Const 1963, art 6, § 23; MCL 600.226 (authorizing retired judges to preside over cases); MCL 600.557 (defining senior judges and applicable requirements and duties, authorizing assignment to cases). The constitutional provision is not limited to judicial vacancies, but "allows the Court to designate retired judges for limited judicial duties or specific assignments." *People v. Booker*, 208 Mich App 163, 177; 527 NW2d 42 (1994) (establishing also that the age limitation in Const 1963, art 6, § 19, does not apply to retired judges thus authorized). Temporary assignments are valid even though the term of the visiting judge may be open-ended. See *People v. Fleming*, 185 Mich App 270, 274-275; 460 NW2d 602 (1990).

Absent statutory authorization, retired judges may not resolve disputes, or even act only as factfinders. See *Oakland Co Prosecutor v. Beckwith*, 242 Mich App 579, 584; 619 NW2d 172 (2000). See also *Brockman v. Brockman*, 113 Mich App 233, 237; 317 NW2d 327 (1982) (confirming that circuit courts may not implement statutes explicitly giving Supreme Court power to authorize performance of judicial duties). A court cannot assign judicial functions to retired judges acting as a discovery facilitator. See *Neal v. James*, 252 Mich App 12, 24; 651 NW2d 181 (2002), overruled on other grounds by *Henry v. Dow Chemical Co.*, 484 Mich. 483, 505 (2009). The Michigan Constitution prohibits "master[s] in chancery." Const 1963, art 6, § 5. See also *Karibian v. Palletta*, 122 Mich App 353, 355-356; 332 NW2d

484 (1983) (citing *Brockman*, 113 Mich App 233, to suggest trial courts should not allow masters of chancery to find facts).

On balance, however, because of their experience and expertise, assigning current business court judges to the new cyber business court is recommended.

**c. Finality of Decisions: Binding, Enforceable, Appealable**

Legislation creating a new cyber business court should provide for finality of its decisions. The cyber court was a court of record, MCL 600.8001, generally giving it the power to enforce its own judgments. 1 Michigan Court Rules Practice, Forms, § 1:2. Appeals of its cases went to the Court of Appeals. MCL 600.8021. Appeals from business court decisions also go to the Court of Appeals. MCL 600.8041. These are appeals as of right within MCL 600.309.

**d. Subject Matter Jurisdiction**

Defining the jurisdiction of an online business court will help to determine where it should sit within the existing current court system. As discussed above, the former cyber court and current business court legislation contain almost identical jurisdiction over “business and commercial disputes.” See MCL 600.8005, MCL 600.8035. This term is currently defined broadly in the business court statute:

- (i) An action in which all of the parties are business enterprises.
- (ii) An action in which 1 or more of the parties is a business enterprise and the other parties are its or their present or former owners, managers, shareholders, members, directors, officers, agents, employees, suppliers, or competitors, and the claims arise out of those relationships.<sup>76</sup> arise out of that party's organizational structure, governance, or finances.
- (iv) An action involving the sale, merger, purchase, combination, dissolution, liquidation, organizational structure, governance, or finances of a business enterprise. MCL 600.8031(c).

The business court’s jurisdictional provision also contains an amount in controversy requirement of \$25,000. MCL 600.8035.

The jurisdiction of an online cyber business court should be differentiated from that of the business court by reference to the amount-in-controversy and description of the national nature of a dispute. A higher amount-in-controversy requirement and a higher filing fee would ensure the new cyber court deals with larger disputes. The New York County Commercial Division has a monetary threshold of \$500,000, increased from \$150,000 in 2014. 22 NYCRR 202.10. New Jersey’s Complex Business Litigation Program has a \$200,000 threshold, but allows some judicial discretion. Notice to the Bar: Complex Litigation Program <<http://www.judiciary.state.nj.us/notices/2014/n141113b.pdf>> (accessed April 22, 2015). Cases could be routed into online proceedings by request of the parties and approval by a judge, as with the old cyber court. See MCL 600.8011. Building consent into a case’s assignment to the online court would also ensure that the court will have personal jurisdiction over the litigants.

If the online court is to be separate from the business court, an exception must be built into MCL 600.8035, since jurisdiction of the business court over cases covered by MCL 600.8031(c) is otherwise mandatory.

## 2015 REPORT ON RECENT COURT DECISIONS IDENTIFYING STATUTES FOR LEGISLATIVE ACTION AND RECOMMENDATIONS TO THE LEGISLATURE

As part of its statutory charge to examine recent judicial decisions to discover defects and anachronisms in the law and to recommend needed reforms, the Michigan Law Revision Commission undertook a review of Michigan Supreme Court and Court of Appeals decisions issued from January 1 through December 31, 2015, urging legislative action. That review identified four decisions for which the Commission makes no recommendation, and one decision for which the Commission recommends amendment of the relevant statute. The decisions examined by the Commission are:

1. *Kent County Prosecuting Attorney v City of Grand Rapids*, 498 Mich. 939 (2015)
2. *People v Keefe*, 498 Mich. 962 (2015)
3. *Bedford Public Schools v Bedford Education Ass’n*, 497 Mich. 989 (2015)
4. *People v Bosca*, 310 Mich. App. 1 (2015)
5. *In re: Estate of Jajuga*, 312 Mich.App. 706 (2015)

### 1. Authority of a Home Rule City to Encroach Upon Either a County Prosecutor’s Power to Enforce State Law or the Laws of the State of Michigan

#### A. Background

Grand Rapids amended their City Charter in two significant ways. First, it made the possession, control, use, or giving away of marijuana a civil infraction. Second, it prohibited city police and the city attorney from referring complaints of such conduct to the County Prosecutor.

The Kent County Prosecutor sought a declaratory judgment that the City Charter amendment both usurped his authority and was preempted by state law. Both the trial court and the Court of Appeals held that the amendment was not preempted by state law and that it did not interfere with the County Prosecutor’s rights.

The Supreme Court denied the application for leave to appeal. Justices Viviano and Markman dissented. *Kent County Prosecuting Attorney v City of Grand Rapids*, 498 Mich. 939 (2015). Justice Viviano believes the case presented an important constitutional question about whether a home rule city may, through its charter, encroach upon a county prosecutor’s power to enforce the law. Justice Viviano encouraged the Legislature to clarify the rights and responsibilities of the police and Prosecutor after an arrest is made, or, in the alternative, consider an amendment to the Home Rule City Act, MCL 117.41, to include charter provisions. Justice Markman agreed with Justice Viviano, and also urged the Legislature to address whether the charter amendment violated MCL 117.36, a section of the Home Rule City Act, which provides that “[n]o provision of any city charter shall conflict with or contravene the provisions of any general law of the state.”

#### B. Question Presented

Should the Legislature amend section 41 of MCL 117.41 to include charter provisions and/or clarify the rights and responsibilities of city officials in these types of cases?

#### C. Recommendation

The Commission recommends legislative review of these issues, but makes no recommendation of specific legislative action.

## 2. Nullification of Mandatory Minimum Sentence for Certain Criminal Sexual Conduct

### A. Background

Under the Michigan Penal Code, a person who engages sexually with a person under 13 years of age shall be guilty of first degree criminal sexual conduct. MCL 750.520b(1)(a). Under MCL 750.520b(2)(b), if a violation is committed by a person who is 17 years or older, against a person who is under 13 years old, that individual shall be subject to a mandatory minimum sentence of 25 years.

In *People v Keefe*, 498 Mich. 962 (2015), Defendant sexually penetrated the victim in 2006 and 2009. In the first instance, Defendant was 17 years old and the victim was 5. In the second instance, Defendant was 20 and the victim was 8.

The Prosecutor orally promised to amend the charges to reduce their severity (the threshold age of 17) in exchange for Defendant's guilty plea. This resulted in Defendant no longer being subject to the mandatory minimum sentence. The Defendant pled guilty; the trial court accepted the guilty plea; and Defendant was sentenced to two concurrent terms of 23-50 years. These sentences were two years shorter than the mandatory minimum required under MCL 750.520b(2)(b).

The Michigan Supreme Court denied the Application for Leave to Appeal. Justice Markman concurred but wrote separately to call the Legislature's attention to the possible effective nullification of the mandatory minimum sentence for first-degree criminal sexual conduct.

### B. Question Presented

Should the Legislature amend MCL 750.520b(2)(b) to ensure that the mandatory minimum sentence is not avoided by action of a Prosecutor?

### C. Recommendation

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

## 3. Clarification of Terms in the Public Employment Relations Act

### A. Background

Teachers in Michigan public schools may receive a pay increase either through a "step-increase", which is based on seniority, or a "lane change", which is based on the level of graduate education. MCL 423.215b precludes any pay increases for teachers while a Collective Bargaining Agreement is not in effect. The issue in this case is the ambiguity created by the two potentially contradictory phrases. MCL 423.215b(1) provides, *inter alia*:

*"The prohibition in this subsection includes increases that would result from wage step increases."*

*and*

*".....a public employer shall pay and provide wages and benefits at levels and amounts that are no greater than those in effect on the expiration date of the collective bargaining agreement."*

In *Bedford Public Schools v Bedford Education Ass'n*, 497 Mich. 989 (2015), the Supreme Court denied the Application for Leave to Appeal. Justice Bernstein concurred but wrote separately to express his concern about the problematic drafting of these two sections. In Justice Bernstein's view, by explicitly mentioning "wage step increases" and not explicitly mentioning "lane change" increases in the first

excerpted phrase, the doctrine of *expressio unius est exclusio alterius* indicates that “lane change” increases are permitted. But “lane change” increases are still increases and, therefore, seem precluded by the second excerpted phrase. While the legislative history of the statute supports the latter interpretation, which precludes both “lane change” and “step increases,” Justice Bernstein recommends that the Legislature clarify their intent and in the future indicate whether statutory lists are illustrative or exhaustive.

### **B. Question Presented**

Should the Legislature amend MCL 423.215b to clarify its application to “lane change” increases?

### **C. Recommendation**

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

## **4. Registration of an Individual as a Sex Offender under SORA When the Offense Requiring Registration is Not Sexual in Nature**

### **A. Background**

In June 2011, a few teenage boys, all minors, broke into Defendant’s home. While there, they stole Defendant’s marijuana. Two days later, Defendant lured the boys back to his home where he duct-taped them to chairs and assaulted them with a number of weapons.

Defendant was charged and convicted on a number of counts and the trial court required him to register as a sex offender under the Sex Offenders Registration Act, MCL 28.721 *et.seq.*, (“SORA”). SORA requires a defendant to be registered as a sex offender when a person is convicted of one of the “listed offenses.” In this case, the listed offense was unlawful imprisonment of a minor. This offense, and all of the underlying conduct in this case, was not sexual in nature.

In *People v Bosca*, 310 Mich.App. 1(2015), the Court of Appeals, after a lengthy review of statutory interpretation, case law and the federal Sex Offender Registration and Notification Act, concluded that SORA did require Defendant to be registered as a sex offender even though the underlying conduct was not sexual in nature. But the Court found it troubling that a person could be deemed a sex offender without committing a sexual offense and noted the vagueness and ambiguity of the statute. The Court urged the Legislature to amend the statute to address those concerns. The Court suggested a number of potential remedies for the Legislature’s consideration:

1. Amending the short title so that the Act does not only refer to sexual offenders. The Court suggests “Sex and Child-Victim Offenders Registration Act.”
2. Amending the statement of legislative purpose to express an interest in both child-victim offenders as well as sex offenders.
3. Amending the act to include a definition of “sex offender” and “sex offense.”
4. Amending the act to separately define “child victim offender” and “child victim offense” so as to remove the perceived injustice of labeling a non-sexual offender as a sexual offender.
5. Amending the act to create separate registries for child-victim offenders and sex offenders.

### **B. Question Presented**

Should the Legislature amend the Sex Offenders Registration Act to address the situation where a person is labeled a sex offender without having committed a sexual offense?

### **C. Recommendation**

The Commission recommends that the Legislature consider the suggestions of the Court of Appeals and amend the Sex Offenders Registration Act to address the concerns of the Court.

## **5. Construction of the term “Exempt Property” under the Estates and Protected Individuals Code**

### **A. Background**

Shelby Jean Jajuga’s last will and testament expressly provided that some of her children were to “inherit nothing from her estate.” She explained her decision to disinherit them as not due to lack of love for them, but because they either received compensation before she died or because she did not believe it was in their best interest.

One of the disinherited children brought this action. MCL 700.2404 provides that a surviving child, in the absence of a surviving spouse, is entitled to “exempt property” from the estate. In this case, Ms. Jajuga left no surviving spouse and therefore, the disinherited child was covered by MCL 700.2024.

In *In re: Estate of Jajuga*, 312 Mich.App. 706 (2015), a case of first impression, the Court held that the term “entitled” rendered the “exempt property” immune to the expressed wishes of the decedent. The Court indicated that this result was strange since one of the policies of the Estates and Protected Individuals Code, MCL 700.1101 *et.seq.*, was “to discover and make effective a decedent’s intent in distribution of the decedent’s policy.” MCL 700.1201(b). Thus, the Court recommended that the Legislature address how the intent to disinherit a child will affect their right to “exempt property.”

### **B. Question Presented**

Should the Legislature amend MCL 700.1201(b) to specifically prescribe the way in which a statement of a decedent’s intent to disinherit a child under a will affects the child’s claim to “exempt property” under MCL 700.2404?

### **C. Recommendation**

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

## 2016 REPORT ON RECENT COURT DECISIONS IDENTIFYING STATUTES FOR LEGISLATIVE ACTION AND RECOMMENDATIONS TO THE LEGISLATURE

As part of its statutory charge to examine recent judicial decisions to discover defects and anachronisms in the law and to recommend needed reforms, the Michigan Law Revision Commission undertook a review of Michigan Supreme Court and Court of Appeals decisions issued from January 1 through December 31, 2016, urging legislative action. That review identified one decision for which the Commission makes no recommendation, and one decision for which the Commission recommends that the Legislature amend the relevant statute. The decisions examined by the Commission are:

1. *People v Duenaz*, 498 Mich 969; 873 NW2d 303 (2016).
2. *In re: Gach*, No. 328714, 2016 Mich App LEXIS 783, at \*14-20 (Apr. 19, 2016).

### 1. Definition of Sexual Conduct Under the Rape-Shield Statute.

#### A. Background

Under the rape-shield statute, MCL 750.520j, a defendant accused of rape cannot offer evidence of a victim's past "sexual conduct." The two exceptions to this are past instances of "sexual conduct" with the defendant, and specific instances of "sexual activity" that caused disease or pregnancy. Under the statute, each of these exceptions can only be used if the inflammatory or prejudicial nature of the evidence does not outweigh its probative value. The statute does not define "sexual conduct."

In *People v Duenaz*, the Court of Appeals upheld a trial court's ruling that the defendant's evidence, which showed the victim was abused by her then-step-father a year prior, was inadmissible. The Supreme Court denied the defendant's application for leave to appeal. In the Order denying the application for leave to appeal, the Supreme Court noted the term "sexual conduct" is not defined by statute and encouraged the Legislature to "clarify whether evidence of prior sexual abuse constitutes 'sexual conduct' within the meaning of the rape-shield statute."

The Court cited two cases in which the courts were divided. In *People v Piscopo*, 480 Mich 966, 970 741 NW2d 826 (2007), Justice Markman dissented from an order denying an application for leave to appeal, which held that a defendant cannot admit evidence that his victim has been sexually abused (in this case, the victim purported to have been raped by a demon). Justice Markman noted that "sexual conduct" should only encompass behavior and voluntary conduct because of the dictionary definition of "conduct" and because the statute contrasts "sexual conduct" with a broader term of "sexual activity". *Id.* In *People v Parks*, 483 Mich 1040, 1057; 766 NW2d 650 (2009), Justices Markman and Cavanagh reiterated this view. However, Justice Young disagreed with Justice Markman's view and concurred with the majority in denying the application for leave to appeal. Justice Young noted that Justice Markman's interpretation of the term "sexual conduct" would give prostitutes more protection than rape victims.

#### B. Question Presented

Should the Legislature amend the rape-shield statute, MCL 750.520j, to clarify whether evidence of sexual abuse constitutes "sexual conduct" within the meaning of the statute?

#### C. Recommendation

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

## **2. Lack of a Rebuttal Process Challenging the Presumption of Unfitness in Parental Rights Terminations Where the Parent Has Had His or Her Rights Terminated in the Past**

### **A. Background**

Under MCL 712A.19b(3)(l) of the Probate Code, a court may terminate parental rights when the person's parental rights to another child have been terminated by proceedings under MCL 712A.2(b) or the similar proceedings of another state. MCL 712A.2(b), in contrast to MCL 712A.19b(3)(l), allows for termination of rights because of neglect or refusal "to provide proper or necessary support, education, medical, surgical, or other care necessary for [a child's] health or morals"; because of a home being unfit due to the "neglect, cruelty, drunkenness, criminality, or depravity" of a parent, guardian, or nonparental adult; because the child is in danger of physical or psychological harm; and other reasons.

In this case, respondent's parental rights to other children were previously terminated in prior proceedings, and, on that basis, in this case, her rights to the minor child were terminated under section 19b(3)(l). The Court of Appeals considered a due process challenge to subsection (l) and held that when a parent has been subjected to an earlier termination of parental rights, if the facts of the current case do not justify a new termination, application of subsection (l) creates a presumption of a parent's unfitness that operates to deny a fair opportunity to rebut the presumption in violation of the due process clauses of the Federal and Michigan Constitutions. *In re: Gach*, No. 328714, 2016 Mich. App. LEXIS 783, at \*14-20 (Apr. 19, 2016).

In reviewing the statutory provisions, the Court explained that in contrast to other provisions in the statute, under MCL 712A.19b(3)(l), there is no requirement that its application be limited to enumerated standards such as serious and chronic neglect or physical or sexual abuse when prior attempts to rehabilitate the parents have been unsuccessful. Rather, under subsection (3)(l), a trial court may proceed directly to a termination proceeding when it has taken jurisdiction over a child and when the respondent has had a prior termination for any reason. The Court reasoned that this statutory provision creates "a presumption of a respondent's unfitness when that respondent has been subjected to a prior termination (and the State has no burden to prove the parent is still unfit)." *Id.* at 17. The U.S. Supreme Court has held that "a statute creating a presumption which operates to deny a fair opportunity to rebut it violates the due process clause of the Fourteenth Amendment." *Vlandis v Kline*, 412 U.S. 441 (1973). For these reasons, the Court held that MCL 712A.19b(3)(l) violates the Due Process Clauses of the Federal and State Constitutions.

### **B. Question Presented**

Should the Legislature amend MCL 712A.19b(3)(l) to address the Constitutional violation as held by the Court?

### **C. Recommendation**

The Commission recommends that the Legislature amend MCL 712A.19b(3)(l) to bring it into compliance with the Due Process Clauses of the Federal and Michigan Constitutions.

PRIOR ENACTMENTS PURSUANT TO  
MICHIGAN LAW REVISION COMMISSION RECOMMENDATIONS

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

1967 Legislative Session

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

1968 Legislative Session

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

1969 Legislative Session

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

1970 Legislative Session

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

1971 Legislative Session

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

1972 Legislative Session

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

1973 Legislative Session

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

1974 Legislative Session

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

1975 Legislative Session

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

1976 Legislative Session

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

1978 Legislative Session

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

1980 Legislative Session

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

1981 Legislative Session

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

1982 Legislative Session

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

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

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

1984 Legislative Session

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

1986 Legislative Session

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

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

1988 Legislative Session

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

1990 Legislative Session

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

1991 Legislative Session

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

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

1992 Legislative Session

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

1993 Legislative Session

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

1995 Legislative Session

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

1996 Legislative Session

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

1998 Legislative Session

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

2002 Legislative Session

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

2003 Legislative Session

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

2004 Legislative Session

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

## BIOGRAPHIES OF COMMISSION MEMBERS AND STAFF

### **RICHARD D. McLELLAN**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **ANTHONY DEREZINSKI**

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

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

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

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

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

## **GEORGE E. WARD**

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

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

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

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

## **WILLIAM C. WHITBECK**

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

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

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

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

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

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

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

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

### **BERT JOHNSON**

State Senator Bert Johnson is a legislative member of the Michigan Law Revision Commission and has served on the Commission since January 2015.

A lifelong resident with a 100-plus year family history in Detroit, Bert Johnson grew up in Russell Woods, on the city's west side, the son of a postal employee and an attorney. He attended the University of Detroit Jesuit High School and Academy and the University of Detroit – Mercy.

Senator Johnson went on to manage his family's law firm for a decade before serving as then-State Representative Bill McConico's Chief of Staff for five years. When Representative McConico was unable to run for reelection due to term limits, Senator Johnson, with strong grassroots and community support, ran to succeed him in the Legislature in 2006. A leader with the skills and experience to advance a progressive, forward-thinking agenda, Senator Johnson quickly established himself as a go-to person when it comes to passing legislation.

Senator Johnson's work on behalf of Michigan's citizens has been recognized with various awards and honors, which include a "Men of Excellence" Award from the *Michigan Chronicle*, a "Great Expectations" Award from the Detroit Branch NAACP, a "Humane Legislator of the Year" Award from the Humane Society of the United States, a "Friend of the MAC" Award from the Michigan Association of Counties, and a "Cancer Prevention" Award from the national organization, Less Cancer, in honor of his work to establish Cancer Prevention Day in Michigan. His passions and legislative focus issues include educational access for all, civil rights, regional mass transit, foreclosure relief, improved and more affordable healthcare, addressing the expansion of the prison-industrial complex, environmental responsibility, and economic development and investment.

In the 2009-2010 legislative session, only Senator Johnson's second term in the Michigan House, he solidified his reputation as a problem-solver. As a two-term Detroit Caucus Chair and serving as one of only two African-American committee chairs in the Michigan government, he held the gavel for the powerful Regulatory Reform committee. Senator Johnson passed more laws that session than any other Democratic or Republican member in the House or the Senate. His performance led former Senate Democratic Floor Leader Buzz Thomas to call him, "Detroit's most effective legislator."

Today, Senator Johnson is able to drive a statewide discussion despite serving in the 'super-minority' in the Senate, while still achieving real results for his constituents. He was a lead sponsor of legislation that established a regional transit authority in southeastern Michigan and authored the bill that eliminated the egregious charges associated with the draconian Driver's Responsibility Fee.

Senator Johnson is a board member for Michigan Youth in Government and regularly addresses their conventions at the Capitol. He has been Treasurer of the Michigan Legislative Black Caucus and has

served with defense and prosecuting attorneys, judges, justice advocates and others on the statewide Indigent Defense Advisory Commission, tasked with making recommendations on improving Michigan's public defender system.

Senator Johnson represents the 2nd Senate District, which includes northeast Detroit, Highland Park, Hamtramck, Harper Woods and the five Grosse Pointe Communities. He serves on the Regulatory Reform Committee, the Insurance Committee, and as Minority Vice-Chair of the Outdoor Recreation and Tourism Committee and Families, Seniors and Human Services Committee. He is devoted to raising his children in a loving and stable home with the same values of hard work and humanitarianism his parents instilled in him.

### **PETER J. LUCIDO**

State Representative Peter J. Lucido is a legislative member of the Michigan Law Revision Commission and has served on the Commission since January 2015. He was first elected to serve the 36<sup>th</sup> District in November 2014. The district covers part of Macomb County including Bruce, Washington and part of Shelby townships and the Village of Romeo.

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

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

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

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

### **ROSE MARY ROBINSON**

State Representative Rose Mary Robinson is a legislative member of the Michigan Law Revision Commission and has served on the Commission since January 2015. She is serving her third term representing Michigan's 4th House District, which comprises Hamtramck and portions of Detroit.

Representative Robinson, a former attorney for the American Federation of State, County and Municipal Employees Union Council 25, was one of the first women ever elected to the Wayne County Commission in 1970. Before being elected to the Michigan House of Representatives, she practiced as a criminal defense lawyer for more than 40 years, and also served as a member of the Detroit Charter Revision Commission in 2009. Representative Robinson holds a law degree from Wayne State Law School.

She is a mother of six and lives in Detroit.

## **TONYA SCHUITMAKER**

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

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

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

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

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

## **JOHN G. STRAND**

Mr. Strand, as the Legislative Council Administrator, served as the ex-officio member of the Michigan Law Revision Commission from January 2001 until April 2016. Prior to being appointed to the Legislative Council, Mr. Strand served as Chairman of the Michigan Public Service Commission since October 1993 and had been a Tribunal Judge for the Michigan Tax Tribunal from January to October 1993. He had previously served six terms as a state legislator beginning in 1981, serving in a leadership position and as Vice Chair of the Insurance and the House Oversight Committees and as a member of the Taxation and Judiciary Committees.

Mr. Strand is a member of the State Bar of Michigan. He holds a B.A. from the University of Pittsburgh in Economics and Political Science (1973) and a J.D. from Case Western Reserve University (1976).

## **JENNIFER L. DETTLOFF**

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

Revision Commission, State Drug Treatment Court Advisory Committee, and the Michigan Commission on Uniform State Laws.

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

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

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

### **JANE O. WILENSKY**

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

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

## REPORT TO THE LEGISLATURE ON RECOMMENDATIONS FOR REVISIONS TO MICHIGAN’S FREEDOM OF INFORMATION ACT

Transparency is a critical requirement for public entities at all levels of state and local government. As part of its statutory charge to discover defects and anachronisms in the law and to recommend needed reforms, the Michigan Law Revision Commission conducted a review of the Michigan Freedom of Information Act, MCL 15.231 et seq., (“FOIA”), court decisions interpreting FOIA, and legislation from other states to identify issues for consideration by the Legislature to improve the public’s access to information regarding the affairs of government. Mindful of the fact that legislation is currently pending to create a new Legislative Open Records Act, the Commission has identified five areas that merit legislative review. Those areas are:

1. Language That Has Been Limited by Court Interpretation
2. Improvements to Statutory Language for Clarity
3. Amending FOIA Regarding Certain Private Entities That Receive Public Funds
4. Expansion of Michigan’s Open Data Portal
5. Creation of an Entity to Monitor Access to Information Under FOIA

### **I. LANGUAGE THAT HAS BEEN LIMITED BY COURT INTERPRETATION**

1. The Words “Granted” and “Fulfilled” Are Not Synonymous. *Cramer v Village of Oakley*, 316 Mich.App. 60; 890 N.W.2d 895 (2016).

#### **A. Background**

Under MCL 15.235(5)(2), a public body must respond to a request for information within 5 days of receiving it by granting the request, denying it, granting it in part and denying it in part, or by giving a written notice of an extension of up to 10 days.

In *Cramer v. Village of Oakley*, the plaintiff made six separate FOIA requests regarding the village’s reserve police department unit. Five days later, plaintiff was informed the requests were granted, and that the village would conduct a search and provide any documents located. The plaintiff sued, alleging that a written statement saying the village granted the requests did not comply with FOIA; rather, the documents had to be provided when the village responded to the request. Eleven days after receiving the request, the village provided the documents.

The district court ruled for the plaintiff, holding that the village did not provide the documents within the statutorily required period, which was tantamount to denial of the request. The Court of Appeals reversed the decision. The Court held that the words “granted” and “fulfilled” are not synonymous, and that the village complied with the statute by granting the request within the statutorily required period. The court noted that a requestor can sue for the fulfillment of their request if “an inordinate delay in the production of requested documents” occurs. *Id.*

#### **B. Question Presented**

Should the Legislature amend FOIA to clarify the terms “granted” and “fulfilled”? Should the Legislature define the amount of time that constitutes an “inordinate delay” under *Cramer*?

#### **C. Recommendation**

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

2. Notes Taken by Municipal Officials in Public Meetings Are Not Necessarily Public Records. *Hopkins v Twp of Duncan*, 294 Mich.App. 401; 812 N.W.2d 27 (2011).

A. Background

Under MCL 15.232(2)(e), a public record is “a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created.”

In *Hopkins v. Twp of Duncan*, a township resident requested copies of the notes taken by the members of the township board at a specific board meeting. The township refused to produce the requested records, and the resident filed suit. The Court of Appeals held that “handwritten notes of a township board member taken for his personal use, not circulated among other board members, not used in the creation of the minutes of any of the meetings, and retained or destroyed at his sole discretion, are not public records subject to disclosure under FOIA.” *Id.* at 402.

B. Question Presented

Should the Legislature amend FOIA to clarify that notes taken by municipal officials in public meetings are not public records?

C. Recommendation

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

3. Public Funds Do Not Include Fee-For-Service. *State Defender Employees v Legal Aid & Defender Ass’n of Detroit*, 230 Mich.App. 426; 584 N.W.2d 359 (1998).

A. Background

Under MCL 15.232(d)(iv), a public body (all of which are subject to FOIA requests) includes any entity that “is created by state or local authority or which is primarily funded by or through state or local authority.”

In *State Defender Union Employees v Legal Aid & Defender Ass’n of Detroit*, the plaintiff requested financial records from a non-profit corporation established to provide legal services to indigent persons residing in the city of Detroit. A majority of the revenue of the non-profit came from “public funds received for services rendered or to be rendered, including contracts with public agencies and as appointed counsel.” *Id.* at 428. The Court of Appeals held that the non-profit was not a public body because revenues that are generated from fee-for-service transactions with various governmental entities do not count as being “funded by or through state or local authority” for the purposes of FOIA. *Id.* at 433-34.

B. Question Presented

Should the Legislature review FOIA to clarify that being “primarily funded by or through state or local authority” does not include revenues from fee-for-service transactions, especially for entities that serve a public purpose like social service non-profits that receive public contracts?

C. Recommendation

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

## II. OVERALL IMPROVEMENTS IN STATUTORY LANGUAGE FOR CLARITY

### 1. Clarify the Definition of Public Body

#### A. Background

MCL 15.232(d) defines public body as any of the following:

“(i) A state officer, employee, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of the state government, but does not include the governor or lieutenant governor, the executive office of the governor or lieutenant governor, or employees thereof.

(ii) An agency, board, commission, or council in the legislative branch of the state government.

(iii) A county, city, township, village, intercounty, intercity, or regional governing body, council, school district, special district, or municipal corporation, or a board, department, commission, council, or agency thereof.

(iv) Any other body which is created by state or local authority or which is primarily funded by or through state or local authority.

(v) The judiciary, including the office of the county clerk and employees thereof when acting in the capacity of clerk to the circuit court, is not included in the definition of public body.”

Subsection (iii) does not expressly include committees from local government units. Subsection (iii) also does not expressly include mayors, county executives, prosecutors, sheriffs, and other singular local offices.

Boards of canvassers and other electoral officials are not expressly included in the definition of “public body” since they are neither inherently legislative nor executive in nature and the Michigan Constitution provides for elections in a separate section of the Constitution, rather than under one of the three branches of state government. Mich. Const. art. II, § 7.

#### B. Question Presented

Should the Legislature amend the definition of “public body” under Section 2(d) of FOIA, MCL 15.232(d), to expressly include local government committees, singular local offices, and boards of canvassers and other electoral officials?

#### C. Recommendation

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

### 2. Clarify the Definition of Writing

#### A. Background

MCL 15.232(2)(h) defines “writing” as “handwriting, typewriting, printing, photostating, photographing, photocopying, and every other means of recording, and includes letters, words, pictures, sounds, or symbols, or combinations thereof, and papers, maps, magnetic or paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content.”

While courts have interpreted “writing” to include digital and other electronically stored information for the purposes of FOIA, the definition of the term “writing” does not include those methods of recording.

**B. Question Presented**

Should the Legislature amend the definition of “writing” under MCL 15.232(2)(h), to expressly include digital and other electronically stored information?

**C. Recommendation**

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

**3. Clarify the Language of Section 4(1)(c)**

**A. Background**

MCL 15.234(4)(1)(c) reads in part, “[Except as otherwise provided in this act, if the public body estimates or charges a fee in accordance with this act, the total fee shall not exceed the sum of the following components:] For public records provided to the requestor on nonpaper physical media, the actual and most reasonably economical cost of the computer discs, computer tapes, or other digital or similar media.”

Section 4(1)(c) does not include modern forms of non-paper physical media such as flash drives.

**B. Question Presented**

Should the Legislature amend Section 4(1)(c) of FOIA, MCL 15.234(1)(c), to include more modern forms of non-paper physical media such as flash drives?

**C. Recommendation**

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

**4. Clarify the Language of Section 10b**

**A. Background**

MCL 15.240b reads in part, “If the court determines, in an action commenced under this act, that a public body willfully and intentionally failed to comply with this act or otherwise acted in bad faith, the court shall order the public body to pay, in addition to any other award or sanction, a civil fine of not less than \$2,500.00 or more than \$7,500.00 for each occurrence. (Emphasis added).

The word “occurrence” is not defined. Neither the Supreme Court nor the Court of Appeals has addressed the meaning of “occurrence” in this section or reviewed a penalty imposed under Section 10b of FOIA. Occurrence could potentially mean per request, per document, per wrong exemption, per improper legal theory, or per person.

**B. Question Presented**

Should the Legislature amend Section 10b of FOIA, MCL 15.240b, to clarify the meaning of “occurrence”?

**C. Recommendation**

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

5. Clarify the Language of Section 11(2)

A. Background

MCL 15.241 reads in part:

“(1) A state agency shall publish and make available to the public all of the following:

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

(b) Promulgated rules.

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

(2) Publications may be in pamphlet, loose-leaf, or other appropriate form in printed, mimeographed, or other written matter.”

Subsection (2) does not explicitly mention publication by electronic means.

B. Question Presented

Should the Legislature amend Section 11(2) of FOIA, MCL 15.241(2), to explicitly include publication by electronic means?

C. Recommendation

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

III. AMENDING FOIA REGARDING CERTAIN PRIVATE ENTITIES THAT RECEIVE PUBLIC FUNDS

A. Background

Under MCL 15.232(d), the term “public body” includes any entity that “is created by state or local authority or which is primarily funded by or through state or local authority.” All public bodies are subject to FOIA.

In *Sclafani v. Domestic Violence Escape*, 255 Mich. App. 260; 660 N.W.2d 97 (2003), a nonprofit group that educates citizens about domestic violence and provides several services to victims, received sixty percent (60%) of its funding from multiple government sources. The Court of Appeals considered whether multiple government sources can be combined to constitute “primary funding” under this section. While noting that the language of the statute is somewhat ambiguous, the Court held that the shelter was a public body, reasoning that any entity that received fifty percent (50%) or more of its funding from grants from state or local government authorities was a public body. The Court further held that funding from multiple government sources should be combined for determining whether fifty percent (50%) or more of a body’s funds are from state or local government authorities.

Compared to several other states, this is a high threshold. For instance, in Texas, any entity that is supported by public funds is subject to Texas’s Freedom of Information Act. Tex. Gov’t Code § 552.003(xii) (LexisNexis, 2015). However, the Supreme Court of Texas has held this does not include funds from quid pro quo contracts with government entities. *Greater Houston P’ship v. Paxton*, 468 S.W.3d 51, 58 (Tex. 2015).

In Georgia, a non-profit is subject to Georgia’s Freedom of Information Act where one-third (1/3rd) or more of its budget is from direct allocations of tax funds (not counting healthcare facilities’ Medicaid reimbursements). Ga. Code Ann. § 50-18-70(b)(1) (LexisNexis, 2016). In Kansas, an entity that receives

public funds, except in return for goods or services, is subject to the Kansas Freedom of Information Act. Kan. Stat. Ann. § 45-217(f) (LexisNexis, 2017). In Minnesota, non-profit community action agencies that receive public funding and non-profit social services agencies that contract with government agencies are subject to the Minnesota Freedom of Information Act. Minn. Stat. Ann. § 13.02, subd. 11 (LexisNexis, 2017). In North Dakota, all private entities that expend or are supported by public funds are subject to the North Dakota Open Records Statute. N.D. Cent. Code § 44-04-17.1(12)(c) (LexisNexis, 2017). In South Carolina, public bodies subject to the South Carolina Freedom of Information Act include “any organization, corporation, or agency supported in whole or in part by public funds or expending public funds.” S.C. Code Ann. § 30-4-20(a) (LexisNexis, 2016). In Tennessee, “when a private entity’s relationship with the government is so extensive that the entity serves as the functional equivalent of a governmental agency” it is subject to Tennessee’s Freedom of Information Act. Memphis Publ. Co. v. Cherokee Children & Family Servs., 87 S.W.3d 67, 78-79 (Tenn. 2002).

In Ohio, private non-profit and for-profit schools are subject to the Ohio Freedom of Information Act, regardless of whether the school receives public funds. Ohio Rev. Code Ann. § 149.43(A)(1) (LexisNexis, 2016). Other states beside Michigan that use a primary funding requirement include Virginia and West Virginia. Va. Code Ann. § 2.2-3701 (LexisNexis, 2017); W. Va. Code § 29B-1-2(4) (LexisNexis, 2016).

#### B. Question Presented

Should the Legislature review the phrase “primarily funded by or through state or local authority” under MCL 15.232(d)(iv), to expressly provide the percentage of a private entity’s budget that must be made up of public funds to determine whether the entity is subject to FOIA?

#### C. Recommendation

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

### IV. EXPANSION OF MICHIGAN’S OPEN DATA PORTAL

#### A. Background

According to the National Conference of State Legislatures, an open data law “aims to make nonconfidential government data available for public use in a format that is easily accessible. Open data formats allow government information to be combined, analyzed or presented in new ways by citizens, businesses and other organizations.” Open Government Data Legislation, National Conference of State Legislatures (Feb. 7, 2017), <http://www.ncsl.org/research/telecommunications-and-information-technology/open-data-legislation.aspx>.

One of the reasons Michigan scored so poorly on the Center for Public Integrity’s 2015 state integrity investigation was due to its lack of open data laws. Chad Selweski, Michigan gets F grade in 2015 State Integrity Investigation, Center for Public Integrity (Nov. 12, 2015), <https://www.publicintegrity.org/2015/11/09/18427/michigan-gets-f-grade-2015-state-integrity-investigation>. Since then, Michigan has created an open data portal at [www.data.michigan.gov](http://www.data.michigan.gov), which includes hundreds of open data sets. Publishing responses to FOIA requests in open data format would give the state and the public more information about, for example, which entities receive multiple FOIA requests and on what subjects, and would provide better-targeted, more accountable data-driven policies to increase transparency.

Several states have developed laws and policies to publish responses to freedom of information requests as open data. Utah requires various freedom of information requests to be published online in open format. Utah Code Ann. § 63A-3-403(10)-(11) (LexisNexis, 2016). In Hawaii, the state Office of

Information Practices maintains three databases of responses to freedom of information requests: the first provides formal summaries, the second provides informal summaries, and the third contains information request responses. Nancy Cook Lauer, Hawaii gets D+ grade in 2015 State Integrity Investigation, Center for Public Integrity (Nov. 9, 2015), <https://www.publicintegrity.org/2015/11/09/18372/hawaii-gets-d-grade-2015-state-integrity-investigation>.

B. Question Presented

Should the Legislature amend FOIA to require that responses to FOIA requests be published as open data?

C. Recommendation

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

V. CREATION OF AN ENTITY TO MONITOR ACCESS TO INFORMATION UNDER FOIA

A. Background

Another reason Michigan scored poorly on the Center for Public Integrity's 2015 state integrity investigation was due to the lack of an entity to monitor access to information under FOIA. Selweski, *supra*. Other states have entities that investigate FOIA complaints against public bodies, help mediate disputes over public records, and can either order public record disclosure or file suit in their own name to obtain public records. Such an entity could potentially resolve FOIA disputes in less time and for less money, thereby possibly reducing litigation.

In Iowa, the Public Information Board provides informal assistance in settling open records complaints, investigates open records complaints, and can issue orders for public bodies to comply with the open records law. 2012 Iowa Acts 1115. In Hawaii, the Office of Information Practices can investigate and rule on complaints under the state's Uniform Information Practices Act (its FOIA equivalent). Lauer, *supra*. In Connecticut, the Freedom of Information Commission has the power to investigate violations of Connecticut's Freedom of Information Act. Conn. Gen. Stat. § 1-205 (LexisNexis, 2016).

B. Question Presented

Should the Legislature create an entity to monitor access to information under FOIA?

C. Recommendation

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