

The Status of Uniform Laws in Wisconsin

Darrell L. Peck

Follow this and additional works at: <http://scholarship.law.marquette.edu/mulr>



Part of the [Law Commons](#)

Repository Citation

Darrell L. Peck, *The Status of Uniform Laws in Wisconsin*, 39 Marq. L. Rev. 35 (1955).
Available at: <http://scholarship.law.marquette.edu/mulr/vol39/iss1/3>

This Article is brought to you for free and open access by the Journals at Marquette Law Scholarly Commons. It has been accepted for inclusion in Marquette Law Review by an authorized administrator of Marquette Law Scholarly Commons. For more information, please contact megan.obrien@marquette.edu.

THE STATUS OF UNIFORM LAWS IN WISCONSIN

DARRELL L. PECK*

As far back as 1889, attempts were being made to achieve some degree of uniformity in the law of the various United States jurisdictions. In that year the American Bar Association, at its annual meeting, created a Special Committee on Uniformity of State Legislation. Although this committee did not itself take any direct steps towards uniformity of state laws, it did recommend that the various states be encouraged to adopt statutes similar to one originally enacted in New York in 1890. This statute created a Commission on Uniform State Laws for the State of New York which was a permanent body with authority to confer with similar bodies from other states. Other jurisdictions were adopting similar statutes almost immediately, and in 1892 the first National Conference of Commissioners on Uniform State Laws was held. Representatives of nine states attended. Within twenty years, every state and territory, as well as the District of Columbia, the Phillipines, and Puerto Rico, was sending representatives.

Since 1892 the National Conference has held sixty-three annual meetings and has promulgated nearly one hundred and forty uniform and model acts.¹ However, more than fifty of these have since been superseded, withdrawn, or declared obsolete or inactive. A total of eighty-four acts are currently being promulgated. All of the acts which have been enacted in at least one jurisdiction are published, together with explanatory notes by the Commissioners and annotations to court decisions, in *Uniform Laws Annotated*. An account of the National Conference's annual proceedings, as well as the text of acts pending before or approved by the Commissioners, is published each year in the *Handbook of the National Conference of Commissioners on Uniform State Laws*.

To insure that the primary purpose of the uniform acts will not be defeated by a different court interpretation in every jurisdiction adopting them, the National Conference includes a "short title" provision—"This Act may be cited as the Uniform . . . Act."—and a provision that "This Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which en-

*LL.B., Marquette University, 1954; member of the Board of the Marquette Law Review, 1953-54; member of the Wisconsin and Washington Bars; Instructor of Law, University of Washington.

¹ The Commissioners and some writers sometimes count each amendment to or revision of an existing act as a separate act. In this article, all amendments and revisions are treated as part of the original act and consequently are not counted separately.

act it." Although many states do not include these provisions when adopting a uniform act, Wisconsin incorporates them in almost every case. The purpose of these provisions is to appraise the courts of the fact that they are dealing with a uniform act and to induce them to interpret the act as it has been interpreted in other jurisdictions.

Wisconsin is among the leaders as far as adoption of uniform acts goes. According to the 1953 *Handbook*, Wisconsin has fifty-four adoptions to lead all jurisdictions. However, this figure includes nineteen acts or amendments which are no longer being promulgated and six amendments to or revisions of uniform acts previously adopted by Wisconsin. Of the acts currently being promulgated by the National Conference, Wisconsin has twenty-nine and is second only to South Dakota, which has thirty-three. This article is intended to discuss only those uniform and model acts which are currently being promulgated by the National Conference, although brief mention is made of the seven commercial acts recently superseded by the Uniform Commercial Code.

UNIFORM ACTS CURRENTLY BEING PROMULGATED

The following table contains a list of the fifty-eight uniform acts currently being promulgated by the National Conference. Amendments to or revisions of these acts are listed under each act and are considered a part of that act. The citation to WIS. STATS. (1953) is given for the acts which have been adopted in Wisconsin. In some cases Wisconsin has adopted a uniform act with some variations from the form approved by the National Conference, but these changes are, for the most part, very minor.

Title of Model Act	Citation in Uniform Laws Annotated or Handbook	Year of Approval by Conference	No. of Juris. Enacting	Citation in Wis. Stats. (1953)
1. Absence as Evidence of Death and Absentees' Property Act	9 ULA 1	1939	3	268.22-268.34
2. a. Acknowledgment Act	9 ULA 13	1939	7	235.19(1)-(15)
b. Acknowledgment Act Amendment	9 ULA 21	1942	22	235.19(11)
c. Acknowledgment Act as Amended	9 ULA 13	1949	1	
3. Act Governing Secured Creditors' Dividends in Liquidation Proceedings	9 ULA 27	1939	5	128.25
4. Act on Blood Tests to Determine Paternity	9 ULA (P.P.) 12 ²	1952	3	
5. Act Relating to Reverter of Realty	1944 <i>Handbook</i> 209	1944		
6. a. Act to Secure the Attendance of Witnesses from Without the State in Criminal Cases	9 ULA 37	1931	16	325.33

² Citations to—ULA (P.P.)—refer to the 1954 Cumulative Annual Pocket Part for the volume of UNIFORM LAWS ANNOTATED which is cited.

b. Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings as Revised	9 ULA 41	1936	36	325.33
7. Adoption Act	1953 <i>Handbook</i> 216	1953		
8. Aircraft Financial Responsibility Act	1954 <i>Handbook</i> ³	1954		
9. a. Ancillary Administration of Estates Act	9 ULA (P.P.) 36	1949		324.31
b. Ancillary Administration of Estates Act Amendment	1953 <i>Handbook</i> 241	1953		
10. Business Records Evidence Act	9 ULA 385	1936	22	
11. Civil Liability for Support Act	1954 <i>Handbook</i>	1954		
12. Commercial Code Pamphlet ⁴		1951	1	
13. a. Common Trust Fund Act	9 ULA 148	1938	27	223.055
b. Common Trust Fund Act Amendment	9 ULA (P.P.) 48	1952	5	223.055(2)
14. Contribution Among Tortfeasors Act ⁵	9 ULA 153	1939	10	
15. a. Criminal Extradition Act	9 ULA 169	1926	16	
b. Criminal Extradition Act Amendments	9 ULA 169	1932	10	364.01-364.29
c. Criminal Extradition Act as Revised	9 ULA 174	1936	29	364.01-364.29 ⁶
16. Criminal Statistics Act	1946 <i>Handbook</i> 222	1946		
17. Declaratory Judgments Act	9 ULA 232	1922	39	269.56(1)-(16)
18. Desertion and Non-Support Act	10 ULA	1910	21	52.05
19. Disposition of Unclaimed Property Act	1954 <i>Handbook</i>	1954		
20. Divorce Recognition Act	9 ULA 364	1948	9	247.22
21. Enforcement of Foreign Judgments Act	9 ULA 376	1948	7	270.96
22. Federal Tax Lien Registration Act	9A ULA 1	1926	25	74.76
23. Fiduciaries Act	9A ULA 10	1922	24	112.01(1)-(16)
24. Flag Act	9A ULA 32	1917	17	348.479-348.484
25. Foreign Depositions Act	9A ULA 39	1920	14	
26. Fraudulent Conveyances Act	9A ULA 42	1918	20	242.01-242.13
27. Insurers Liquidation Act	9A ULA 148	1939	12	
28. Interstate Arbitration of Death Taxes Act	9A ULA 163	1944	11	
29. Interstate Compromise of Death Taxes Act	9A ULA 172	1944	13	
30. Judicial Notice of Foreign Law Act	9 ULA 399	1936	28	328.01
31. Limited Partnership Act	8 ULA	1916	37	124.01-124.30
32. Marriage License Application Act	1950 <i>Handbook</i> 243	1950		
33. a. Narcotic Drug Act	9A ULA 182	1932	44	161.01-161.25
b. Narcotic Drug Act As Amended	9A ULA 182	1942	9	161.01-161.25

³ The 1954 HANDBOOK is not yet available at the time of this writing.

⁴ The length of the Commercial Code made it impractical to include the final draft in the 1951 HANDBOOK. The Code has been published in 1952 and again in 1954 in a paper bound volume. Information concerning copies of the Code may be obtained by writing: American Law Institute, 133 South 36th Street, Philadelphia, Pennsylvania.

⁵ This act is currently being revised as the Joint Tortfeasors Act. A tentative draft of the proposed revision appears in 1953 HANDBOOK 275.

⁶ Wisconsin originally adopted the 1932 amended version of the act, but C. 304, LAWS OF 1939, amended this version to comply with the revised act of 1936 in many of its provisions.

c. Amendments to Narcotics Drug Act as Amended	9A ULA (P.P.) 33	1952	7	
34. Official Reports as Evidence Act	9 ULA 410	1936	6	
35. Partnership Act	7 ULA	1914	33	123.01-123.38
36. Photographic Copies of Business Records as Evidence Act	9 ULA 413	1949	29	327.29
37. Powers of Foreign Representatives Act	1944 <i>Handbook</i> 325	1944		
38. Prenatal Blood Test Act	1950 <i>Handbook</i> 247	1950		
39. Preservation of Private Business Records Act	1954 <i>Handbook</i>	1954		
40. Principal and Income Act	9A ULA 225	1931	17	
41. Probate of Foreign Wills Act	9A ULA (P.P.) 49	1950	1	310.07
42. Proof of Statutes Act	9A ULA 245	1920	30	
43. Property Act	9A ULA 249	1938	1	
44. a. Reciprocal Enforcement of Support Act	9A ULA (P.P.) 58	1950	43	52.10
b. Reciprocal Enforcement of Support Act as Amended	9A ULA (P.P.) 92	1952	19	52.10(1)-(26)
45. Reciprocal Transfer Tax Act	9A ULA 258	1928	19	
46. Rules of Criminal Procedure Act	1952 <i>Handbook</i> 307	1952		
47. Rules of Evidence Act	1953 <i>Handbook</i> 164	1953		
48. a. Simultaneous Death Act	9A ULA 263	1940	42	237.10
b. Simultaneous Death Act Amendments	1953 <i>Handbook</i> 248	1953		
49. Single Publication Act	9A ULA 129	1952	4	
50. Statute of Limitations Act	1939 <i>Handbook</i> 289	1939		
51. Supervision of Trustees for Charitable Purposes Act	1954 <i>Handbook</i>	1954		
52. Transfer of Dependents Act	9A ULA 270	1935	9	
53. a. Trustees' Accounting Act	9A ULA 318	1936	2	
b. Trustees' Accounting Act as Amended	9A ULA 318	1937	3	
54. Trusts Act	9A ULA 333	1937	7	
55. Unauthorized Insurers Act	9A ULA 347	1938	7	
56. Vendor and Purchaser Risk Act	9A ULA 357	1935	6	235.72
57. a. Veterans' Guardianship Act	9A ULA 361	1928	38	
b. Veterans' Guardianship Act as Revised	9A ULA 361	1942	23	319.50
58. Vital Statistics Act	9A ULA 392	1942	12	

MODEL ACTS CURRENTLY BEING PROMULGATED

The distinction between uniform acts and model acts is pointed out by the introductory statement which is included in the Commissioners' notes on each model act:

"Where there is a demand for an Act covering the subject matter in a substantial number of the States, but where in the judgment of the National Conference of Commissioners on Uniform State Laws it is not a subject upon which uniformity between the States is necessary or desirable, but where it would be helpful to have legislation which would tend toward uniformity where enacted, Acts on such subjects are promulgated as Model Acts."

There are twenty-six model acts currently being promulgated by the National Conference.

Title of Model Act	Citation in Uniform Laws Annotated or Handbook	Year of Approval by Conference	No. of Juris. dictions Enacting	Citation in Wils. Stats. (1953)
1. Act concerning the Administration of Charitable Trusts, Devises, and Bequests (<i>Cy Pres</i> Act)	9 ULA 24	1944	2	
2. Act on Perjury	9 ULA (P.P.) 22	1952	3	
3. Act to Provide for the Appointment of Commissioners	9 ULA 34	1944	11	
4. Anti-Gambling Act	1952 <i>Handbook</i> 212	1952		
5. Business Corporation Act	9 ULA 49	1928	5	
6. Composite Reports as Evidence Act	9 ULA 395	1936	3	
7. Court Administrator Act	9 ULA (P.P.) 54	1948	1	
8. Crime Investigating Commission Act	1952 <i>Handbook</i> 242	1952		
9. Department of Justice Act	1952 <i>Handbook</i> 374	1952		
10. Estates Act	1938 <i>Handbook</i> 272	1938		
11. Execution of Wills Act	9 ULA 419	1940	1	
12. Expert Testimony Act	9 ULA 427	1937	2	
13. Extradition of Persons of Unsound Mind Act	1916 <i>Handbook</i> 382	1916	11	365.01-365.05
14. Illegitimacy Act	1922 <i>Handbook</i> 385	1922	7	
15. Interparty Agreement Act	9A ULA 160	1925	4	
16. Joint Obligations Act	9A ULA 176	1925	5	113.01-113.10
17. Police Council Act	1952 <i>Handbook</i> 278	1952		
18. Post Mortem Examination Act	1954 <i>Handbook</i>	1954		
19. Power of Sale Mortgage Foreclosure Act	1940 <i>Handbook</i> 256	1940		
20. Resale Price Control Act	1940 <i>Handbook</i> 249	1940		
21. Rule Against Perpetuities Act	9A ULA 261	1944	2	
22. Small Estates Act	1951 <i>Handbook</i> 258	1951		
23. State Administrative Procedure Act	9A ULA (P.P.) 131	1944	3	227.01-227.24
24. State Witness Immunity Act	9A ULA (P.P.) 141	1952	1	
25. War Service Validation Act	9A ULA 414	1944	1	235.255
26. Written Obligations Act	9A ULA 418	1925	2	

ACTS SUPERSEDED BY THE UNIFORM COMMERCIAL CODE

Although these uniform acts have been incorporated into the Commercial Code and are no longer being promulgated by the National Conference, they are listed here because they are still in effect in most of the American jurisdictions and probably will remain so until the Commercial Code is more widely adopted. No further mention of these acts will be made in this article, however.

Title of Uniform Act	Citation in Uniform Laws Annotated or Handbook	Year of Approval by Conference	No. of Juris. dictions Enacting	Citation in Wils. Stats. (1953)
1. Bills of Lading Act	4 ULA	1909	33	120.01-120.55
2. Conditional Sales Act ⁷	2 ULA	1918	12	122.01-122.31

⁷ The Conditional Sales Act was withdrawn in 1943 pending preparation of the Commercial Code. The other acts were not withdrawn until the Code had been approved in 1951.

3. Negotiable Instruments Act	5 ULA	1896	53	116.01-118.65
4. Sales Act	1 ULA	1906	37	121.01-121.79
5. Stock Transfer Act	6 ULA	1935	50	183.01-183.23
6. Trust Receipts Act	9A ULA 274	1933	30	241.31-241.50
7. Warehouse Receipts Act	3 ULA	1906	53	119.01-119.63

DESCRIPTION OF UNIFORM ACTS EFFECTIVE IN WISCONSIN

There is in effect in Wisconsin a total of twenty-five uniform acts and four model acts. A brief explanation of each of these is set forth below, together with a note of any substantial variations between the act as approved by the Commissioners and as enacted in Wisconsin.

Absence as Evidence of Death and Absentee's Property Act (1939)—eliminates the common law presumption of death after seven years unexplained absence; provides instead for the appointment of a receiver for the estate of the missing person and a final hearing declaring him dead and distributing his property. The act also invalidates provisions in insurance policies which are contrary to the terms of the act. WISCONSIN omits the section of the act which eliminates the common law presumption of death.

Acknowledgement Act (1939)—sets forth by whom and in what form acknowledgments may be taken. The act is permissive only and does not prohibit acknowledgments as authorized elsewhere in the statutes. The 1942 amendment permits servicemen to make acknowledgments before military officers. The 1949 amendment allows acknowledgments to be made before attorneys-at-law or other persons who are authorized in the state where the acknowledgment is made. WISCONSIN has added certain other provisions which are not in the uniform act. The 1949 amendment is not in effect in this state.

Act Governing Secured Creditors' Dividends in Liquidation Proceedings (1939)—makes the federal bankruptcy rule applicable to determine what share a secured creditor is to receive in a state insolvency proceeding. This rule, that the value of the security must be deducted from the amount of the creditor's claim, was one of four rules which had developed in the courts of the various states in litigation on this point.

Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings. (1931)—provides that witnesses for a criminal proceeding may be summoned from outside the state, as long as they are not over 1000 miles distant. These witnesses are made exempt from criminal prosecution or civil suit. The 1936 revised act extends these provisions to witnesses for grand jury proceedings and provides for arrest, custody, and delivery of witnesses to the state where the proceeding is to be held. WISCONSIN has adopted the 1931 act, but by Laws of 1947, c. 567, it was amended to read substantially the same as the 1936 revision of the act.

Ancillary Administration of Estates Act (1949)—codifies the law of ancillary administration, treating the domiciliary administration as the primary one and treating the entire estate, wherever situated, as a unit. The 1953 amendment specifies the method of determining the value of security held by a creditor. WISCONSIN does not have this amendment.

Common Trust Fund Act. (1938)—authorizes banks and trust companies to establish common trust funds to diversify investment and spread the risk of loss. The 1952 amendment provides the method of giving notice to beneficiaries when an accounting of the common trust fund is to be made. WISCONSIN adds a requirement that every investment of the common trust fund must be an investment permissible for the individual trust accounts. There is also a taxation provision added to the act.

Criminal Extradition Act (1926)—originally set up machinery for the extradition of a person charged with a crime from a state in which he had done an act having criminal effects in another state. The 1932 amendment provides for extradition from any state to which the criminal goes. The 1936 revision of the act allows extradition of a criminal who left the state by compulsion.

Declaratory Judgments Act (1922)—authorizes state courts to declare the rights and duties of parties to contracts, deeds, wills, and so forth in advance of actual litigation or dispute.

Desertion and Nonsupport Act (1910)—makes it a crime to desert or wilfully fail to provide for the support of a wife or child. The act also authorizes the court to order the defendant to make periodic payments for the use of his dependents upon conviction or plea of guilty.

Divorce Recognition Act (1948)—provides that a divorce obtained in another jurisdiction is ineffective when both parties are domiciled in this state at the time the proceedings were commenced. Certain presumptions of domicile are also created.

Enforcement of Foreign Judgments Act (1948)—provides for registration of foreign judgments and allows levy and execution on the judgment thereafter.

Federal Tax Lien Registration Act (1926)—require federal tax lien notices and certificates discharging such liens to be filed in the county where the property subject to the lien is located.

Fiduciaries Act (1922)—is concerned with the duties of one dealing with a known fiduciary with respect to notice of a breach of fiduciary obligations.

Flag Act (1917)—makes it a misdemeanor to use the United States

or state flag for advertising or commercial purposes or to desecrate the flag.

Fraudulent Conveyances Act (1918)—allows creditors to set aside conveyances which render the debtor insolvent if there was no fair consideration, regardless of the debtor's intent.

Judicial Notice of Foreign Laws Act (1936)—provides that all state courts shall take judicial notice of the common law and statutes of all United States jurisdictions, using whatever means they think proper to inform themselves of these laws.

Limited Partnership Act (1916)—provides for the creation and dissolution of limited partnerships and defines the rights and liabilities of members therein.

Narcotic Drug Act (1932)—requires manufacturers and wholesalers of certain drugs to be licensed; requires druggists and prescribing physicians to keep records of the use of these drugs. The act also makes it illegal to manufacture or possess the specified drug except as authorized in the act. The 1942 amendment covers the use of drugs on ships or planes and also reduces the number of drugs not included under the provisions of the act. The 1952 amendment enlarges the definition of narcotic drugs and also exempts certain dihydrocodeine preparations from the provisions of the Act. WISCONSIN does not have the 1952 amendment.

Partnership Act (1914)—controls the creation and dissolution of partnerships and the rights and liabilities of the partners.

Photographic Copies of Business and Public Records as Evidence Act (1949)—allows photographic copies, microfilm, and the like to be used as evidence where records are kept on such a medium in the regular course of business. This is a modification of the best evidence rule.

Probate of Foreign Wills Act (1950)—establishes a simplified procedure for admitting to probate a nonresident's will which has previously been admitted to probate in the state of his domicile.

Reciprocal Enforcement of Support Act (1950)—provides an easier means of enforcing the duty of support through both civil and criminal proceedings in cases where the defendant has gone to another jurisdiction. The 1952 amended version of the act makes it easier for destitute families to take advantage of the provisions of the act and also eliminates many of the defects of the original act which experience has pointed out.

Simultaneous Death Act (1940)—provides a method of property disposition for cases where two or more persons die in a common disaster and there is no evidence as to which one died first, when the devolution of the property depends on the priority of death. The 1953

amendment limits the application of the act in certain cases where a right to succeed to the property is conditioned on surviving another person. Certain other minor changes are also made. WISCONSIN has not adopted the 1953 amendments.

Vendor and Purchaser Risk Act (1935)—defines on whom the risk of loss falls under a contract for the sale of realty in the event the property is destroyed or damaged.

Veterans' Guardianship Act (1928)—provides for the appointment of guardians for incompetent or minor beneficiaries of veterans' benefits, for the commitment of mentally incompetent veterans to Veterans' Administration hospitals, and limits fees on administration of veterans' estates. The 1942 revision, adopted in Wisconsin with minor variations, is an attempt to modernize the act.

DESCRIPTION OF MODEL ACTS EFFECTIVE IN WISCONSIN

Extradition of Persons of Unsound Mind Act (1916)—provides for the extradition of an insane person who has fled to this state from another state where he has been detained in an asylum, legally declared insane, or personally served in a proceeding to declare him insane.

Joint Obligations Act (1925)—modifies some of the technical common law rules regarding joint and/or several obligors and obligees to avoid injustices.

State Administrative Procedure Act (1946)—establishes rules of operation for administrative agencies. There are provisions for the adoption of rules and regulations, for the conduct of contested hearings, and for judicial review.

War Service Validation Act (1944)—makes valid conveyances and wills executed by servicemen even though these documents are technically defective.

DESCRIPTION OF UNIFORM ACTS NOT ADOPTED BY WISCONSIN

There are thirty-three uniform acts and twenty-two model acts currently being promulgated by the National Conference which have not been adopted by Wisconsin. The subject matter of many of these is covered by other Wisconsin legislation, sometimes in a manner similar to the uniform or model act, and sometimes in quite a different way. In some cases there are no statutes in Wisconsin which are comparable to the uniform or model act.

A brief explanation of the uniform and model acts which have not been adopted by Wisconsin is set forth below. The paragraph following the description of each act contains a summary of comparable Wisconsin legislation as based on a reasonable search of the 1953 statutes.

Act on Blood Test to Determine Paternity (1952)—authorizes a

court trying a suit in which paternity of a child is an issue to compel parties to submit to blood tests. The act makes a negative finding in such tests conclusive proof that the alleged father is not the father. The provisions leave a good deal of discretion to the court. The act also applies to criminal cases.

The Wisconsin courts are authorized to direct parties to submit to blood tests in civil actions by sec. 325.23 and in criminal illegitimacy actions by sec. 52.36. However, the results of such tests may be admitted in evidence only in cases where definite exclusion is established, and even then no conclusive presumption is raised.

Act Relating to Reverter of Realty (1944)—restricts the effectiveness of all conditional limitations and possibilities of reverter to a period of thirty years and provides that there will be no forfeiture at any time unless the covenant which is breached is of substantial benefit to the party in whose favor it exists.

A similar period of limitation is imposed in Wisconsin by sec. 330.15 which prohibits an action concerning the title or possession of real property unless it is founded on an instrument recorded not more than thirty years before. Sec. 330.15 (4) expressly makes this limitation applicable to reverter clauses in covenants restricting the use of real estate. Sec. 230.46 provides that conditions annexed to a conveyance of land may be disregarded and will not work a forfeiture unless there is actual and substantial benefit from the condition to the person in whose favor it is to be performed.

Adoption Act (1953)—establishes rules as to who may adopt or be adopted, whose consent is necessary, what investigation and proceedings must be had, and the effect of the decree of adoption.

Chapter 322 covers almost exactly the same matter as is contained in the uniform act. However, the treatment of this matter varies somewhat.

Aircraft Financial Responsibility Act (1954)—requires aircraft accidents to be reported, proof of financial responsibility to be filed, and allows suspension of licenses or registration, all similar to provisions generally made for automobiles. There is also a section similar to the nonresident motorists statute which makes the use of aircraft in the state an appointment of the secretary of state as an agent for the service of process.

There is no statute of this kind in Wisconsin.

Business Records as Evidence Act (1936)—makes business records admissible as competent evidence if they were made in the regular course of business, near the time of the event recorded, and the custodian testifies as to their authenticity.

A more specific, but very similar provision is made by sec. 327.25. This statute is also made applicable to criminal cases by sec. 357.14.

Civil Liability for Support Act (1954)—seeks to codify and clarify exactly what duties of support exist, since in many states these duties exist only by court decision or by inference from other statutes. The act is designed to supplement the Reciprocal Enforcement of Support Act.

In Wisconsin the duties of support are expressly declared by sec. 52.01 (4).

Commercial Code (1951)—codifies nearly the entire field of commercial law, including what is presently contained in the Bills of Lading Act, Conditional Sales Act, Negotiable Instruments Act, Sales Act, Stock Transfer Act, Trust Receipts Act, and Warehouse Receipts Act, as well as new provisions on bank collections and deposits, bulk transfers, and letters of credit. An attempt has been made to bring up to date the law in this entire area, and even the uniform acts incorporated into the Commercial Code have been modified considerably.

All of the seven uniform acts which were incorporated into the Commercial Code are in effect in Wisconsin.⁸ Other statutes dealing with matters covered by the new Code are sec. 220.15, the bank collection code, and 241.18 - 241.21, the bulk sales act. Although existing Wisconsin statutes cover the great majority of what is included in the Commercial Code, the specific provisions vary in many places.

Contribution Among Tortfeasors Act (1939)—provides for contribution among joint tortfeasors, setting forth detailed procedural provisions which include a section on third party practice.

Wisconsin still has common law contribution among joint tortfeasors, since no statutes on the subject have been enacted.⁹ However, sec. 260.19 (3), the interpleader statute, gives as much protection against multiplicity of suits as does the uniform act. The biggest discrepancy in contribution as applied at common law apparently is in the fact that all joint tortfeasors are liable to the same extent. In Wisconsin this is so regardless of the percentages of negligence under sec. 331.045, the comparative negligence statute. The uniform act, although it does not establish "comparative contribution," provides for prorating the liability in certain cases where the joint tortfeasors are not equally at fault.

Criminal Statistics Act (1946)—establishes a bureau of criminal

⁸ See the paragraph on Acts Superseded by the Uniform Commercial Code, *supra*.

⁹ WIS. STATS. (1953), §260.19 (3) and the Joint Obligations Act, Chapter 113, deal with contributions among joint tortfeasors to a limited extent, but it is basically the same as at common law.

statistics to gather, analyze, and disseminate information on crime, criminals, and criminal justice.

Town, village, and city clerks are required by sec. 68.15 to make reports on crime to the county clerk who then makes a report to the state department of public welfare. However, this statute is of much more limited scope than the uniform act.

Disposition of Unclaimed Property Act (1954)—creates certain presumptions that personal property has been abandoned and makes the state the custodian of such property. The act establishes procedures to be used by the owner to recover the property, but this must be done within five years. There are reciprocity provisions in the act to avoid interstate conflict over unclaimed property.

Chapter 171 deals with unclaimed property in a manner somewhat similar to the uniform act. The county takes custody of the property, and claims by the owner are barred after five years. There are other provisions concerning unclaimed property scattered throughout the statutes, but the uniform act is far more comprehensive.

Foreign Depositions Act (1920)—requires witnesses in this state to make depositions for foreign suits in the same way as if they were proceedings in local courts.

Provisions almost identical to the uniform act are made by sec. 326.24, except that Wisconsin makes the statute reciprocal only. Unless the state in which the witness' testimony is required makes similar provisions for foreign depositions to be used in Wisconsin, the statute cannot be invoked.

Insurers Liquidation Act (1939)—provides for ancillary and domiciliary proceedings for the liquidation, rehabilitation, or reorganization of insurance companies doing business or having assets in two or more states. The act is reciprocal only.

Although Wisconsin has sec. 200.08 and 200.09 dealing with the same matter, the uniform act is much more comprehensive and efficient.¹⁰

Interstate Arbitration of Death Taxes Act (1944)—establishes procedure for voluntary arbitration between states as to the domicile of a decedent for death tax purposes. *Interstate Compromise of Death Taxes Act* (1944), provides a system by which taxing authorities of different states, which claim that the decedent was domiciled there at the time of his death, may agree as to the amount to be accepted as full payment by each state.

Wisconsin has no statute dealing directly with the matter covered by these two uniform acts. However, sec. 14.77 authorizes state

¹⁰ For a detailed comparison of existing Wisconsin law and the Insurers' Liquidation Act, see COMMENT, 36 MARQ. L. REV. 383 (1953).

agencies to "negotiate compacts" with similar agencies in other states, but only in cases where "no legislation providing standards has been enacted." It is questionable whether this statute could be used to obtain the result attained by the uniform acts.

Marriage License Application Act (1950)—requires that all marriage license applications be kept as public records and provides for a waiting period and blood tests as prerequisites for the issuance of a license.

The same matter as is covered by the uniform act is similarly treated in sec. 245.20, requiring the county clerk to keep a marriage license docket which is open to public inspection; sec. 245.14, which requires application to be made five days before a license is issued; and sec. 245.10 (5), which requires both parties to submit to a blood test.

Official Reports as Evidence Act (1936)—allows written reports of officers of this state to be admitted in evidence if made within the scope of officer's duty. A copy of the report must be supplied to the adverse party before the trial unless there will be no surprise in introducing the report.

The "ideal simple act" in this subject, as it is called in the Prefatory Note to the uniform act,¹¹ is sec. 327.18. This statute is similar to the uniform act except that it does not contain a provision for notice to the adverse party or for cross examination.

Powers of Foreign Representatives Act (1944)—allows a personal representative appointed by the court of another jurisdiction to exercise the same powers in this state as a locally appointed representative could, provided no local administration is pending or has been applied for.

The provisions made by sec. 287.16 are almost identical to those in the uniform act.

Prenatal Blood Test Act (1950)—requires that pregnant women submit to blood tests to determine the presence of venereal disease, both for purposes of treatment and for statistical purposes.

Wisconsin does not have a provision of this type.

Preservation of Private Business Records Act (1954)—provides that private documents and records which state law requires to be kept must be preserved for three years, either in the original form or by photostatic or other copies kept in the regular course of business.

There is no Wisconsin statute similar to the uniform act.

Principal and Income Act (1931)—establishes a method of apportionment of income and expenses between life tenant and remaindermen in either trusts or legal estates.

¹¹ 9 U.L.A. 410.

There is no similar statute in Wisconsin.

Proof of Statutes Act (1920)—allows statutes of any state, territory, or foreign country to be proven prima facie by books purporting on their face to contain the statutes and published with the authority of that jurisdiction or generally recognized in its courts.

Similar provisions are made by sec. 327.02.

Property Act (1938)—attempts to modernize and codify certain rules of real property. The act abolishes a number of rules which are hold-overs from English feudal law.

Although Chapter 230 includes several provisions also contained in the uniform act, the latter is far more extensive in its revisions of the law of real property.

Reciprocal Transfer Tax Act (1928)—exempts intangible personal property from transfer of death taxes when the decedent who owned the property resided in a state not imposing such a tax on similar property of residents of this state or providing a reciprocal exemption to residents of this state.

Wisconsin provides for a similar exemption in sec. 72.01 (9), except that the exception applies only when the state of the decedent's domicile has such a transfer tax but allows an exemption in favor of Wisconsin residents. If the other state has no transfer tax at all, Wisconsin does not grant the exemption.

Rules of Criminal Procedure Act (1952)—modernizes extensively the procedural rules to be used in criminal cases in an attempt to insure simple, fair, inexpensive, and speedy administration of justice.

Title XXXIII, containing Chapters 353 through 366, establishes the rule of criminal procedure for Wisconsin. Although these provisions are liberal, they are not as streamlined as those of the uniform rules. The proposed Criminal Code of Wisconsin, although primarily replacing the present Title XXXII, makes several changes in Title XXXIII as well.

Rules of Evidence Act (1953)—is an attempt to codify and liberalize the entire law of evidence. The act contains certain general provisions and sections on judicial notice, presumptions, witnesses, privileges, policies affecting admissibility, expert and opinion testimony, hearsay, and written and documentary evidence.

Chapter 328 deals with presumptions and judicial notice; Chapter 325, with witnesses and oral testimony; and Chapter 327, with documentary and record evidence. In addition, there are various evidence provisions scattered throughout the statutes. These provisions are neither as extensive or as liberal as the uniform rules.

Single Publication Act (1952)—declares that a person has only one cause of action in libel or slander or invasion of privacy for a single

publication or utterance. This abolishes the old common law rule which made publication to each reader or listener a separate tort, giving rise to a separate cause of action.

There is no similar statute in Wisconsin.

Statute of Limitations Act (1939)—would make the periods of limitation on the various causes of action uniform in all jurisdictions adopting the act. The act was proposed on the theory that there is no genuine reason for the varying periods of limitation in the different states.

Chapter 330 contains most of Wisconsin's statutes of limitation, although there are many other such statutes, dealing with more specific actions, scattered throughout the statute book.

Supervision of Trustees for Charitable Purposes Act (1954)—provides for the supervision of charitable trusts by the attorney general to assure efficiency and honesty.

Supervision of trusts is generally left in the hands of the courts in Wisconsin, although sec. 231.34 authorizes the attorney general to sue for the enforcement of a public charitable trust. Wisconsin has statutory provisions comparable to the uniform act, however.

Transfer of Dependents Act (1935)—authorizes state welfare agencies to make reciprocal agreements with similar agencies in other states in regard to acceptance, transfer, and support of certain poor and indigent persons receiving support in the other state.

Sec. 66.30 is somewhat like the uniform act, but applies only to agreements between governmental units within the state. Temporary aid and transportation home for certain out of state dependents is provided by sec. 49.09 (3), but this is not comparable to the uniform act. It is possible that sec. 14.77, allowing state agencies to make compacts with similar agencies in other states, could achieve the same result as the uniform act does.

Trustees' Accounting Act (1936)—requires trustees to file inventories and make periodic and final accountings and defines the affect of approval of these accounts by a court. The 1937 amendments conform the act to the Trusts Act.

All testamentary trustees are required by sec. 323.01 (1) to file an inventory and by sec. 323.01 (2) to render an annual accounting. Additional provisions on accounting by trustees of charitable testamentary trusts are made by sec. 317.06. The uniform act is much more detailed in its provisions than any of the Wisconsin statutes.

Trusts Act (1937)—changes certain common law rules regarding trusts because those rules are considered obsolete or unjust. In addition, the act clarifies and tightens the trustee's duty of loyalty, as well as relaxing certain trust rules for the sake of convenience.

Chapter 231 modifies the common law rules regarding trusts to some degree, but is not nearly so extensive as the uniform act.

Unauthorized Insurers Act (1938)—imposes tight restrictions on insurers not authorized to do business in the state. Transacting business without authority constitutes appointment of the insurance commissioner as agent for the service of process. The unauthorized insurer may not maintain or defend an action without first filing a bond.

The criminal provision against carrying on an unauthorized insurance business in Wisconsin is sec. 348.488. All insurance companies doing business in this state are required by sec. 201.41 to obtain a license. The statutes in effect in Wisconsin are not as strict nor as detailed as the uniform act.

Vital Statistics Act (1942)—provides for the systematic collection of useful vital statistics throughout the state.

Chapter 69 gives an extensive coverage of the same general matter as is covered by the uniform act.

DESCRIPTION OF MODEL ACTS NOT ADOPTED BY WISCONSIN

Act Concerning the Administration of Charitable Trusts, Devises, and Bequests [Cy Pres Act] (1944)—provides for the application of a charitable devise or bequest to another charitable purpose when the original purpose cannot be carried out. This is a codification of the common law *cy pres* rule.

Wisconsin does not apply the doctrine of *cy pres* at all.¹²

Act on Perjury (1952)—is an attempt to make enforcement of perjury laws more effective by simplifying the method of proof and remedying certain defects in the Federal perjury statute.¹³

Perjury is made a crime by sec. 346.01 and 346.02, but these statutes do not take the same approach nor attempt to achieve the same ends as does the model act.

Act to Provide for the Appointment of Commissioners (1944)—provides that the governor shall appoint three commissioners on uniform state laws to represent the state for a term of four years.

The revisor of statutes and the chief of the legislative reference library are *ex officio* representatives of Wisconsin among the commissioners on uniform state laws, according to sec. 14.76.

Anti-Gambling Act (1952)—organizes and codifies the criminal law provisions to cover the entire field of gambling. This act is intended to allow the various states to modernize existing statutes on gambling which were, for the most part, enacted piecemeal as the need for each provision arose, without regard for consistency. The act attempts to classify gambling as a generic offense, without enum-

¹² *McHugh v. McCole*, 97 Wis. 166, 72 N.W. 361 (1897).

¹³ 18 U.S.C.A. §1621 (1948).

erating each specific type of gambling as a different type of crime, as many state statutes now do. The "professional" gambler is given special treatment in the act.

In the present Wisconsin statutes, sec. 348.01 through 348.174 deal with various gambling offenses. For the most part these are "piecemeal" statutes such as the model act seeks to correct. However, Chapter 345 of the proposed Criminal Code of Wisconsin is apparently an attempt to achieve the same ends that the model act seeks to attain, and a very similar approach is taken. "Commercial gambling" is a more serious offense under the proposed Code.

Business Corporation Act (1928)—establishes rules for the organization, operation, and dissolution of business corporations.

Chapter 180 gives Wisconsin a very thorough and modern business corporation code.

Composite Reports as Evidence Act (1936)—allows the introduction in evidence of an expert's written report, even though the report contains conclusions based on written information supplied to the expert by others. It is not necessary to have the persons supplying the written information testify.

There is no provision in Wisconsin expressly authorizing the introduction of composite reports. Sec. 357.27 (4) provides for the preparation and reading into evidence by an expert of a report on the mental condition of a defendant, but such a report is based on the expert's personal observations, rather than on written information supplied to him.

Court Administrator Act (1948)—establishes a state office to direct the business affairs of the various state courts.

Wisconsin has no agency comparable to the office of state administrator created by the model act. The Judicial Council, as set up by sec. 251.181, is primarily an advisory group, whereas the state administrator would have direct administrative control over all state trial courts.

Crime Investigating Commission Act (1952)—creates a crime investigating commission which is empowered to investigate the relationship between organized crime and governmental, political, or economic units. This is to prevent laxness or corruption in governmental and law enforcement groups.

No agency such as this has been established in Wisconsin.

Department of Justice Act (1952)—attempts to secure greater efficiency and effectiveness in the operation of the local public prosecutors' offices by submitting the conduct of these offices to the scrutiny of the state attorney general.

Sec. 17.11 allows the governor to suspend the district attorney from

office under certain circumstances, but Wisconsin has no provisions similar to the model act.

Estates Act (1938)—is an attempt to codify the law concerning estates in real property as it is generally recognized throughout the United States. Definitions make up the bulk of the act.

Title XX, including Chapters 230 through 234, codifies and makes some modifications in the law regarding estates in land in Wisconsin.

Execution of Wills Act (1940)—sets forth provisions for the execution of ordinary wills, and also for noncupative and holographic wills.

Provisions similar to those in the model act are made by sec. 238.01, sec. 238.05 through 238.09, as regards ordinary wills, and by sec. 238.16 and 238.17, as regards noncupative wills. Wisconsin has no statute authorizing holographic wills and in view of sec. 238.06, which states that no will shall be effective unless it meets the requirements specified, such a will would probably be invalid.

Expert Testimony Act (1937)—allows the court to select expert witnesses who may be permitted to draft reports which may be introduced in evidence. Inferences drawn by the expert may be brought out without the necessity of asking a hypothetical question.

Although it applies only in criminal cases, sec. 357.27 is similar to the model act but is not nearly as broad.

Illegitimacy Act (1922)—provides for the legitimation, custody, and support of children born out of wedlock, and also defines the rights of inheritance of such children.

Wisconsin has several provisions which are somewhat similar to the model act, although not as extensive. Sec. 237.05 deals with descent of the estate of an illegitimate child, and sec. 237.06, with his rights of inheritance. The presumption of legitimacy is expressed in sec. 328.39, and legitimation by marriage of the parents is covered by sec. 245.36.

Interparty Agreement Act (1925)—abolishes the common law doctrine that a person cannot contract with himself. The act allows contracts to be made between a group, on one side, and part of the same group, on the other side. The act also provides that a contract is not discharged merely because the rights of the obligee become vested in the obligor in a different capacity.

There is no Wisconsin statute making similar provisions.

Police Council Act (1952)—creates a permanent body to supervise the operation of local police departments to assure honesty, efficiency, and effectiveness in those departments.

The board of police and fire commissioners, authorized in each

city by sec. 62.13, has certain supervisory powers over the local police department. However, Wisconsin has no statewide police council.

Post Mortem Examination Act (1954)—creates a commission to investigate certain enumerated types of deaths and conduct autopsies if necessary. The commission must keep detailed records which may be used as evidence in court proceedings.

Chapter 366 authorizes autopsies and inquests, but these are conducted in the county, not on a statewide basis.

Power of Sale Mortgage Foreclosure Act (1940)—allows mortgages to be foreclosed by exercise of a power of sale as an alternative to court foreclosure. The act also establishes the procedure to be used.

Chapter 297 authorizes and establishes the procedure to be followed in foreclosure "by advertisement" when the mortgage contains a power of sale.

Resale Price Control Act (1940)—follows the same general lines as resale price control statutes now in effect in many states by legalizing and providing a means of enforcing "fair trade" contracts.

The Fair Trade Act in Wisconsin is sec. 133.25.

Rule Against Perpetuities Act (1944)—codifies the American common law rule against perpetuities.

The Wisconsin rule against perpetuities, which differs from the common law rule, has been codified in sec. 230.14 and 230.15.

Small Estates Act (1951)—establishes various procedures for simplifying or dispensing with administration of small estates. The act allows transfer of title without judicial proceedings in estates up to \$1,500, summary proceedings for estates up to \$3,500, and simplified administration for estates up to \$10,000.

Summary settlement of small estates is authorized by sec. 311.05 and 311.055, but is limited to very few cases and has not been used very widely by Wisconsin attorneys. Sec. 237.09 allows the county court to issue a certificate of heirship to real property without regular proceedings if the decedent died intestate, and Chapter 315 authorizes a determination of descent of real property in intestacy cases. However, Wisconsin has no statute comparable to the model act.

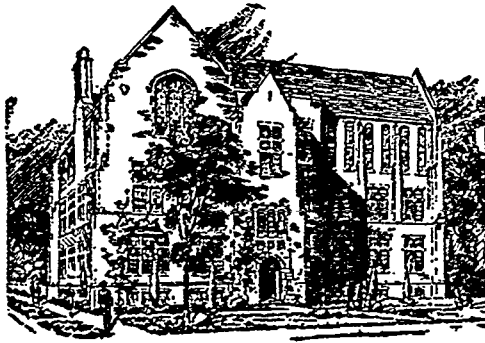
State Witness Immunity Act (1952)—allows a witness in a criminal proceeding to be compelled to testify in spite of the fact that he thereby incriminates himself, but provides the witness with immunity from prosecution concerning the matter of which he testifies.

Sec. 325.24 is similar to the model act except that it is limited to certain types of action. It must be either a suit on the bond of a public officer or to recover public money deposited with the defendant. Sec. 348.12 makes similar provisions for witnesses in certain actions concerning gambling.

Written Obligations Act (1925)—provides that a written release or promise is not invalid for lack of consideration if the person executing it states in writing that he intends to be legally bound.

Wisconsin has no similar statute.

MARQUETTE LAW REVIEW



Vol. 39

SUMMER, 1955

No. 1

LAW REVIEW BOARD

ROBERT H. GORSKE

Editor-in-Chief

DAVID KAISER

DONALD D. ECKHARDT

CLIFFORD K. MELDMAN

DANIEL O. HOWARD

WILLIAM U. ZIEVERS

C. WILLIAM ISAACSON

STUDENT CONTRIBUTORS TO THIS ISSUE

RICHARD J. ASH

JOSEPH SWIETLIK

C. WILLIAM ISAACSON

JAMES J. WILLIAMSON

GEORGE RADLER

WILLIAM U. ZIEVERS

Circulation Manager

FLOYD MARENDA

Advertising Manager

PAUL GERGEN

Faculty Adviser

LEO W. LEARY

"MEMBER NATIONAL CONFERENCE OF LAW REVIEWS"