UNIFORM TRANSFER OF LITIGATION ACT *

Drafted by the

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ON UNIFORM STATE LAWS

and by it

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IN ALL THE STATES

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UNIFORM TRANSFER OF LITIGATION ACT

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UNIFORM TRANSFER OF LITIGATION ACT

PREFATORY NOTE

This Transfer Act is designed to provide for the transfer of litigation from a court in one judicial system to a court in another judicial system. Transfer can serve a variety of needs. The simplest purpose is to provide an alternative to dismissal for lack of personal or subject matter jurisdiction. Transfer to a court that has jurisdiction may be more fair and efficient than dismissal, particularly if substantial proceedings have been had before the jurisdiction determination or if there are potential limitations problems in filing a new action. Transfer also can be a better means of refusing litigation in an inconvenient forum. More ambitious purposes are to provide for the consolidation of small numbers of closely related cases and to establish a framework that may facilitate consolidation of a substantial number of cases involving the same central dispute. A single act can serve all these purposes since the structural problems of transfer are the same in each setting. Actual transfer decisions, however, must take account of quite different factors according to the purpose of transfer.

Traditional forum non conveniens remedies have been stay or dismissal of litigation brought in an inconvenient forum. Transfer provides a better remedy. Transfer, however, has been confined to courts in a single judicial system, state or federal. Within the federal system, transfer has been limited to courts that could command personal jurisdiction without regard to the defendant's desire for transfer. Transfer between state courts builds on these models, going beyond them to create a more flexible tool. Transfer makes it possible to preserve much of the effort expended before the decision, helps avoid problems in dealing with such matters as statutes of limitations and docket priority, permits transfer of only a portion of an action, and establishes an explicit structure in which both transferring courts and receiving courts understand the effects of transfer. Because of these advantages, transfer can be ordered in circumstances that would not support a stay or dismissal under traditional forum non conveniens doctrine. The transfer statute will not entirely supplant forum non conveniens doctrine, however, because the more convenient court may not have authority to accept a transfer. If Congress should adopt legislation permitting transfer from federal courts to state courts, similar benefits could be achieved by transferring pendent state claims after disposition of the claims that establish federal jurisdiction.

Quite different questions are presented when two or more actions involving the same facts are filed in different courts. The simplest setting involves overlapping efforts of two adversaries to select a favorable forum. Traditional responses under such labels as "other action pending" have not always worked well. Often it will be easy to determine that there should be one action, not two. Transfer provides a means of effecting consolidation. Transfer and consolidation are readily achieved if it is apparent that one of the two courts is a more convenient, efficient, or just forum. Even if both courts seem equally convenient, it may be possible to achieve transfer and consolidation -- one ready means of resolving the dilemma is transfer to the court in which the first action was filed.
Still different questions are presented when multiple actions grow out of the same or related facts. A single event such as an airplane crash or a hotel fire can give rise to many actions, but usually it is possible to identify a finite number of potential claimants. A series of related events such as the marketing of a dangerous product or the contamination of an environment can give rise to many more actions, often in circumstances in which claims will arise over a protracted period of time. Some of the limits on consolidation of related cases in these settings arise from inherent procedural difficulties. Our means for resolving mass litigation require much improvement, and may never develop to a point that warrants massive consolidation as a routine matter. In many circumstances, however, it is possible to achieve substantial benefits by consolidating related actions. The Act supports consolidation in circumstances that will enable all courts, acting together, to accomplish a worthwhile reduction in the burdens all carry. With experience, transfer on the voluntary basis provided by the Act may go far toward reducing the problems now presented by mass and complex litigation.

The Act will work best when both the transferring court and the receiving court belong to systems that have enacted it, but it is not limited to such settings. Transfer is authorized to any court that has power to receive, whether the power derives from enactment of this Act or from any other source. Receipt likewise is authorized without regard to the source of the transferring court's authority to transfer. Adoption of the Act enables courts of a state to make and receive transfers in cooperation with any other court, state, federal, or foreign. Transfer will work best when both courts are acting under the Act, since both will be able to rely on the consequences of transfer as defined by the Act. Perhaps the greatest risk of unforeseeable consequences arising from transfer by or to a court that is not acting under the Act arises from appeals. Without provisions such as those set out in Sections 109 and 218, it is possible that an appeal in the transferring or receiving state could undo the transfer long after the receiving court has begun or even concluded its disposition. Similar difficulties, however, can arise with respect to the alternatives of ordering a stay or dismissal on forum non conveniens grounds. If two courts are willing to cooperate in the more efficient and controllable transfer process, the Act provides authority for one court even though the other is acting on some different basis of authority.

The basic framework for transfer could be established at a number of points between two poles. At one pole, the transferring court would retain substantial control over the conduct of continuing proceedings in the receiving court. At the other pole, the transferring court would surrender any further connection with the case. It seems likely that in some circumstances a court would be more willing to transfer if it could be assured of exercising some control over the further progress of the case. Divided authority, however, breeds the possibility of confusion and dissension. The model chosen for the Act establishes predominating authority in the courts of the receiving state.

The Act permits transfer by any court to any court that is competent to take the case. Transfer almost invariably will be made by a trial court to another trial court. Ordinarily the need for cooperation at the appellate level can be satisfied by certifying a question of law. In exceptional circumstances, however, an appellate court may seek to transfer all or part of an appeal to an appellate court in another jurisdiction. The most likely reasons for transfer would be
that the only remaining issues in the case should be resolved under the law of the receiving court, that it is difficult to articulate the issues in ways that clearly respond to the developing law of the receiving court, and that the most satisfactory means of addressing the issues is on the basis of the full record. Certification of a specified question or questions may be a less effective means of accomplishing the same goal. If transfer is ordered in such circumstances, it seems almost inevitable that the terms of transfer will provide for return to the transferring court for entry of final judgment in its court system. A state that does not wish to permit transfer of appeals can enact Sections 101 through 103 in a form that provides for transfer only by designated trial courts.

The Act does not provide a complete procedure for transfer. The procedural details might be left to the discretion of individual courts, acting within the general rules of procedure. It is likely, however, that most states will adopt special rules for transfer proceedings. There is no apparent need to make these rules uniform among the states, and in any event the rules should be adapted to local procedures and court structures.

The provisions of the Act are suitable for adoption by court rule in states in which that is appropriate. Whether the Act is enacted as a statute or adopted as a rule, it is important that uniformity be maintained. If local law requires action by both court and legislature to adopt all provisions of the Act, integrated court rules and legislation can be adopted.

The Act is divided between three parts. Part I establishes authority to transfer. Part II establishes authority to receive. The consequences of transfer can be understood only by reading together the corresponding provisions that apply to the transferring court and to the receiving court. Part III sets out housekeeping provisions.
UNIFORM TRANSFER OF LITIGATION ACT

PART I. TRANSFERRING COURT

SECTION 101. POWER TO TRANSFER. A [designate] court of this State may transfer an action or part of an action to a court [of record] not of this State pursuant to Sections 102 through 109.

COMMENT

Section 101 establishes the basic authority to transfer. Transfer can be made to a court in a jurisdiction that has not enacted this Act as well as to courts in jurisdictions that have. A state that wishes to allow only specified courts to order transfer can identify the appropriate courts by name in the brackets provided in Sections 101, 102, and 103. Sections 102 to 109 set out the occasions and criteria for transfer, the procedures for transfer, the consequences of transfer, the duty to accept return, and the rules for appellate review.

The Act is not designed for transfer between courts of a single state. Section 101, as well as Sections 102 and 103, authorizes transfer only to a court "not of this State." The problems of intrastate transfer are quite different from the problems of interstate transfer, and the provisions of the Act should not take the place of specific state procedures adapted to the local court system.

There is no explicit limit in the Act on the nature of the actions that may be transferred. Limits are most likely to arise from concepts of subject matter jurisdiction. Ordinary civil actions, including those seeking equitable relief, are routine candidates for transfer. The Act is not drafted in terms that limit transfer to civil actions, however, because of the prospect that transfer may be appropriate as to proceedings that some courts may not characterize as civil actions. Domestic relations disputes, for example, may prove suitable for transfer, particularly as the parties move away from the state of the initial forum. Transfer also may prove appropriate as to some part of a probate proceeding. Criminal prosecutions, on the other hand, are not covered by the Act. Transfer of a criminal prosecution would entail all of the practical problems and theoretical difficulties that underlie the traditional rule that prosecution for an offense against one sovereign cannot be maintained in the courts of another sovereign.

The power to transfer part of an action includes power to transfer any matter that is usefully transferred. There are no technical or conceptual restrictions on what may be treated as "part" of an action. A single proceeding or issue may be transferred. Issues of liability might be transferred for consolidated proceedings, retaining damages issues for determination in the
transferring court. Transfer for purposes of consolidated discovery on specified issues would be another example. Transfer for purposes of enforcing an equity decree would be a less obvious but potentially useful example.

Transfer confers broad powers on the receiving court, particularly under Sections 203, 208, 212, and 218. Transfer of part of a case might lead to consequences that were not intended by the transferring court. Protection against this possibility can be achieved by formally severing the case into separate actions and transferring only those parts of the original case that the court is willing to put beyond its control. Severance may be especially suitable if the transferring court has finally disposed of one or more claims or of all claims involving one or more parties. Severance in such circumstances ordinarily would be followed by entry of final judgment and appeal in the state of the transferring court.

The potential limitation that transfer can be made only to a court of record is included as an optional term. Some states may feel it necessary to safeguard against improvident transfer to a court that could assert subject matter jurisdiction but that operates informally.

SECTION 102. TRANSFER BY COURT HAVING JURISDICTION. A [designate] court of this State which has jurisdiction of the subject matter of an action and the parties may transfer all or part of the action to a court not of this State which consents to the transfer and can exercise jurisdiction over the matters transferred.

COMMENT

Section 102 authorizes transfer from a court that has jurisdiction of the subject matter and parties to a court that consents to the transfer and that has jurisdiction of the subject matter. Subject matter jurisdiction is controlled by the law of the receiving court; if a particular limitation is characterized as one of subject matter jurisdiction by the receiving court, the fact that the transferring court may adopt a different characterization is unavailing. It is not required that the receiving court be able to establish personal jurisdiction as an independent matter under its own law. Under the provisions of Section 203, the receiving court can assert personal jurisdiction over any party that was subject to personal jurisdiction in the transferring court, subject only to constitutional constraints. These provisions reflect the view that a court with personal jurisdiction should be able to exercise sufficient control over a case to determine that the litigation is better handled in a court that could not command personal jurisdiction over all parties had the action first been brought there. The receiving court cannot exercise personal jurisdiction over any party beyond the limits of due process or other constitutional constraints. Application of the underlying constitutional concepts, however, may be affected by the transfer process.
The requirement in Sections 102 and 103 that the receiving court consent to the transfer is a central part of the Act. The need to convince both courts that transfer is sensible affords strong protection against the danger of improvident or unfair transfer. The consent of the receiving court protects the parties and the receiving court itself. Consent can be refused if the grounds stated for transfer or the terms of transfer seem mistaken. The receiving court, moreover, has better knowledge of its own ability to handle the litigation; this knowledge of conditions in the receiving court may be especially important when transfer is ordered in an effort to achieve consolidation of parallel cases.

Consideration of the factors that warrant transfer may at times show that it is best to transfer an action to a court that could not establish personal jurisdiction over all parties if the action had initially been brought in that court. Section 203 supplements the long-arm statutes of the receiving state to provide a statutory basis for personal jurisdiction. Constitutional limits may be satisfied because the balance of advantages is so great that the parties who would be beyond the jurisdiction of the receiving court consent to transfer. A party who seeks transfer to another court from a court that has personal jurisdiction should be held to consent to personal jurisdiction in the receiving court unless for extraordinary reasons the transferring court agrees to allow preservation of a personal jurisdiction challenge. Transfer should not be ordered unless the party who seeks transfer agrees to submit to the personal jurisdiction of the receiving court as to at least part of the matters transferred.

Transfer should be available, however, even though one or more nonmoving parties do not consent to personal jurisdiction in the receiving state. In simple cases, transfer may be appropriate as a means of filling in gaps in the long-arm statutes of the receiving state. Some state long-arm statutes do not reach to the full extent permitted by constitutional limits; if both transferring and receiving courts conclude that a particular case is best tried in the receiving court, this additional long-arm power is easily justified.

Transfer also justifies expansion of the receiving court's personal jurisdiction in circumstances that do not involve gaps in local long-arm statutes. The constitutional rules that limit personal jurisdiction necessarily are cast in general terms that not only prevent untoward overreaching but also occasionally prohibit litigation in a court that in fact would be more convenient than another court that has jurisdiction. If both courts agree to a transfer, there is sufficient assurance of fairness to go beyond the general limits. The determination of the transferring court that it is fair for the receiving court to decide the case provides a neutral and valuable protection against overreaching.

More complex considerations are presented by multiparty litigation, and particularly by litigation that parallels other litigation arising out of the same events. Ordinary rules of personal jurisdiction are cast in broad general terms that treat each party as if the action involved only one plaintiff and one defendant. Actions involving multiple parties require a different jurisdictional calculus. So long as there is a sufficient relationship between the forum, the events giving rise to the litigation, and all the parties as a group, due process concerns may be satisfied as to parties who would not be subject to personal jurisdiction in a simple two party action. The Act does not
attempt a specific formulation of the due process test; whatever words might be chosen to reflect contemporary Supreme Court decisions might be superseded in the continuing evolution of constitutional doctrine. The need for limits is met by the substantial protections against overreaching that are built into the Act. The initial determination that it is fair to proceed in the receiving court is made by the transferring court, which can be trusted to take a neutral view of the matter. The receiving court too must be persuaded that it is a fair forum for the entire litigation.

At some point, however, fairness to individual parties -- plaintiffs as well as defendants -- may override the advantages of transfer, both in relatively simple and in clearly complex litigation. Constitutional limits on the personal jurisdiction of the receiving court may be implemented by return to the transferring court under Section 214 if the transferring court had personal jurisdiction, and otherwise may be enforced by dismissal or transfer to another court. These protections can be ensured on appeal in the receiving state, and in an extreme case can be reviewed in the transferring state before transfer is effected.

Transferring personal jurisdiction from the transferring court to the receiving court does not address all the jurisdictional questions surrounding transfer. Traditional views of jurisdiction and allied matters also should be adjusted to recognize the opportunities created by transfer. The archaic local action rule, for example, has restrained some courts from entertaining claims that relate to real property in another jurisdiction. The local action rule should be disregarded entirely in deciding on transfer. A proceeding to foreclose a mortgage on real property in one state, for example, could easily involve questions related to litigation pending in another state; transfer of part of the action could be as useful in this setting as in any other, without encountering any of the difficulties that might be imagined in other circumstances.

SECTION 103. TRANSFER BY COURT LACKING JURISDICTION. A [designate] court of this State which lacks jurisdiction of the subject matter of an action or part of an action or which lacks personal jurisdiction of a party may transfer all or part of the action to a court not of this State which consents to the transfer and can exercise jurisdiction over the matters transferred and the parties.

COMMENT

Section 103 authorizes transfer from a court that lacks jurisdiction to a court that has jurisdiction. Transfer can be more efficient than dismissal, particularly if significant actions have been taken before the lack of jurisdiction is recognized. Transfer also may help avoid statute of limitations problems that might impede filing a new action in a court that has jurisdiction; Section 210 carries the date of filing in the transferring court forward to the receiving court.
Transfer from a court that lacks personal jurisdiction to a court that has personal jurisdiction does not violate the rules limiting personal jurisdiction. A lack of personal jurisdiction deprives the court of power to enter judgment on the merits, but the court has other powers. Discovery of facts bearing on the jurisdiction issue can be required. In states that have a final judgment rule, a trial court can proceed through trial. If the defendant appears without objecting to jurisdiction, the objection is lost. If the defendant raises the jurisdiction issue, a ruling that jurisdiction exists is binding by way of res judicata. The power to transfer to a court that does have personal jurisdiction is properly added to this list.

Problems arising from a lack of property jurisdiction are treated in the same way as problems arising from a lack of subject matter jurisdiction or personal jurisdiction. In some situations a state court may believe that lack of authority with respect to property defeats subject matter jurisdiction. If the court concludes that it has subject matter jurisdiction but lacks property jurisdiction, it has the same power to transfer that it has when there is no personal jurisdiction. For this purpose, a lack of property jurisdiction is described as a lack of personal jurisdiction.

Transfer may be requested before the court determines whether it has jurisdiction, and indeed transfer may be a useful means of avoiding difficult questions of jurisdiction. If the court orders transfer without determining whether it has jurisdiction, however, it must act under Section 103 -- transfer can be made only to a court that has both subject matter and personal jurisdiction. Transfer also may be ordered after the court has concluded that it lacks jurisdiction. A request for transfer is timely so long as it is made during the period provided by local practice for reconsidering a judgment of dismissal.

SECTION 104. REASONS FOR TRANSFER. A court may order a transfer to serve the fair, effective, and efficient administration of justice and the convenience of the parties and witnesses. In deciding whether to order a transfer, the court shall consider all relevant factors, including the interest of each plaintiff in selecting a forum and the public interest in securing a single litigation and disposition of related matters.

COMMENT

Section 104 states the general criteria for transfer. Many different factors may be considered in determining whether transfer will advance the fair, effective, and efficient administration of justice and the convenience of the parties and witnesses. All of these factors must be weighed together in a process that depends on the broad discretion of the transferring court to reach a wise decision based on the specific circumstances of each case. It is not possible to list all of the factors that may prove relevant, much less to prescribe a weighing process. The
only factors specifically identified by the Act are the plaintiff's interest in selecting a forum and the public interest in securing a single litigation and disposition of related matters. These factors have been enumerated to ensure that courts reach uniform results as to fundamental matters that could easily generate disagreement. A list of other potentially relevant factors is set out at the end of this Comment. Many of these factors bear on the determination whether transfer is consistent with constitutional limits on receiving court jurisdiction over the parties.

One major issue that must be resolved by the Act is the weight to be given the plaintiff's interest in selecting the forum. Courts traditionally have given substantial weight to the plaintiff's interest, although some recent cases have questioned this tradition. There are substantial arguments in favor of giving equal weight to the interests of all parties in choosing a forum. Rules of jurisdiction and venue are drawn in general terms that may provide access to courts chosen for reasons of strategic advantage or even harassment. Perhaps more important, it is difficult to find any coherent standard to define the circumstances in which deference to the plaintiff's choice should outweigh a conclusion that another forum is more fair for all parties. Nonetheless, the Act directs that consideration be given the plaintiff's interest in selecting a forum. This traditional rule reflects the fact that it is the plaintiff who is responsible for initiating suit and a belief that a party who must carry the burdens of production and persuasion should enjoy some compensating advantage in selecting the forum. In adopting the traditional rule, the Act does not specify the weight to be given the plaintiff's interest. The determination will be affected by many of the general factors that go into the transfer decision -- plaintiffs who would be at a significant disadvantage in a distant forum deserve more protection than those who seek only strategic advantage, perhaps in a court that otherwise is less convenient for all parties. Very little deference would be due a declaratory plaintiff who has anticipated the declaratory defendant's suit for coercive relief by racing to a favorable forum. And if the plaintiff seeks transfer from a forum initially selected by the plaintiff, the court must protect the defendant against deliberate manipulation by the plaintiff and the additional costs that may result from transfer.

The Act also addresses the issue whether public interests can be considered in addition to the private interests of the parties. Transfer is permitted to serve not only the convenience of the parties but also the fair and efficient administration of justice and the convenience of witnesses. Public interests can overcome the convenience of the parties considered alone. The most common reason for transfer in the public interest will be the need to consolidate related litigation. Most often consolidation will serve the convenience and private interests of the parties as well as the public interests in promoting efficient use of judicial resources and securing a single, uniform and coherent disposition of related matters. All parties to all consolidated actions benefit from shared discovery, joint pretrial, and the like. Significant inconvenience to some parties, moreover, often can be reconciled with the advantages of consolidation by securing consolidation of many related actions without insisting on consolidation of all parts of every one. Private disadvantage often will be more a matter of strategic opportunity than a matter of unfair or inconvenient litigation. In the end, however, consolidation may be ordered even though it would not be ordered if the only consideration were the interests of the parties to a particular action.
By allowing consideration of the interest in securing a single litigation and disposition of related matters, this Act establishes a starting point for consolidation in state court systems of multiparty, multiforum disputes. As courts become familiar with the opportunities created by the statute, they should be able to go a long way toward reducing the costs of conducting multiple parallel proceedings in two or more different states. In some situations there will be an obvious forum for consolidation -- the court at the scene of an air crash, hotel fire, building collapse, or like single event provides a clear example. Another clear example is the court that has the largest share of the related cases. The statute, however, does not provide any means for taking cases from courts that are unwilling to let go, nor for transferring cases to courts that are unwilling to accept. Transfer and consolidation will depend on the joint cooperation and consent of transferring and receiving courts. In some situations the mass of litigation may be too large to be managed in a single court; despite the obvious problems of coordination, transfer and consolidation may be achieved in a relatively small number of courts on a regional or functional basis.

Many factors beyond the plaintiff's interest in selecting a forum and the public interest in consolidation could be considered in deciding on transfer. The Act does not attempt to provide a complete list of all these factors. Among the factors that have been considered in transferring cases between federal courts or in resolving forum non conveniens questions are:

- The residence of the parties and the distance of each party from the relevant courts.
- The locations of the events giving rise to the action.
- The distance between transferring and receiving courts.
- The comparative costs to each party of litigating in each court, including the ability of each party to bear those costs and the possibility of conditioning transfer on payments by the moving party.
- The amount of damages and the importance of the principles involved.
- Whether transfer will limit the ability of present counsel to conduct the litigation, and whether retaining new counsel will impose untoward costs on any party.
- Any agreement among the parties as to the place of litigation.
- The law that will apply to the action or any part of it.
- The locations of witnesses.
- The places in which discovery will occur.
The desirability of facilitating joinder of additional claims or parties.

The opportunity to achieve consolidation of related matters or to transfer to a court that is familiar with the underlying transaction, occurrence, or series of transactions or occurrences.

The progress of the action up to the time of transfer.

Whether transfer will delay or expedite further progress of the action.

If part of an action is transferred, the impact of transfer on disposition of the parts not transferred.

The interest of the forum and of the receiving court in adjudicating the action.

The desires of the parties.

The public interest in the consistent resolution of related disputes.

The availability of jury trial; the impact of transfer of part of an action on the character of jury trial; the possibility of community prejudice or interest that may affect a jury verdict; and the importance of trial before a jury familiar with the community standards relevant to the case.

Differences in available procedures, including rules of discovery and privilege and reliance on alternate dispute resolution methods.

The nature of the claims.

The degree of involvement of each party with the merits of the suit.

The prospect that transfer may avoid difficult questions of jurisdiction in the transferring court.

The foreseeability of litigation in the forum and in each court considered for transfer.

The extent to which the parties were involved in a commercial capacity with the events underlying the action.

Ease of enforcing the judgment, whether for monetary or specific relief.
SECTION 105. TRANSFERRING COURT'S ORDER; WHEN TRANSFER EFFECTIVE. A court may order a transfer on motion by a party or on its own initiative after notice and opportunity to be heard. A transfer order must state the reasons for the transfer. If part of an action is transferred, the order must state the part as a term of the transfer. The order may state other terms of the transfer. The court shall notify the parties of the transfer order. A party or the court may file the transfer order in the receiving court. The transfer takes effect when an order accepting the transfer is filed in the transferring court.

COMMENT

Section 105 establishes the basic procedure for ordering transfer. A transfer order must state the reasons for transfer so as to facilitate the decision whether to accept the transfer. The statement also will make it easier to determine whether the case is one of the rare cases in which review of the transfer order should be undertaken pursuant to Section 109.

Section 105 does not provide a formal process through which a court that would like to receive transfer of an action pending in another court can initiate the transfer process. A court that would like to receive an action is not foreclosed, however, from suggesting consideration of transfer to the parties or to the court in which the action is pending.

The power to impose terms on the transfer conferred by Section 105 does not establish authority to exact conditions that bind the receiving court to return the case should the conditions prove unwise. Instead, Section 208 gives the receiving court power to depart from the terms of transfer for good cause. In ordinary circumstances, however, the receiving court should not accept transfer if it plans to depart immediately from the terms of transfer. As stated in connection with Section 208, power to depart from the terms of transfer is provided in recognition of the experience gained by the receiving court as the litigation proceeds. If the terms of transfer are unacceptable at the outset, respect for the transferring court's experience with the case counsels that transfer be refused.

Ordinarily the notice of transfer should be sent by means that provide a return receipt or other specific assurance that the notice has been received.

Transfer becomes effective when the order accepting transfer is filed in the transferring court. This provision, and the parallel provision in Section 206, ensure that there always is a single court in control of the action. The parties deserve to know at all times which court has authority to act. The risk that transfer may disrupt review proceedings in the transferring state under Section 109 can be met by the powers of the trial and appellate courts to stay the transfer
order. If the transfer order is stayed it may be appropriate for the receiving court to determine whether it would accept transfer, but it cannot accept transfer until any stay in the transferring state has been dissolved.

SECTION 106. TRANSMITTING RECORD. After notice of an order accepting a transfer is filed in the transferring court, the court shall send relevant portions of the record to the receiving court.

COMMENT

Section 106 requires that relevant portions of the record be sent to the receiving court after transfer is accepted. Identification of the relevant portions depends on the history of the litigation and the purposes of transfer. If transfer is for specified purposes, it may be possible to identify portions of the record that are not needed. If transfer is ordered after some proceedings have been completed, again it may be possible to conclude that some portions of the record are not needed. It may prove helpful to state the portions of the record that will be sent at the time of making the transfer order under Section 105 if the court believes a determination can be made. The early statement may provide an opportunity to resolve any disputes without delaying the transfer process. The original record need not be sent; copies that contain the functional equivalent of the original record are sufficient.

SECTION 107. PENDING PROCEEDINGS. A proceeding pending at the time of transfer must be completed by the receiving court according to the procedural rules of the transferring court, measuring applicable time limits as if the proceeding had been initiated ten days after the day the transfer took effect, unless otherwise ordered by the transferring court or the receiving court.

COMMENT

Section 107 complements Section 211. Each section deals with "proceedings" initiated in the transferring court. A proceeding includes any procedure, including those that are conducted by the parties without any involvement of the court. Under Section 211 the receiving court has authority to control not only procedures initiated after transfer but also the consequences of procedures completed before transfer or pending at the time of transfer. If the proceeding is pending at the time of transfer, the receiving court ordinarily is to complete it according to the procedural rules of the transferring court. The distinction between matters of substance and
procedure is to be drawn for this purpose according to the needs of effective transfer, not according to the distinctions drawn for other purposes. This authority of the receiving court reflects the basic determination that the receiving court is in the best position to determine the needs of the litigation as it progresses. Section 107, however, establishes the power of the transferring court to control procedures pending at the time of transfer because the transferring court may be more familiar with the needs of the case at the time of transfer. Although Section 107 does not define a time limit on the power of the transferring court, it should act only within a brief period surrounding the effective date of transfer.

SECTION 108. RETURN; WHEN RETURN EFFECTIVE. The transferring court shall accept the return of a matter ordered returned by the receiving court pursuant to the terms of the transfer order or for lack of jurisdiction in the receiving court. The return takes effect when a return order is filed in the transferring court.

COMMENT

Section 108 implements the return provisions of Sections 214 and 215. The receiving court may order return of a transferred matter because it concludes that it lacks jurisdiction or because the terms of the transfer have been fulfilled. The return order is binding on the transferring court. If the transferring court were free to make inconsistent findings as to the grounds for return, the parties might be caught in a limbo in which neither court would accept responsibility for the action.

SECTION 109. APPELLATE REVIEW IN STATE OF TRANSFERRING COURT. An order of a court of this State granting or refusing a transfer is reviewable only by extraordinary writ of [or permissive interlocutory appeal to] an appellate court of this State at the time the order is entered. An order or ruling not reviewed before a transfer takes effect is not reviewable in this State except as to matters returned or transferred back.

COMMENT

Provisions for appeal have been included in the Act despite the difficulty of integrating a Uniform Act with the appellate structures of different states. Uniform appeal provisions seem important for at least three reasons. First, it is important that the parties and courts involved know whether the transfer question can be reopened on appeal. A court that has consented to
accept transfer, for example, should know whether there is a prospect that its proceedings can be disrupted or set at naught by appellate review in the transferring state. Second, it is important to allocate responsibility for reviewing orders made by the transferring court before transfer, or by the receiving court before return. Third, it is intrinsically important to establish appeal rules that make sense in the context of the transfer procedure.

Section 109 allows review of orders granting or refusing transfer only by extraordinary writ or permissive interlocutory appeal. Provisions for extraordinary writs and for permissive interlocutory review vary from state to state; this provision is meant to invoke whatever limited and discretionary review proceedings are available in a particular state and should be enacted in the terms appropriate to each state. If a state has no general procedure for permissive interlocutory review, an interlocutory review procedure should be created for transfer orders in a revised forum of this section. Review is provided to facilitate appellate resolution of the questions of interpretation that inevitably will arise, particularly in the early years of the statute. Review should extend to the discretionary factors weighed in determining whether transfer is appropriate under Sections 102 and 103 only in highly unusual circumstances. Appellate courts should make vigorous efforts to expedite disposition of appeals in order to avoid the danger that transfer will become the occasion for undue delay in moving litigation toward a final conclusion. If review is not secured by extraordinary writ or permissive interlocutory appeal at the time transfer is ordered, the transfer order is not reviewable on any subsequent appeal that may be available in any portion of the action that remains in the courts of the transferring state. So too, once transfer has been made, Section 218 provides that the order granting transfer is not reviewable in the courts of the receiving state. Review after proceedings have been conducted in the receiving court in reliance on the transfer would threaten undue disruption of the litigation. The protections provided by the limited opportunity for review in the transferring state and by the need to persuade the receiving court to accept transfer are adequate.

Orders refusing transfer also are reviewable by extraordinary writ or permissive interlocutory appeal. Review should be limited, however, to circumstances involving a gross abuse of discretion. The opportunity for transfer, although valuable, should not become the occasion for prolonged delay and uncertainty in reaching disposition on the merits. A reviewing court must extend substantial deference to a trial court's weighing of the factors involved in the transfer decision. If transfer is sought on a claim that the court lacks jurisdiction, the jurisdictional rulings remain open for review in the ordinary processes of appeal. Any review of the refusal to transfer, moreover, must be limited to immediate review by writ or permissive appeal. It would be untoward to reverse a judgment on the merits by a court that has jurisdiction because it was wrong to refuse transfer.

Section 109 bars review in the transferring state of rulings not reviewed before the transfer took effect, unless the rulings are properly reviewable in connection with matters returned or transferred back. This provision works in combination with Section 218, which confers authority on courts of the receiving state to review rulings made by the transferring court that were not reviewed before the transfer took effect. Although there is a certain awkwardness about having courts of the receiving state review rulings made by the transferring court, this
provision should work better than any of the obvious alternatives, particularly in light of the steps that can be taken to preserve the opportunity for review in the transferring state.

The alternatives to review in the receiving state are to deny review of rulings made before transfer or to divide authority to review. It is difficult to deny all opportunity for review of pre-transfer rulings. Authority to review could be divided most easily by providing that appeal can be taken before transfer as to any ruling of the transferring court that would be reviewable on appeal from a final judgment. This division would enable the appellate courts of the transferring state to review the rulings of their own trial courts, but would require significant, and at times crippling, delay in the progress of the case toward trial. It also would often thwart the purposes served by the final judgment rule, requiring premature review of issues that would be mooted by subsequent proceedings and forcing decision on the basis of an inadequate record. The alternative of providing review in two courts after final judgment in the receiving court would be even worse.

Review in the receiving court is limited to questions that were not reviewed in the transferring court. The fact that review could have been sought, either in conjunction with review of the transfer order or by another interlocutory procedure, does not of itself defeat review. All parties may recognize that review before transfer is undesirable; forfeiture of the opportunity for review in the receiving state would force appeals that otherwise would not be taken. If review was had before transfer, on the other hand, there is no reason to provide duplicating appellate review of the same ruling. Rulings made by the receiving court related to matters decided on appeal in the transferring state, however, are open to review in the receiving state. Even an order refusing to reconsider an order of the transferring court under Section 212 can be reviewed in the receiving state, although there is little chance of reversal.

The transferring court can protect the opportunity to review pre-transfer rulings by staying the transfer order. Protection also may be achieved by formal severance of the action, retaining jurisdiction of any part that is not transferred for disposition in the ordinary course. Transfer of part of an action, however, may create the prospect that a single pre-transfer ruling affects both the part that is transferred and the part that is retained. Sections 109 and 218 do not preclude the possibility that the same ruling will be reviewed in both states.

Section 109 does not affect application of the ordinary appeal rules of the transferring state to orders made after transfer. The most obvious occasion for making orders after transfer arises when part of an action is transferred and part is retained. In special situations, however, the transferring court may enter orders after transfer of the entire action. Contempt proceedings might be initiated after transfer for conduct occurring before transfer. Or, as another example, it is possible that disputes might arise as to the accuracy of the record sent to the receiving court or the selection of the record portions to send. Rulings on such matters or any other proceedings in the transferring court after transfer are reviewable under the ordinary appeal practice of the transferring state.
PART II. RECEIVING COURT

SECTION 201. POWER TO ACCEPT TRANSFER. A court of this State may accept transfer of an action or part of an action pursuant to Sections 202 through 218.

COMMENT

Section 201 establishes the basic power to accept transfer. Transfer can be accepted from a court in a jurisdiction that has not enacted this Act as well as from a court in a jurisdiction that has.

SECTION 202. ACCEPTANCE BY COURT HAVING JURISDICTION. A court that can exercise jurisdiction over the subject matter and the parties may accept a transfer, whether or not the transferring court had jurisdiction of the subject matter or the parties.

COMMENT

Section 202 complements the transfer provisions of Section 103. It ensures that transfer can be accepted from a court that lacked subject matter or personal jurisdiction to decide the merits. The receiving court must be able to establish both subject matter and personal jurisdiction independently as a matter of its own law. Transfer cannot be used to give the receiving court authority to decide cases beyond its competence.

Sections 202 and 203 partially supersede the ordinary venue statutes of the receiving state. If the receiving court believes that it is a convenient forum, it can accept the transfer even though local rules might dictate a different venue. The joint determination of the transferring and receiving courts that transfer is desirable satisfies the policies served by venue statutes. After transfer is accepted, the receiving court remains free to transfer the case to another court in the receiving state pursuant to any available local procedure.

SECTION 203. ACCEPTANCE BY COURT LACKING PERSONAL JURISDICTION. A receiving court that can exercise jurisdiction over the subject matter, even if it lacks personal jurisdiction of a party, may exercise personal jurisdiction over the party if the transferring court had jurisdiction of the subject matter of the action and the party.
COMMENT

Section 203 complements the transfer provisions of Section 102. It enables the receiving court to exercise personal jurisdiction over a party that would not be subject to the independent jurisdiction of the receiving court if the transferring court had both personal and subject matter jurisdiction. The purpose of authorizing this expansion of the receiving court's personal jurisdiction and the need to honor constitutional limits are discussed with Section 102. Challenges to the personal jurisdiction of the transferring and receiving courts may be raised in the trial and appellate courts of the receiving state according to the ordinary rules of local practice.

SECTION 204. TRANSFER REFUSED. A receiving court may refuse to accept a transfer for any reason. The court shall state its reasons for the refusal.

COMMENT

Section 204 establishes the discretionary power to refuse to accept transfer for any reason. This requirement establishes ample protection against any risk that transfer might be used as a means to shuttle away undesirable cases or simply to relieve local docket pressures. Adoption of the Act creates power to accept transfers found desirable by the receiving court but does not create any duty.

Although acceptance is left to the discretion of the receiving court, this discretion is informed by the same factors that are relevant in determining whether to order transfer. Because the transferring court has considered these factors, the receiving court ordinarily should extend substantial deference to the determination of the transferring court that transfer is desirable.

The requirement that the receiving court state the reasons for refusing to accept transfer serves at least three purposes. If the refusal rests on rejection of the terms of transfer, the statement will enable the transferring court to reconsider the terms. The requirement ensures that the receiving court has exercised its discretion thoughtfully. The statement of reasons also will aid an appellate determination whether the case is one of the rare cases in which it is appropriate to exercise the power of review established by Section 218.

SECTION 205. ORDER OF ACCEPTANCE OR REFUSAL. A party may move for an order accepting or refusing a transfer. The receiving court shall enter an order accepting the transfer unless within 30 days after the motion is made the court enters an order refusing the transfer or directing further proceedings to determine whether to accept the transfer.
COMMENT

Section 205 sets out time limits for determining whether to accept transfer. It is important that transfer not become the occasion for significant delay as successive courts ponder the transfer question. Because the transfer order represents careful deliberation by the transferring court, the time limits operate to require acceptance once a request is made to accept or refuse transfer unless the receiving court acts affirmatively to refuse transfer. In most cases it should be possible to decide whether to accept transfer within the initial 30-day period that begins with a request for an order accepting or refusing transfer. The transfer question should have been fully litigated in the transferring court and the parties should be able to present their arguments to the receiving court without additional delay. More time may be needed, however, if the transfer question is unusually complicated. If transfer is ordered in an attempt to consolidate several related cases in a single forum, significant delay may be required to determine whether sufficient consolidation can be achieved to justify the effort. Ordinarily the party that requested transfer will have ample incentive to request an order accepting transfer. If transfer was ordered against the wishes of all parties, there should be ample incentive to request an order refusing transfer. The transferring court can refuse to proceed until a motion to accept or refuse is made in the receiving court, and in an extreme case could dismiss for lack of prosecution.

The motion procedure is designed to ensure that any party can trigger the time limits established by Section 205. It does not bar a receiving court from acting on its own motion to consider whether to accept or refuse the transfer.

SECTION 206. NOTICE OF ORDER; WHEN TRANSFER EFFECTIVE. The receiving court shall notify the parties of the order accepting or refusing the transfer. A party or the court may file the order in the transferring court. The transfer takes effect when an order accepting the transfer is filed in the transferring court.

COMMENT

Section 206, as Section 105, makes the transfer effective when notice of the order accepting transfer is filed in the transferring court. It is important to have a clearly specified time for transfer so that the parties always can determine which court has present authority over the action. At the same time this provision does not operate as a limitation on the "jurisdiction" of the receiving court. Orders made by the receiving court following otherwise appropriate proceedings are valid notwithstanding the fact that notice of the order accepting transfer had not yet been received by the transferring court. Notice of the order accepting or refusing transfer must be given to all parties to ensure that they know which court will proceed with the action.
SECTION 207. REQUEST FOR RECORD. The receiving court may request the transferring court to send relevant portions of the record to aid in deciding whether to accept a transfer or to supplement the record sent by the transferring court.

COMMENT

Section 207 supplements Section 106 by allowing the receiving court to request transfer of portions of the record to aid in the initial decision whether to accept transfer or to supplement the record transmitted under Section 106. The request should be honored unless there are compelling reasons for refusal.

SECTION 208. TERMS OF TRANSFER. The receiving court for good cause may depart from the terms specified in the transfer order.

COMMENT

Section 208 authorizes the receiving court to depart from the terms of transfer for good cause. Ordinarily this power should not be exercised at the time of accepting transfer. The power is conferred because the receiving court is intimately involved with the case as it develops after transfer and is in a better position than the transferring court to determine the continuing justification for the terms. Thus the terms of transfer, responding to the factors weighed in determining whether to order transfer, might include such matters as a direction that the moving party pay the increased costs incurred by another party as a result of transfer; a designation of the law to be applied to the dispute; or a statement of the purposes of transfer, including limiting transfer to pretrial matters or trial only of such matters as causation or liability but not damages. As the case unfolds in the receiving court, it may turn out that the transfer has not caused increased costs, that a different choice of law is fairer, or that it is better to exceed the limits of a transfer for pretrial or limited trial. Settlement negotiations frequently will provide occasion for departing from the terms of transfer. In many circumstances, however, the receiving court can be expected to honor the terms of transfer. A transferring court may be able to enhance its own control by severance or, in some cases, by ordering compliance with designated conditions before transfer is ordered. Payment of a designated sum as an estimate of the increased costs occasioned by transfer is one illustration of such conditions.

SECTION 209. STATUTE OF LIMITATIONS. If the transferring court had jurisdiction of the subject matter and the parties, the receiving court may not dismiss because of a statute of limitations a claim that would not be dismissed on that ground by the transferring court.
COMMENT

Section 209 provides protection against the risk that transfer might defeat a claim by changing the body of limitations doctrine applied to the claim. This concern arises only if the claim was filed in a court that had jurisdiction to decide the claim on the merits and that would have refused to dismiss the claim on limitations grounds. In such circumstances transfer should not be used to deprive the claimant of the protection won by filing the claim in a proper court. This protection extends to all facets of limitations doctrine, including not only the choice of the limitations period but also such surrounding doctrines as those that determine the time when the claim arose, events that suspend the running of the period, and estoppel. The same rule applies to the defense of laches, although ordinarily it will be difficult to identify clear differences in application of this discretionary doctrine. The receiving court makes its own findings of fact but applies whatever law would be chosen by the transferring court. Assurance of this protection not only protects the claimant but also makes it easier for the transferring court to order transfer without concern that a different choice of limitations law will be made by the receiving court.

Transfer also might result in a determination by the receiving court to reject a limitations defense that would be accepted by the transferring court. An absolute rule barring this result would be unwise. The transferring court might apply its own shorter period of limitations for the purpose of protecting its interests as forum, not for the purpose of closing off a remedy in other courts. Dismissal on such grounds should be without prejudice to instituting a new action; transfer to a court that would apply a longer period is more efficient. If the transferring court believes that the claim should be barred on the merits, it can dismiss rather than transfer; if it believes that a particular body of limitations law should apply but that application should be made by the receiving court, it can make application of a designated body of limitations law a term of transfer under Section 105.

SECTION 210. DATE OF FILING. The receiving court shall treat the matters transferred as if they were initially filed on the date of filing in the transferring court.

COMMENT

Section 210 transfers the date of filing in the transferring court to the receiving court. This provision is important both as a means of avoiding potential statute of limitations problems and as a means of establishing presumptive docket priorities.

SECTION 211. PROCEEDINGS COMMENCED IN TRANSFERRING COURT. A proceeding completed in the transferring court before transfer has the same effect in the receiving court as in the transferring court unless the receiving court orders otherwise. A proceeding
pending at the time of transfer must be completed by the receiving court according to the
procedural rules of the transferring court, measuring applicable time limits as if the proceeding
had been initiated ten days after the transfer took effect, unless otherwise ordered by the
transferring court or the receiving court.

COMMENT

Section 211, complementing Section 107, establishes clear rules for integrating
proceedings in the transferring and receiving courts. The receiving court is given power to
control the impact of procedures completed in the transferring court as well as matters pending at
the time of transfer. Receiving court control is necessary to ensure consistent and efficient
disposition, and to integrate earlier proceedings with subsequent proceedings.

SECTION 212. OUTSTANDING ORDERS. An injunction or other order in effect at
the time of transfer remains in effect after transfer according to its terms until vacated or
amended by the receiving court. The receiving court may vacate or amend an order made by the
transferring court as if it had entered the order.

COMMENT

Section 212 avoids the need to review all orders outstanding at the time of transfer to
ensure that there are no unintended lapses. Orders in effect at the time of transfer automatically
remain in effect until dissolved or modified by the receiving court. Once the case has been
transferred, the receiving court has the same power to reopen any prior decision that it would
have if it had made the decision. The power to reopen is subject to the provision in Section 209
that bars dismissal on statute of limitations grounds if the transferring court had jurisdiction and
would not have dismissed on limitations grounds. An order refusing to dismiss on limitations
grounds is powerful evidence that the transferring court would not dismiss. Nonetheless the
receiving court may conclude that new information developed after the order by the transferring
court justifies dismissal on limitations grounds. One example would be information showing
that an injury had been discovered at an earlier time than the transferring court had believed.

[SECTION 213. TRANSFER OF COUNSEL. The receiving court should permit
counsel of record in the transferring court to appear and may require local counsel to appear if
necessary to ensure orderly disposition of the transferred matters. The law that would be applied by the transferring court governs contracts between clients and counsel who appeared in the transferring court and any ground advanced to disqualify counsel who appeared in the transferring court.

COMMENT

Section 213 addresses the effect of transfer on relations between counsel and client. This topic is both important and sensitive. In many states this topic can be addressed only by court rule. The section has been set out in brackets, recognizing that some states may prefer to adopt the Act without this section. Even if the section is not adopted, courts should consider carefully the effects of transfer. It is not possible to achieve a fully satisfactory means of ameliorating the impact of transfer on attorney-client relationships. The Act seeks to remove formal impediments by providing that ordinarily counsel of record in the transferring court is permitted to appear in the receiving court. This provision does not supersed fundamental policies of the receiving state in regulating its bar. If counsel in the transferring court has been disbarred in the receiving state, or has a disqualifying relationship that cannot satisfactorily be resolved by selecting the judge assigned to the case in the receiving court, disqualification is appropriate. The receiving court has the same full authority to discipline or suspend counsel for conduct after transfer as it has with respect to members of its own bar.

Section 213 further provides that local counsel may be required only if necessary to ensure orderly disposition of the transferred case. Often the parties will wish to associate local counsel. Local counsel can prove expensive, however, and the expense can be crippling, particularly in cases with substantial elements of pro bono representation. The receiving court has ample power to ensure proper performance by any lawyer who has been allowed to appear; inadequate performance can justify a requirement that local counsel be retained at any time.

Section 213 also seeks to avoid disruption of representation contracts valid in the transferring court and to prevent disqualification on many grounds that would not be recognized by the transferring court. Many other problems may arise that are not addressed by this section. Counsel in the transferring court may be unable, for a variety of reasons, to pursue the litigation effectively in the receiving court. It may be expensive for the client to secure new counsel, and in some cases -- particularly those with elements of pro bono representation -- the burdens imposed on counsel by transfer may effectively close off the opportunity for meaningful representation. Transferring and receiving courts may have different rules with respect to attorney-client privilege, work product protection, confidential communications, conflicts of interest, and other matters. These problems affect counsel, client, other parties to the litigation, and the courts. These problems cannot be resolved effectively by setting out clear answers in the Act. Instead, the problems should be weighed in determining whether to order transfer.
SECTION 214. RETURN FOR LACK OF JURISDICTION. If the receiving court determines after accepting transfer that it lacks jurisdiction of all or part of the matters transferred by a court that had jurisdiction, it may return that matter and any additional matters to the transferring court.

COMMENT

Section 214 recognizes the risk that a receiving court may conclude that it lacks jurisdiction after accepting transfer. The lack may go to subject matter jurisdiction, but is more likely to involve personal jurisdiction as to one or more parties. Since transfer from a court that had jurisdiction ordinarily should not become the occasion for losing a claim in these circumstances, the receiving court usually will return to the transferring court any part of the transferred matters beyond its jurisdiction. The receiving court has discretion to return any additional parts of the transferred matters to serve the interests of fairness and efficiency. The transferring court is required by Section 108 to accept any transferred matter that is returned under this section.

SECTION 215. RETURN PURSUANT TO TRANSFER ORDER. The receiving court may return any transferred matter to the transferring court pursuant to the terms of the transfer order.

COMMENT

Section 215 provides for returning the case to the transferring court pursuant to the terms of the transfer order. In most situations the order for return, and subsequent acceptance, should be matters of routine. The transferring court, however, may not agree with the conclusion that the terms for return have been fulfilled. Section 108 requires it to accept return nonetheless. The alternative of a standoff between two courts, each disclaiming responsibility for further proceedings, is not tolerable.

SECTION 216. NOTICE OF RETURN; WHEN RETURN EFFECTIVE. A receiving court shall notify the parties of a return order. A party or the receiving court may file the return order in the transferring court. The return takes effect when the return order is filed in the transferring court.
COMMENT

Section 216 requires that notice of a return order be given to the parties and to the transferring court. A return order takes effect upon filing in the transferring court.

SECTION 217. FURTHER TRANSFER. A receiving court may transfer back a transferred matter to the transferring court or transfer the matter to another court pursuant to Sections 101 through 109.

COMMENT

Section 217 governs all situations other than return pursuant to the terms of the transfer order or for lack of jurisdiction. The transferred matter can be sent back to the transferring court, or to another court, only on complying with the full procedure for transfer. The original transferring court should consider sympathetically a transfer back, since as court of initial filing it has some residual responsibility to the receiving court and the parties. Transfer to a third court should be undertaken only when unusual circumstances justify moving the litigation again. The most likely justification for further transfer will arise from the needs and advantages of consolidating many related cases.

SECTION 218. APPELLATE REVIEW IN STATE OF RECEIVING COURT. An order granting a transfer is not reviewable in the state of the receiving court by appeal or otherwise. An order accepting or refusing to accept a transfer, or granting or refusing to grant a return, is reviewable in the state of the receiving court only by extraordinary writ [or permissive interlocutory appeal] at the time the order is entered. Review may be had in the state of the receiving court of all other orders or rulings made by the receiving court and of all orders or rulings other than the order granting transfer made by the transferring court and not reviewed before the transfer took effect.

COMMENT

Section 218 deals with appeals in the receiving state.
The first provision of Section 218 complements the provisions of Section 109. An order granting transfer is reviewable only in the courts of the transferring state within the limits authorized by Section 109. Review in the receiving state is properly limited to the order accepting transfer.

Orders accepting or refusing to accept transfer are reviewable only by extraordinary writ or permissive interlocutory appeal. As with Section 109, if the receiving state has no general procedure for permissive interlocutory review, an interlocutory review procedure should be created for orders determining whether to accept transfer or whether to return the proceedings. The opportunity for review is limited because of the other safeguards built into the transfer procedure. Any opportunity to review orders accepting or refusing to accept transfer as a matter of right would provide an opportunity for delay. Review on appeal from judgment on the merits, undoing otherwise proper proceedings, would be untoward. Challenges to the jurisdiction of the receiving court, as augmented by Section 203, remain available on appeal. Other challenges to the order accepting transfer are not.

Orders granting or refusing to grant return likewise are reviewable only by extraordinary writ or permissive interlocutory appeal. Return can be ordered only on the narrow grounds specified in Sections 214 and 215. A limited opportunity for review in the receiving state is appropriate in light of the requirement in Section 108 that the transferring court accept return without reexamining the basis for return. Broader opportunities for review, however, would threaten delay that is incompatible with achieving the efficiency sought by transfer. There can be little serious objection to return of an action to the court where it was first filed if that court has jurisdiction. Challenges to the jurisdiction of the transferring court remain available on appeal in the transferring state after return.

Review of all other rulings made by the receiving court is available according to the review procedures of the receiving state. The rulings subject to review include matters that are related to the transfer process. The jurisdiction of the receiving court, for example, can be challenged by whatever interlocutory or final judgment review procedures are available. Decisions by the receiving court under Section 208 to depart from terms of transfer imposed under Section 105 are likewise reviewable, as are decisions as to limitations matters governed by Section 209. An order under Section 212 vacating or amending an order of the transferring court is reviewable; failure to challenge the vacating or amending order of the receiving court may affect the opportunity for review of the original order of the transferring court.

Section 218 also empowers courts of the receiving state to review rulings made by the transferring court before transfer and not reviewed before the transfer took effect. This provision complements both the provision in Sections 105 and 206 governing the effective time of transfer and the provision in Section 109 that bars review in the transferring court system of rulings not reviewed before the transfer took effect. The reasons for this allocation of review authority between transferring and receiving states are discussed with Section 109.
PART III. GENERAL

SECTION 301. UNIFORMITY OF APPLICATION AND CONSTRUCTION. This [Act] must be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of the [Act] among states enacting it.

SECTION 302. SHORT TITLE. This [Act] may be cited as the Uniform Transfer of Litigation Act.

SECTION 303. SEVERABILITY. If any provision of this [Act] or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

SECTION 304. TIME OF TAKING EFFECT. This [Act] takes effect ________________________.

COMMENT

Some states may have statutes that must be amended or repealed to avoid conflict with this Act. The Act, however, is not intended to supersede other statutes. Statutory provisions governing forum non conveniens, for example, remain important since the more convenient forum may not be authorized to receive transfer. Other statutes providing for cooperation between courts in different jurisdictions also remain useful. Cooperation in discovery, for example, often may be achieved more effectively by means other than transfer. Reciprocal procedures for enforcing child support obligations likewise may prove superior to transfer of the underlying proceeding. Certification of questions of law can remain useful. Yet other examples will be found. Transfer provides an additional procedural tool, not a panacea that makes other tools obsolete.
SECTION 305. REPEALS. The following acts and parts of acts are repealed:

(1)

(2)

(3)