

State of New Jersey

New Jersey Law Revision Commission

ANNUAL REPORT

2009



Report to the Legislature of the State of New Jersey
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I. MEMBERS AND STAFF OF THE COMMISSION IN 2009

The members of the Commission:

Vito A. Gagliardi, Jr., Chairman, Attorney-at-Law

Albert Burstein, Attorney-at-Law

Andrew O. Bunn, Attorney-at-Law

Hon. Sylvia Pressler, P.J.A.D., Retired

Paul A. Sarlo, Chairman, Senate Judiciary Committee, Ex officio

Linda R. Greenstein, Chairman, Assembly Judiciary Committee, Ex officio

Patrick Hobbs, Dean, Seton Hall Law School, Ex officio

Represented by Professor **Ahmed I. Bulbulia**

John J. Farmer, Jr., Dean, Rutgers Law School – Newark, Ex officio

Represented by Professor **Bernard Bell**

Rayman Solomon, Dean, Rutgers Law School - Camden, Ex officio,

Represented by **Grace Bertone**, Attorney-at-Law

The Staff of the Commission is:

John M. Cannel, Executive Director

Laura C. Tharney, Deputy Director

Marna L. Brown, Counsel

John J. A. Burke, Of Counsel

Jenene J. Hatchard, Administrative Assistant

***Steven Rappoport**, Law Student Intern

***Ksenia Takhistova**, Law Student Intern

Alexander Fineberg, Law Student Intern

* resigned

In Memory Of



Judge Sylvia B. Pressler

1934 - 2010

The New Jersey Law Revision Commission was saddened by the loss of Judge Sylvia B. Pressler in February 2010.

Judge Pressler served on the New Jersey Law Revision Commission beginning in 2004 after being appointed by the New Jersey Senate President. After her appointment, Judge Pressler gave generously of her time; undertaking detailed and incisive reviews of the Commission's projects. Her years on the bench, combined with her innate appreciation of the practical impact of changes to the law, gave her a unique perspective that was extraordinarily valuable in guiding the work of the Commission.

Judge Pressler's contributions to the Commission are irreplaceable, and the Commission will long feel her loss.

Photo used Courtesy of Steve Hockstein/Harvard Studio

II. HISTORY AND PURPOSE OF THE COMMISSION

New Jersey has a tradition of law revision. The first Law Revision Commission was established in 1925 and produced the Revised Statutes of 1937. The Legislature intended that the work of revision and codification continue after the enactment of the Revised Statutes, so the Law Revision Commission continued in operation until 1939. After that time, the functions of the Commission were transferred to a number of successor agencies, including the Legislative Counsel.¹

In 1985, the Legislature enacted 1:12A-1 *et seq.*, the effective date of which was January 21, 1986. Those sections of the statute transferred the functions of statutory revision and codification to a newly created New Jersey Law Revision Commission.² The Commission began work in 1987 and has, since that time, filed 78 Reports with the Legislature, 36 of which have been enacted into law.

The Commission's statutory mandate is to simplify, clarify and modernize New Jersey statutes and, as a result, the Commission conducts an ongoing review of the statutes to identify areas of the law that require revision. The scope

¹ *N.J.S.* 52:11-61.

² The Law Revision Commission was created by L.1985, c.498, and charged with the duty to:

a. Conduct a continuous examination of the general and permanent statutory law of this State and the judicial decisions construing it for the purpose of discovering defects and anachronisms therein, and to prepare and submit to the Legislature, from time to time, legislative bills designed to

- (1) Remedy the defects,
- (2) Reconcile conflicting provisions found in the law, and
- (3) Clarify confusing and excise redundant provisions found in the law.

b. Carry on a continuous revision of the general and permanent statute law of the State, in a manner so as to maintain the general and permanent statute law in revised, consolidated and simplified form under the general plan and classification of the Revised Statutes and the New Jersey Statutes;

c. Receive and consider suggestions and recommendations from the American Law Institute, the National Conference of Commissioners on Uniform State Laws, and other learned bodies and from judges, public officials, bar associations, members of the bar and from the public generally, for the improvement and modification of the general and permanent statutory law of the State, and to bring the law of this State, civil and criminal, and the administration thereof, into harmony with modern conceptions and conditions; and

d. Act in cooperation with the Legislative Counsel in the Office of Legislative Services, to effect improvements and modifications in the general and permanent statutory law pursuant to its duties set forth in this section, and submit to the Legislative Counsel and the Division for their examination such drafts of legislative bills as the commission shall deem necessary to effectuate the purposes of this section.

of the revision performed by the Commission varies by project, and includes both modest changes like the correction or removal of inconsistent, obsolete or redundant language, as well as comprehensive modifications of select areas of the law.

Before choosing an area of the law for revision, the Commission considers recommendations from the American Law Institute, the National Conference of Commissioners on Uniform State Laws, and other learned bodies and public officers. Once a project begins, the Commission extensively examines local law and practice, and, when appropriate, the law of other jurisdictions. The Commission also consults with experts in the field throughout the drafting process and seeks input from individuals and organizations familiar with the practical operation of the law and the impact of the existing statutes.

When the preliminary research and drafting is finished, the Commission issues a Tentative Report and makes it available to the public for comments. The Commission then reviews all the comments received, and incorporates them into the Tentative Report as necessary. When a revision is completed, a Final Report is prepared and submitted to the New Jersey Legislature for consideration.

The Commission's work has been published in law journals, cited by the New Jersey Courts, and used by law revision commissions in other jurisdictions.

The meetings of the Commission are open to the public and the Commission actively solicits public comment on its projects, which are widely distributed to interested persons and groups. Since 1996, the Commission has maintained a website for the purpose of making its projects and Reports readily available to the public, now at <http://www.njlrc.org>.

III. LEGISLATIVE SUMMARY

Since it began work in 1987, the New Jersey Legislature has enacted 37 bills³ based upon the Final Reports and Recommendations of the New Jersey Law Revision Commission:

- Anatomical Gift Act (L.2001, c.87)
- Cemeteries (L.2003, c.261)
- Civil Actions – Service of Process (L.1999, c.319)
- Civil Penalty Enforcement Act (L.1999, c.274)
- Court Names (L.1991, c.119)
- Court Organization (L.1991, c.119)
- Criminal Law, Titles 2A and 24 (L.1999, c.90)
- Evidence (L.1999 c.319)
- Intestate Succession (L.2001, c.109)
- Juries (L.1995 c.44)
- Lost or Abandoned Property (L.1999, c.331)
- Material Witness (L.1994, c.126)
- Municipal Courts (L.1993, c.293)
- Parentage Act (L.1991, c.22)
- Recordation of Title Documents (L.1991, c.308)
- Repealers (L.1991, c.59, 93, 121, 148)
- Replevin (L.1995, c.263)
- School Background Checks (L.2007, c.82)
- Service of Process (L.1999 c.319)
- Statute of Frauds (L.1995, c.36)
- Surrogates (L.1999, c.70)
- Tax Court (L.1993, c.403)
- Title 45 –Professions (L.1999, c.403)
- Uniform Child Custody Jurisdiction and Enforcement Act (L.2004 c.147)

³ A total of 37 bills were enacted, implementing 34 reports. The Repealers project was divided into three reports.

- Uniform Commercial Code 2A –Leases (L.1994, c.114)
- Uniform Commercial Code 3 – Negotiable Instruments (L.1995, c.28)
- Uniform Commercial Code 4 – Bank Deposits (L.1995, c.28)
- Uniform Commercial Code 4A – Funds Transfers (L.1994, c.114)
- Uniform Commercial Code 5 – Letters of Credit (L.1997, c.114)
- Uniform Commercial Code 8 – Investment Securities (L.1997, c.252)
- Uniform Commercial Code 9 – Secured Transactions (L.2001, c.117)
- Uniform Electronic Transactions Act (L.2001, c.116)
- Uniform Mediation Act (L.2004 c.157)
- Uniform Prudent Management of Institutional Funds Act (L.2009, c.64)

IV. FINAL REPORTS AND RECOMMENDATIONS

A Final Report contains the decision of the Commission on a particular area of the law and includes an analysis of the subject, proposed statutory language and commentary. A Final Report is approved and adopted after the public has had an opportunity to comment on drafts of the Report, and is filed with the Legislature. After filing, the Commission and its Staff work with the Legislature to draft the Report in bill form and to facilitate its enactment.

In 2009, the New Jersey Law Revision Commission published five Final Reports and Recommendations to the Legislature.

A. Title 2A – Capias Writs

In 2009, the Commission began a comprehensive revision of Title 2A, which includes the capias writs. Capias ad respondendum allows a plaintiff to commence a civil action by putting a defendant in jail. Capias ad satisfaciendum enables a judgment creditor to cause the arrest and retention in custody of a judgment debtor until the judgment is paid or discharge is secured as an insolvent debtor.

After reviewing the writs, the Commission recommended that both be repealed. First, the writs raise grave constitutional problems related to due process and equal protection. Second, the writs needlessly duplicate powers given to the courts under the civil contempt statutes. Third, the law requires civil prisoners to be held separately from criminal prisoners but it has proved impractical to effect such a separation. Fourth, even if separation of civil and criminal prisoners were possible, it is not clear who would pay for the incarceration of a civil prisoner jailed under a writ of capias.

In 1997, the Law Revision Commission issued a report that called for the repeal of both writs. The Commission asserted that the statutes “consist of archaic terms of art” and that they are “poorly drafted and present due process problems.” Even if the statutes were modernized and protections for the due

process rights of debtors were added, the Commission remained troubled by the seemingly duplicative nature of the writs since civil contempt and other measures contained in the New Jersey Court Rules protected litigants' rights at least as well as *capias*. Finally, the Commission was deeply concerned by *ca. re.*'s ability to jail a person neither charged with a crime nor in violation of a court order.

Having reviewed the writs anew in the context of the Title 2A revision, the Commission maintains that that they are constitutionally deficient, no longer necessary, and are too impractical and costly to be administered effectively.

A Final Report was issued in December 2009.

B. Construction Lien Law

This project was begun in response to concerns from construction industry attorneys that the Construction Lien Law, *N.J.S. 2A:44-1 to 38*, was ambiguous and had led to inconsistent appellate decisions. The Commission learned that contractors and subcontractors attempting to invoke the law, as well as judges and arbitrators responsible for implementing it, found the law confusing and unclear. More than a year after commencing revision of the statute, the Tentative Report on Construction Lien Law was released in December of 2008 with a public comment period through March 1, 2009.

The existing Construction Lien Law became effective in 1994, replacing the old Mechanic's Lien Law, which, up until that time, had applied to non-public construction projects. The purpose of the statute is twofold: to enable private project contractors, subcontractors and suppliers to secure payment for their labor and materials by a straightforward lien filing process, and to protect property owners from exposure to double payment for work or materials for which they have already paid. Application of the law has been problematic, however, because key terms in the current law are not precisely defined, some provisions are difficult to understand and there are gaps in the law.

The Commission was fortunate to receive considerable informal comment during the pendency of the project from a wide variety of commenters, including

attorneys and organizations representing various participants in the construction process. As a result of the feedback from a number of sources, the project grew in scope, addressing ambiguities and unclear provisions in the existing law as well as the need for new sections to rectify practical problems.

The revision focused on: the clarification of existing definitions; the addition of new defined terms necessary for better application of the statute; the modification of existing provisions found to be ineffective in practice; the incorporation of recent court decisions; clarification of the arbitrator's role; and the addition of new provisions that enhance the effectiveness of the statute. Where necessary, language was updated or reworded to make the statute clearer and easier to use. Although the statute has been substantially revised, the Commission endeavored to make all modifications consistent with the stated legislative intent and the expressed purpose of the initial drafters as explained by case law.

The Final Report was released by the Commission in March 2009.

C. Title 44 - Poor Law

Two laws with confusingly similar names govern assistance to the needy in New Jersey.

One, the "Work First New Jersey" Act, 44:10-55 *et seq.*, resulted from the federal "Personal Responsibility and Work Opportunity Reconciliation Act of 1996," 42 *U.S.C.* section 601 *et seq.*, which established a federal block grant for temporary assistance for needy families and enabled the states to design their own welfare programs. This Act replaced earlier programs including: aid to families with dependent children, general public assistance, emergency assistance for recipients, and the family development initiative. The two main relief programs established by this Act are Temporary Aid for Needy Families ("TANF") and General Assistance ("GA"). TANF is the successor to the federally funded categorical programs; GA is the continuation of municipal general public

assistance for those people who do not fit within the categorical programs.

The second law, “Work First New Jersey General Public Assistance” Act, 44:8-107 *et seq.*, replaced the State’s General Public Assistance Law of 1947. The existing statutory language confuses the relationship between the two “Work First” laws. The Work First New Jersey General Public Assistance Act seems to establish a general assistance program to “needy, single adults and couples without dependent children.” In fact, that Act serves only to provide for municipal governance of the General Assistance program established by the other “Work First” Act. A municipality may choose either to run the program itself or to cede authority to the county. In current practice, administration of the program is equally divided between municipal and county governance. The TANF program is administered by the county.

Much of the difficulty with the current statutory scheme results from the fact that many of the statutes in the earlier chapters of the Title were enacted in the 19th century. Others date from the 1920’s and before. Archaic in substance and in style, they do not reflect current reality and practice. It appears that as times and welfare programs changed, very little of the old law was repealed.

Commission Staff spent many days in consultation with welfare professionals to produce a draft of a modern, comprehensive, clear welfare law. The Commission drafted provisions that clearly establish the programs operating in New Jersey and remove the ambiguities and anachronisms of the current statutes.

A Final Report was published in February of 2009.

D. Title 22A - Costs and Fees

Title 22A contains the general fees pertaining to civil actions, probate actions and criminal actions as well as other fees and language concerning the disposition of those fees. The updating of the Title was inconsistent. Certain sections of the Title remained reasonably current, other sections were updated

intermittently and the remaining sections had not been updated since their enactment in 1953.

The largest single substantive change in the Title is the inclusion of a flat-fee mileage charge designed to replace the hundreds of different mileage fees currently assigned to individual municipalities throughout the State. Another substantive change is the adjustment of the filing fees to make them nearly uniform across the courts. In addition, the Report attempted to correct what appeared to be an error in the recently enacted 22A:4-17(b) (effective September 2009) as shown in Section 22B:9-2.

Ultimately, a number of statutory sections were proposed for removal as anachronistic or inconsistent with other sections of the Title. The remaining sections were consolidated and reorganized in an effort to develop a more orderly presentation of the information contained in the Title. Throughout the course of this project, Staff worked closely with the AOC, the County Clerks, the Surrogates and the Sheriffs and was able to achieve consensus on the vast majority of the provisions contained in the Final Report.

A Tentative Report was released in September 2008 and later revised in November 2008. A Final Report was issued in November 2009.

E. Uniform Environmental Covenants Act

The Commission considered adoption in New Jersey of the Uniform Environmental Covenants Act (“UECA”) as recommended NCCUSL. Intended to develop a system of recording environmental covenants for Brownfields, the UECA seeks to ensure that land use restrictions, environmental monitoring requirements and engineering controls for potential environmental risks of residual contamination are reflected on the land records and effectively enforced over time. Brownfields are defined as abandoned and environmentally contaminated properties, formerly used for commercial and industrial purposes, which are developed and reintroduced into the stream of commerce.

Although no New Jersey statute provides for an environmental covenant per se, New Jersey has enacted significant legislation regulating Brownfields and other contaminated properties, including the *Brownfield and Contaminated Site Remediation Act, N.J.S. 58:10B-1 et seq.*, which regulates contaminated sites once used for commercial and industrial purposes but currently abandoned or underused, and the *Site Remediation Reform Act, P.L. 2009, c. 60 (SRRA)*, which provides, in part, for the use of notice and institutional controls as part of the remediation of contaminated properties. The *Brownfield Act* also includes remediation standards, financial incentives, cleanup procedures and liability protection for innocent parties who clean up Brownfields.

As a result of the existing legislation and the strong enforcement record of New Jersey's Department of Environmental Protection (DEP), the Commission recommended that the deed notice required by the *Brownfield Act* and *SRRA* be amended to make it function like a restrictive covenant and to allow enforcement by any person who is injured, or, if the DEP fails to enforce the restrictions, by any person whether or not the person was a party to a restrictive covenant. The adoption of the UECA in its entirety, however, was not recommended.

V. TENTATIVE REPORTS

A Tentative Report represents the first settled attempt of the Commission to revise an area of law. It is the product of lengthy deliberations, but it is not final. A Tentative Report is distributed to the general public for comment. The Commission considers these comments and amends its Report.

In 2009, the Commission published five Tentative Reports.

A. Custody

A Tentative Report on child custody was released in November 2009. This report revised material now contained in Chapter 2 of Title 9. The subject of the chapter is the standard to be applied when making decisions regarding the custody of a child if there is a dispute among parties. The standard is most commonly applied in cases of divorce. The law is related to that used for dispositional decisions after findings of child abuse since it uses a “best interests” standard but its application is different.

This report is closely based on existing law but with simplified and clarified language. It also incorporates decisional law limiting the use of the “best interests” standard when the custody dispute is between a parent and a non-parent or when the dispute is over the acceptance of an arbitration award of custody. The deviations from current statutes and the decisions that require them are indicated in the comment after each section.

B. Durable Power of Attorney Law

With the recent introduction of amendments to New York’s durable power of attorney law, the Commission determined that New Jersey’s current durable power of attorney laws might need revision.

New Jersey’s *Revised Durable Power of Attorney Act* (RDPA) was enacted in 2000, replacing Sections 46:2B-8 and 46:2B-9, which had been enacted in 1971 as an Act concerning the effect of death, disability or incapacity

of a principal upon a power of attorney. Although only one modification had been made to the RDPAA since its enactment, pertaining to gratuitous transfers and gifts, the Commission learned that commenters believed some revisions to current law would be useful. New Jersey's statute relating to banking transactions under a power of attorney, Title 46:2B-10 et seq., which was not intended to be superseded by the RDPAA, also needed at the very least to be integrated and made consistent with the RDPAA.

The Commission's Tentative Report revising the RDPAA adopts concepts derived from the Uniform Power of Attorney Act, promulgated in 2006 by the National Conference of Commissioners on Uniform State Laws (NCCUSL), and follows suggestions advanced by members of the State Bar Association.

C. Juvenile Detention Facilities

A Tentative Report on Juvenile Detention Facilities was released in July 2009. This Report included the substance of what are now chapters 10 through 12A of Title 9. These statutes authorize counties to establish juvenile detention facilities and children's shelters and provide for their operation.

The current statutes are antiquated in several ways. Most important, they fail to distinguish between secure institutions for the detention of children charged with, or convicted of criminal activity and institutions for other children needing shelter, such as dependent neglected children or children involved in "juvenile-family" cases. See 2A:4A-34, 2A:4A-37 and 2A:4A-46. In addition, the administrative structures provided by these laws are not those now used, and some of the terms used in these laws are now anachronistic. Most of the significant law on juvenile detention facilities and shelters is now found in Title 2A, Chapter 4A rather than in Title 9. Only a small part of what are now chapters 10 through 12A of Title 9 is of continuing importance. As a result, the recommended revision is much reduced in length but preserves the residual purpose of the chapters in Title 9, to authorize counties to establish and maintain these institutions.

D. Parentage

A Tentative Report on Parentage was released in May 2009. This was a revision covering the substance of what is now Chapter 17 of Title 9. The current statutes were written before the development of modern genetic tests that can determine whether a particular person is a genetic parent of a particular child with a level of accuracy that makes them practically irrefutable. As a result, the current law is written in terms of factual presumptions that are not now relevant. This Report gives a central role to genetic testing in litigated cases of disputed genetic parentage.

The majority of parentage cases that arise around the time of birth, however, do not involve a court determination. Most often, a man agrees that he is the father and signs a certificate of paternity. Federal statutes and regulations essentially require that states establish a system of voluntary acknowledgements of paternity that is as binding as a court determination. See, e.g. 42 *U.S.C.* §668 and 45 *C.F.R.* §303.5. Section 4 established such a system in the form of certificates of parentage. Unfortunately, some men who sign acknowledgments later come to question whether they were correct either because of the acquisition of new facts or a change of heart. The Commission considered requiring genetic testing in connection with a certificate of paternity but rejected the requirement because of the cost in money, time and invasion of privacy.

A small number of disputes over paternity do not follow the ordinary pattern of a known question around the time of birth. These disputes may arise when the relationship terminates between the persons who thought themselves to be father and mother, or in the context of divorce, or in the distribution of estates or trusts. There are not many of these cases, but they engender a great deal of difficulty. The Report deals with this problem, first, with the requirement of genetic testing. Whenever an issue of genetic parentage arises, the court is required to order testing. The Report also limits challenges to parentage by barring challenges to parentage when the questioned parent has lived with the

child for five years. This “statute of repose” treats the relationship as one of adoption whatever the genetic information may show.

The only provision on non-genetic parentage is one regarding sperm or egg donation, tracking a current provision on sperm donation. There are many other issues involving parentage that turn on matters other than genetics. Many of these issues are controversial, and all are fact sensitive. It seems better to leave these issues to case law determination.

E. Title 39 - Motor Vehicles and Traffic Regulation

The Commission has worked on this substantial project for several years and it was released as a Tentative Report at the end of 2007. After initially considering sections of Title 39 in response to requests, the Commission determined that the entire Title was an appropriate candidate for a comprehensive revision.

The basic statutory provisions concerning motor vehicles were drafted in the 1920's and there are statutory sections currently in effect that were enacted in every decade beginning in the 1920's. Periodic modifications and accretions over time resulted in a collection of layered statutes containing overlapping, contradictory and obsolete provisions.

The scope of Title 39 is very broad. It includes registration and licensing requirements, motor vehicle equipment requirements, and numerous provisions regarding the regulation of traffic, including requirements pertaining to bicycles, roller skates, horses and horse-drawn vehicles, snowmobiles, all terrain vehicles, machinery and equipment of unusual size or weight, pedestrians, the law of the road and right-of-way, traffic signals, accidents and reports, parking, highway and traffic signs, and the powers of municipal, county and state officials. Title 39 also includes provisions regarding automobile insurance, vehicle inspections, the purchase, sale and transfer of vehicles, abandoned and unclaimed vehicles, junk yards, driving schools and auto body repair facilities.

As a result of its scope, Title 39 has a significant impact on a large number of residents of the State of New Jersey, and on those who drive on the many roadways in this State. The Commission focused its efforts on improving the language, the structure and the accessibility of Title 39 so that those who are impacted by various provisions of the law can more readily locate and understand the requirements, responsibilities and restrictions imposed upon them.

The general goal of this revision was not to modify the substance of the law significantly, but to consolidate and, where appropriate, restructure the law, so that it is consistent, organized and accessible. There were, however, sections of the law where the substance was revised, including outdated and inconsistent penalty provisions. The modifications to the substance in that area, and in some others, were the result of input from the Motor Vehicle Commission, municipal court judges, attorneys who regularly practice in municipal court, police officers, and others whose work with Title 39 has afforded them the opportunity to identify the instances in which the current law does not adequately address the problems posed by its day-to-day application.

The project was released at the end of 2007 with a lengthy public comment period. The Commission was fortunate to receive informal comments during the pendency of the project and substantial additional commentary during the comment period following the issuance of the Tentative Report. Significantly, attorneys with the Motor Vehicle Commission conducted a line-by-line review of the project in preparation for the submission of detailed MVC comments on the project. As a result of competing demands for attorney time and resources, the MVC was able to submit the vast majority of its comments to Staff before the end of 2009 but did not have the opportunity to provide all of them. It is anticipated that those comments will be provided to the Commission in early 2010, enabling Staff to update the project for release in the spring of 2010.

F. UEVHPA – Uniform Emergency Volunteer Health Practitioners Act

UEVHPA was drafted by the National Conference of Commissioners on Uniform State Laws (“NCCUSL”) in an expedited manner after hurricanes Katrina and Rita which struck within weeks of each other in 2005. Prior to that time, a number of states had enacted emergency management laws that permitted the waiver or modification, in emergencies, of licensure standards for health practitioners. The vast majority of the states had also enacted the Emergency Management Assistance Compact (“EMAC”). EMAC allows for the deployment of licensed health practitioners employed by state and local governments to jurisdictions in which they are not licensed and allows them to provide emergency services there.

The federal government supplemented state law provisions with language allowing licensed health practitioners that it employed on either a permanent or temporary basis to respond to disasters and emergencies without complying with the state professional licensing requirements in the locations where their services are utilized. In addition, federal law established two systems to facilitate the use of private sector health practitioners in response to emergencies, particularly those mobilized by charitable non-governmental organizations that are active in disasters. Unfortunately, neither of those federal programs necessarily results in interstate recognition of licenses issued to volunteer health practitioners.

The response efforts associated with hurricanes Katrina and Rita demonstrated that, in the absence of national standards, the federal and state systems available were inadequate and complicated that use of volunteer health practitioners for both the receiving and the deploying states.

The goal of the Commission is a law that facilitates the use of out-of-state health practitioners in New Jersey when they are needed here while providing appropriate protection to all parties. The Commission was fortunate to receive helpful comments from various individuals on an informal basis, and a Tentative Report was released in November 2009.

VI. WORK IN PROGRESS

A. Title 9-Child Abuse and Neglect

In response to a suggestion from a Legislator, the Commission began working on revision of parts of Title 9 in 2009. Because of the size and complexity of the material, the project was divided into a number of parts. Tentative reports have been completed on three of those parts, Parentage, Custody and Juvenile Detention Facilities. Chapter, 6, the remaining chapter to be addressed is the most difficult, since it deals with child abuse and neglect.

Thus far, several drafts have been prepared and Staff has engaged in extensive consultations with a wide range of interested parties. It is hoped that consensus can be reached and a Tentative Report issued during 2010.

B. Landlord Tenant

In 2009, the Commission began a major project to compile and revise all of the landlord-tenant law. The statutes pertaining to the landlord-tenant relationship, some of which date back to the 1870's, have not evolved in a coherent manner.

Many, but not all, of the landlord-tenant provisions are contained in Title 2A, but even those are not within the same chapter or even in sequence, and different aspects of the same topic are discussed in more than one statutory provision. The result is a scattered morass of overlapping, contradictory and inaccessible provisions.

Another large part of the law is now found in chapter 8 of Title 46. This chapter contains provisions pertaining to Leasehold Estates, the Truth-in-Renting Act, and the New Jersey Safe Housing Act. The remaining provisions of the landlord-tenant law are scattered throughout Titles 20, 38, 40, 52, 54 and 55.

The lack of organization makes the law difficult to find. The conflicts,

inconsistencies and anachronisms make it difficult to determine what the law is. In this area of the law, where parties frequently represent themselves, it is especially important that the statutes be consistent, understandable and easy to locate.

Accordingly, the Commission has undertaken a landlord-tenant revision project that, while preserving current legal concepts and causes of action, seeks to:

(1) consolidate in a single place all statutes pertaining to the legal relationship between the landlord and tenant;

(2) update all statutory language and remove anachronistic provisions;
and

(3) make consistent the various statutory provisions, and cross reference them, as appropriate.

C. Title 2A – Causes of Action

As part of the broader revision of Title 2A, Staff has undertaken a revision of Subtitle 6 of Title 2A, which contains the civil causes of action established by the Legislature. Subtitle 6 is a collection of widely varying causes of action, some of which were drafted relatively recently, while others were drafted over a century ago. This goal of this revision is to modernize the statutes by eliminating language that is no longer viable and updating the remaining language.

The language pertaining to alcohol servers' liability was not recommended for change, nor was the section pertaining to liability for damage to a fire alarm system.

The seven sections of the law known as the "heart balm" statutes were eliminated with the exception of a single sentence. The section pertaining to a change of name application was likewise proposed for elimination except for a single sentence that refers to the procedures for a name change set forth in the Rules of Court.

The two sections pertaining to injury or losses resulting from mob violence or riots are recommended for repeal in their entirety as are the sections pertaining to the recovery of money or property from a municipality or school district and the four sections pertaining to naturalization.

The language pertaining to debts or obligations fraudulently incurred was modified to clarify that, contrary to the interpretation of the federal courts, the New Jersey statutes permit a cause of action for either fraud in the inducement or fraud in the performance even if contractual remedies are also available.

The section pertaining to the arrest or detention of mentally incapacitated persons was modified to make it clear that its provisions did not apply to a commitment proceeding and the statutory language pertaining to proof of lost or destroyed instruments was modified slightly for clarity and to include the applicable standard of proof.

D. Property

The Commission began a project to revise Chapters 1 through 11 of Title 46. These chapters contain the basic law on real property. However, as the result of additions, they follow no particular order but have become a mixture of chapters on a variety of subjects. Some of the chapters are recent and stand alone. Others are anachronistic because they cover matters no longer relevant (see, Chapter 3A on proprietary surveys) and some of the chapters concern subjects of continuing importance but would be improved by modernization of language and approach (see Chapters 4 and 5 on the form of deeds).

E. UDMSA – Uniform Debt-Management Services Act

The Uniform Debt-Management Services Act (“UDMSA”) was approved and recommended for enactment by the National Conference of Commissioners on Uniform State Laws in 2005, and was last revised and amended by NCCUSL in 2008. It provides the states with a comprehensive Act governing these services with the goal of national administration of debt counseling and

management in a fair and effective way. The Act became an essential part of the creditor and debtor law when the Bankruptcy Reform Act of 2005 took effect. The purpose of the Act is to “rein in the excesses while permitting credit-counseling agencies and debt-settlement companies to continue providing services that benefit consumers.”

Prior to 2005, the issue of whether to resort to debt counseling and management services was generally a voluntary decision on the part of an individual with credit problems. However, federal Bankruptcy Reform Act of 2005 changed the status quo. Under that law, to file for Chapter 7 bankruptcy, the individual in most cases has to show that consumer debt counseling/management has been sought and attempted. Greater transparency and accountability are needed to prevent excesses and abuses of the new powers of debt counseling and management services. Because the new bankruptcy rules are federal and apply in every state, it has been suggested that regulation of the counseling and management services in every state must be uniform in character in order for the new bankruptcy rules to be effective and for consumers to be adequately protected.

There will be a number of changes to the New Jersey law if UDMSA is enacted, but commenters have suggested that the current law is badly drafted and, at nearly 30 years old, not adequate to deal with the issues that arise today.

VII. Completed Projects

Completed projects are those on which the Commission has concluded its work without issuing a Final report.

A. Handicapped Parking

This project began early in the year when Staff was contacted by a concerned citizen who explained that there was a need to revise the language of the statute pertaining to handicapped parking in New Jersey. The citizen suggested that the New Jersey law regarding handicapped parking contains a “loophole” because it requires only that a handicapped person be in the vehicle, but does not require that person to enter or exit the vehicle while it is parked in the handicapped parking space.

Draft language requiring that the handicapped person enter or exit the vehicle while it is parked in a handicapped space, except in cases of an emergency, was provided to the Commission for consideration.

Input was obtained from: Legal Services of New Jersey, New Jersey’s Division of Disability Services (“DDS”); the individual in the Office of Disabilities Management, Department of Treasury, who is the statewide ADA Coordinator for the State of New Jersey; the New Jersey Division on Civil Rights (“DCR”); and the New Jersey Police Traffic Officers Association (“NJPTOA”).

There was some support for the proposed change to the law, but there were also strong arguments against such a change and the case law and the statutory and regulatory language do not clearly support or prohibit the change. In addition, it was recognized that the majority of the states do not impose the requirement of entering or exiting the vehicle. Further, there were problems posed by the requested change that are not readily cured by the emergency exception or other concisely drafted language and enforcement difficulties appear to be a legitimate concern. Ultimately, the Commission elected to take no position on this matter.

B. SLAPP

At the July meeting of the Commission, Professor Frank Askin of the Rutgers School of Law, Newark, and Renee Steinhagen, Executive Director of the New Jersey Appleseed Public Interest Law Center, appeared to present information in support of anti-SLAPP legislation. They provided a packet of information regarding SLAPP suits for review by the Commission.

During his presentation to the Commission in July, Professor Askin discussed the recent decision of the New Jersey Supreme Court in *LoBiondo v. Schwartz*, 199 N.J. 62 (2009), a case which was litigated for approximately 18 years, beginning in 1991. He expressed concern about the decision by our Supreme Court that protects SLAPP plaintiffs from SLAPP-back claims if they can find a lawyer to bring their claim, provided the lawyer is not “actuated by malice”. *LoBiondo v. Schwartz*, 199 N.J. at 113.

Information contained in the packet submitted by Professor Askin and Ms. Steinhagen indicates that SLAPP suit defendants prevail 91.6% of the time, that 2/3 of SLAPP suits are dismissed at the time of the first court appearance, and that the average lifespan of a SLAPP suit is between 32 and 40 months from filing through disposition. At last count, 30 of the states currently have anti-SLAPP legislation. *Free Speech State-by-State*, Federal Anti-SLAPP Project, <http://www.anti-slapp.org/?q=node/12> (last accessed September 8, 2009).

Although there are few reported cases in New Jersey in which the courts specifically refer to an action as a SLAPP suit, there are numerous opinions describing actions in which “apparently meritless complaints alleging defamation and various other intentional torts such as infliction of emotional distress and interference with business advantage were brought for the purpose of silencing citizen protest” particularly in the area of land use law. See, e.g., *LoBiondo v. Schwartz*, 323 N.J. Super. at 420. Having considered the materials supplied, the Commission members expressed concern that the proposed project was beyond the Commission’s statutory scope (*N.J.S. 1:12A-8*) and is more appropriate for consideration by the New Jersey Supreme Court’s Civil Practice Committee.