



State of New Jersey

N J L R C
New Jersey Law Revision Commission

ANNUAL REPORT

1997

Report to the Legislature of the State of New Jersey
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I. MEMBERS AND STAFF OF THE COMMISSION IN 1997

The members:

Albert Burstein, Chairman, Attorney-at-Law

Roger I. Abrams, Dean, Rutgers Law School - Newark, Ex officio,
Represented by **Robert Carter**, Professor of Law

Peter Buchsbaum, Attorney-at-Law

Roger Dennis, Dean, Rutgers Law School - Camden, Ex officio,
Represented by **Grace Bertone**, Attorney-at-Law

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

William L. Gormley, Chairman, Senate Judiciary Committee, Ex officio

Hugo M. Pfaltz, Jr., Attorney-at-Law

Ronald J. Riccio, Dean, Seton Hall Law School, Ex officio,
Represented by **Ahmed Bulbulia**, Professor of Law (until 10/97)
Represented by **William Gartland**, Professor of Law (from 10/97)

David C. Russo, Chairman, Assembly Judiciary, Law and Public Safety
Committee, Ex officio

The staff:

John M. Cannel, Executive Director
Maureen E. Garde, Counsel
John J. A. Burke, Associate Counsel
Judith Ungar, Associate Counsel
Leland J. White, Associate Counsel

II. HISTORY AND PURPOSE OF THE COMMISSION

In 1985, the Legislature enacted a statute creating the Law Revision Commission.¹ The Commission conducts a continuous review of New Jersey's statutes to identify subjects that require statutory revision. This review covers the correction of statutes that conflict, are obsolete or redundant, or require comprehensive revision. The Commission also considers recommendations from the American Law Institute, the National Conference of Commissioners on Uniform State Laws, and other learned bodies and public officers. The Commission's objective is to simplify, clarify and modernize New Jersey statutes.

The Commission opened its office in 1987. Since then, it has filed 35 reports with the Legislature of which 16 have been enacted into law. Many recommendations are now pending before the Legislature. The Commission's work has been the subject of comment in law journals and has been used by law revision commissions in other states. In revising a law, the Commission extensively examines local law and practices and consults the law of other jurisdictions, experts in the area and proposals of learned bodies.

The meetings of the Commission are open to the public. The Commission actively solicits public comment on its Tentative Reports which are widely distributed to interested persons and groups. In 1996, the Commission established its website where its reports are published on the Internet. The publications of the Commission's reports on the Internet make its work more accessible to the public.

New Jersey has a tradition of law revision. The first Law Revision Commission was established in 1925. It produced the Revised Statutes of 1937. The Legislature intended the work of revision and codification to continue after enactment of the Revised Statutes. As a result, the Law Revision Commission

¹ 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.

continued in operation. After 1939, its functions passed to a number of successor agencies, most recently the Legislative Counsel.² In 1985, the Legislature transferred the functions of statutory revision and codification to the New Jersey Law Revision Commission.³

III. FINAL REPORTS

In 1997, the New Jersey Law Revision Commission published three final reports. A final report contains the decision of the Commission on a particular legal subject. The report contains an analysis of the subject, a proposed statute and appropriate commentary. It is published after the public has had an opportunity to comment on tentative drafts of the report. The final report 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.

A. Service of Process

In 1997, the Commission completed the Report and Recommendations Relating to Service of Process (see Appendix A). The Commission's review of statutes concerning process continues the effort begun in 1989 to revise Title 2A provisions concerning the courts and the administration of civil justice. The current 21 sections include many which are outdated or unnecessary; some overlap or conflict with the Supreme Court's power over practice and procedure.

The Report and Recommendations contains a proposed statute that generalizes the current statutes to allow substituted service whenever an agent or address for service is required by statute and service cannot be made there. The Commission also recommends that the Supreme Court consider amending the rules to allow service of process by private parties.

B. Civil Arrest - Capias Ad Respondendum et Satisfaciendum

In 1997, the Commission completed its Report and Recommendations Relating to Civil Arrest - Capias Ad Respondendum et Satisfaciendum (see Appendix B). The two capias writs, capias ad respondendum and capias ad satisfaciendum, are closely related. Both allow the court to jail a person against whom a civil action has been brought. A capias ad respondendum is a writ used to hold the defendant in a civil action in jail while the action is pending. Its operative effect goes much beyond that of an ordinary summons. It compels the appearance of the defendant by actual arrest. The writ of capias ad respondendum in appropriate circumstances allows a court to imprison the

² N.J.S. 52:11-61

³ L.1985, c.498.

defendant in a civil action before the trial of a claim. Again, the writ is related to a more general power of the courts to issue temporary restraints and interlocutory injunctions.

The Report and Recommendations advises the Legislature to repeal the capias ad respondendum et satisfaciendum writs because the remedy of imprisonment of a person based on the filing of a civil action is inappropriate under contemporary standards and is probably unconstitutional.

C. Civil Penalty Enforcement Act

In 1997, the Commission completed the Report and Recommendations Relating to the Civil Penalty Enforcement Act (see Appendix C). The Civil Penalty Enforcement Law (N.J.S. 2A:58-1 et seq.) now provides for judicial enforcement of civil penalties. Court Rule 4:70. (Summary Proceedings for the Collection of Statutory Penalties) complements the statute. Civil penalty enforcement actions reach the courts in notably different stages of development. Many penalties are presented in the form of a final administrative order. In these cases, the facts have been judged and monetary penalties have been determined pursuant to the provisions of the Administrative Procedure Act (N.J.S. 52:14B-1 et seq.). Appeal from final orders emanating from such procedures is to the Appellate Division. Other cases involve actions in which (1) no hearing on the facts has been provided, or (2) a penalty for a fixed total amount of money has not been determined. This category includes actions by state agencies which have not made use of the Administrative Procedure Act procedures for contested cases and by municipal agencies to which those procedures do not apply.

The Report and Recommendations contains a proposed statute that distinguishes two distinct categories of actions. The first category describes actions to enforce civil penalties or awards in uncontested cases under the provisions of the Administrative Procedure Act. Since there are no facts to be determined, the proposed statute allows the administrative agency to record the final order in the judgment docket. In these cases, there are no issues for a judge to examine. What is sought is enforcement of a case that has been decided elsewhere, in an administrative tribunal. If a party wants to present any issue to a court, appeal is available. The second category of penalty enforcement actions are those cases where the facts have not been determined administratively. In all such cases, the statute requires that the court provide a hearing and make a judgment.

IV. TENTATIVE REPORTS

In 1997, the Commission published five 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.

A. Uniform Unclaimed Property Act

In 1997, the Commission published its Tentative Report on the Uniform Unclaimed Property Act (see Appendix D). In 1989 New Jersey repealed its escheat statute, N.J.S. 2A:37-11 et seq. and adopted, with numerous variations, the Uniform Unclaimed Property Act (1981 Act), N.J.S. 46:30B-1 through 46:30B-109. Under the former escheat statute, after 14 successive years unclaimed personal property escheated to the State. N.J.S. 2A:37-13. Under the 1981 Uniform Act, the State takes custody, not title, to unclaimed property, and holds the property in perpetuity for the owner.

The Tentative Report recommends that the Legislature adopt the 1995 Act with some deviations from the uniform text. The 1995 Act retains the main features of the 1981 Uniform Act. The major refinements in the new Act pertain to rules of priorities between or among claimant states. The 1995 Act adopts jurisdictional rules to define States' priorities of taking individually. The 1995 Act also makes a number of smaller changes to the 1981 Act. When New Jersey adopted the 1981 Act, it supplemented it with provisions that dealt with problems not addressed by the Uniform Law or specific to New Jersey. While additions to the 1995 Act make a few of these provisions unnecessary, most are of continuing importance, and the Report recommends their retention.

B. Civil Penalty Enforcement Act

In 1997, the Commission published its Tentative Report on the Civil Penalty Enforcement Act (see Appendix E). Later that year, the Commission submitted its Report and Recommendations on the Act (see Appendix C).

C. Interest and Usury

In 1997, the Commission published its Tentative Report on Interest and Usury (see Appendix F). The current New Jersey usury statute is based on the 1877 Revised statutes. In the 19th century, the maximum permitted interest rate on a loan of money was 6%, a rate that today would have the effect of terminating the credit business in New Jersey. Later, the statute was amended to establish two

rates: (1) 6% per year on an oral contract to lend money or any thing of value, and (2) 16% per year if the contract is written and the contract specifies the interest rate. The statute itself contains several exceptions to the two base rates. The most important exceptions are the ones for first lien mortgages for residential property, and for other loans exceeding \$50,000.

The Tentative Report and Recommendations proposes the repeal of the New Jersey civil usury statute. Under the Commission's proposal, the setting of interest rates generally would not be regulated by law. Since the usury statute affects such a small class of loan agreements, the repeal would have no major impact on New Jersey borrowers. Repeal of the usury statute would require technical conforming amendments to numerous laws that refer to the usury statute including licensing statutes such as the Consumer Loan Act, N.J.S. 17:10-1 et seq. (allowing consumer lender to charge rate of interest in excess of 16% usury rate on loan of less than \$15,000). Amendments of these statutes could preserve the substance of the regulatory schemes embodied in the statutes. Finally, To cope with unusual conditions that cause non-competitive interest rates, the Commission recommends that the Legislature enact a statute giving the Commissioner of the Department of Banking the authority to promulgate a regulation controlling interest rates in an emergency.

D. Electronic Records and Signatures

In 1997, the Commission published its Tentative Report relating to Electronic Records and Signatures (see Appendix G). The Tentative Report and Recommendations contains a proposed statute that seeks to address the issue of the utilization of electronic documents and signatures in a limited though important sphere. State agencies receive and store information for many purposes, and they are in the best position to determine the particular circumstances under which electronic records can fulfill those purposes. Thus, the proposed statute gives state executive agencies the authority to define the circumstances under which electronic records and signatures are acceptable for the purposes for which those agencies receive and store information. Similarly to the statute recently enacted to authorize the tele-tax system, the proposed statute permits state agencies to act by the adoption of regulations, subject to the authority of the Secretary of State. Giving the Secretary of State approval authority over such regulations will facilitate the evaluation and implementation of electronic record-keeping requirements on a state-wide basis.

Responses received to the Tentative Report have resulted in a broadening of the scope of the project. The Commission currently is considering embarking on a complete revision of Title 47 Public Records. In addition, staff has been directed to prepare an in-depth study of issues raised by electronic forms of communication.

E. Cemeteries

In 1997, the Commission published its Tentative Report relating to Cemeteries (see Appendix H). Over the last year, the Law Revision Commission has engaged in a comprehensive study of the cemetery laws now compiled as Title 8A of the New Jersey Statutes. The Commission benefited from a previous recommendation for revision by a committee of the Cemetery Board, "Recommended Amendments to The New Jersey Cemetery Act, N.J.S. Title 8A, Report of the Title 8A Revision Committee, January 30, 1995" and from the cooperation of the Cemetery Board and of members and representatives of the cemetery and funeral industries.

The Tentative Report and Recommendations contains a proposed statute that is a thorough revision of Title 8A, the cemetery laws. It fills gaps, harmonizes conflicting provisions and deletes duplications. The statute also implements the incorporation of the Cemetery Board into the Division of Consumer Affairs. While the statute makes small substantive changes, it preserves the current law as to what a cemetery may and may not do.

V. WORKS IN PROGRESS

A. Environmental Protection Projects

In 1993, the Commission entered into a working agreement with the Department of Environmental Protection to revise the state's extensive environmental statutes. The project was suggested by Senator Robert E. Littell. The first stage of the project involved identifying the numerous statutes to be included in the project, which are currently scattered through 13 existing titles of the New Jersey Statutes. The second phase involved reorganizing these statutes into eight new subtitles, to be organized under the new title "Environment."

In 1997, the Commission completed a first draft of the subtitle "Land Use Regulation," including the statutes governing coastal, waterfront and wetlands areas. Work was also begun on the subtitle "Pollution Prevention, Control and Remediation" and a draft of a substantial portion of that subtitle was submitted to the Department for review.

B. Standard Form Contract Act

In 1996, the Commission approved a project to codify New Jersey law related to standardized contracts. The Commission's study of this issue showed that New Jersey caselaw did not provide a coherent system of rules to determine the validity of provisions found in standardized contracts used in market transactions for the purchase, lease or other disposition of goods and services. The objective of the project is to create a statute to clarify and to provide certainty to the enforceability of contract provisions covered by this act.

In 1997 the Commission considered several drafts of a statute. The current statute applies to standard form contracts used in the purchase of a product. "Product" is defined broadly to include, goods, services, licenses and extension of credit. Likewise, "purchase" is defined broadly to include a sale, lease, license or other disposition of a product. The current draft applies to consumers and businesses transacting in a retail market. The heart of the Act is its provision on the enforceability of terms in standard form contracts that are set by sellers and rarely, if ever, read by buyers. The basic rule is that these terms are enforceable if a reasonable buyer would have accepted them. The buyer has the burden of showing a reasonable buyer would have rejected the term and refused to purchase the product.

C. Uniform Common Interest Ownership Act

In 1994, the National Conference of Commissioners on Uniform State Laws published the Uniform Common Interest Ownership Act (UCIOA). It provides in a single comprehensive law for regulation of condominiums, planned communities and cooperatives. New Jersey has a number of existing statutes that regulate or impact some or all common interest ownership communities. The Commission has been asked to consider the uniform law and its effect on these statutes. A report should be filed on this subject during 1998.

D. Tax - Title 54

In 1997, the Commission approved a project, at the request of former Chief Judge of the Tax Court, Lawrence Lasser, to revise the laws related to property tax. The current laws are antiquated, redundant and badly organized. To assist in the project the Commission assembled a panel of experts. This special panel is now working on a preliminary draft of a portion of the law.