



State of New Jersey

N J L R C

New Jersey Law Revision Commission

ANNUAL REPORT

1998

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I. MEMBERS AND STAFF OF THE COMMISSION IN 1998

The members of the Commission are:

Albert Burstein, Chairman, Attorney-at-Law

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

Peter Buchsbaum, Attorney-at-Law

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

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

Eric Neisser, Acting Dean, Rutgers Law School - Newark, Ex officio,
Represented by **Robert Carter**, Professor of Law

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

David C. Russo, Chairman, Assembly Judiciary Committee, Ex officio

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

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 42 reports with the Legislature of which 18 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 continued in operation. After 1939, its functions passed to a number of successor

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.

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 1998, the New Jersey Law Revision Commission published seven 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. Interest and Usury

In 1998, the Commission completed its Final Report and Recommendations Relating to Interest and Usury (see Appendix A). The Report recommends the repeal of the New Jersey civil usury statute, the enactment of a statute giving the Executive limited authority to regulate interest rates in an emergency and amendment of Title 2C of the Code of Criminal Justice. Under the Report, the market forces of supply and demand for credit would set interest rates. Under limited circumstances, the Commissioner of Banking and Insurance would have the authority to promulgate a self-terminating interest rate regulation. Under the Code of Criminal Justice, any unauthorized person making a loan bearing an interest rate greater than 30% to a natural person commits a crime.

The repeal of the civil usury statute does not adversely impact New Jersey borrowers. National preemption of state usury law and New Jersey exceptions to the statute itself have vitiated the strength of the original civil usury statute. The current usury statute affects only a small class of loan agreements. The Report rationalizes the law and recognizes the economic reality that rates for the use of money are market-driven. The repeal of the usury statute does not disturb regulatory and licensing schemes governing lenders except to the extent that it removes usury limitations.

B. Environmental Protection - Tidelands

In 1998, the Commission completed its Final Report and Recommendations Relating to Environmental Protection - Tidelands (see Appendix B). The statutes included in the proposed subtitle "Tidelands" concern the State's ownership interest in its tidelands, often referred to in the statutes and elsewhere as "riparian lands." Tidelands are those lands along the shore of the State which are tide-flowed; they extend from the mean high water mark to the seaward territorial jurisdiction of the State, i.e., "the three-mile limit." The term includes tidal swamps, or "meadowlands."

² N.J.S.A. 52:11-61

³ L.1985, c.498.

The State may convey its interest in tidelands, either by outright deed of a fee interest (called in the statutes a "grant"), or by transferring a lesser interest, such as a lease or a license. The statutes in chapter 3 of Title 12 govern many aspects of how the State may alienate these interests, but they do not govern the nature and extent of the State's ownership interest itself, which is an incident of its sovereignty.

These statutes were not in all respects revised and recodified in the 1937 Revised Statutes. The first 28 sections of the chapter consist of the provisions of prior enactments extending as far back as 1864, retained in the order in which they were enacted and without the deletion of overlapping or even superseded provisions. This makes these provisions, and thus the current, applicable law, difficult to decipher. It is important that all of these provisions be rendered accurately and comprehensibly, as they have an effect on the ownership interests of the State and private property owners.

C. Uniform Unclaimed Property Act

In 1998, the Commission completed its Final Report and Recommendations Relating to the Uniform Unclaimed Property Act (see Appendix C). In 1989 New Jersey repealed its escheat statute, N.J.S.A. 2A:37-11 et seq. and adopted, with numerous variations, the Uniform Unclaimed Property Act (1981 Act), N.J.S.A. 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.A. 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 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 deletes the 1981 definition of "Last known address"; substituting jurisdictional rules to define individually the rules of the States' priorities of taking. The 1995 Act also makes a number of smaller changes to the 1981 Act.

New Jersey adopted the 1981 Act in 1989. The adoption contained a substantial number of non-uniform provisions dealing with problems not addressed by the Uniform Law or dealing with specific New Jersey problems. While additions to the 1995 Act obviate a few of these provisions, most are of continuing importance. As a result, the Law Revision Commission recommended adoption of the 1995 Act with some deviations from the uniform text.

The Law Revision Commission also has added a new Section 32 to the Act to cover real property. At present, real property in an intestate estate is subject to total escheat to the State under 2A:37-1 through -10. Presumably, other real property is subject to escheat under common law. The Commission concluded that there was no policy basis for the distinction between real and personal property, and that the Uniform Law's approach of holding property in perpetuity for the owner was preferable to escheat in all cases.

D. Cemeteries

In 1998, the Commission completed its Final Report and Recommendations Relating to Cemeteries (see Appendix D). In preparing the report, the Commission benefited from a previous recommendation for revision by a committee of the Cemetery Board and from the cooperation of the Cemetery Board and of members and representatives of the cemetery and funeral industries.

In many areas, the current New Jersey Cemetery Act, N.J.S.A. 8A, does not constitute a comprehensive treatment of the subject. In these areas, the Commission Report fills gaps. Title 8A contains 133 sections within 12 chapters. Many sections are poorly written and organized; overlapping and duplicative provisions abound. The Law Revision Commission has reduced the 12 chapters to nine, and the 133 sections to 38, and produced a clearer, simpler statement of the law. In a few places, the Commission has made small substantive changes including amendments to complete the relationship between the Cemetery Board and the Division of Consumer Affairs.

E. Standard Form Contracts

In 1998, the Commission completed its Final Report and Recommendations Relating to Standard Form Contracts (see Appendix E). The Report contains a novel codification of the law governing standard form contracts, that is, contracts that are not negotiated, usually preprinted and offered on a "take it or leave it" basis. Under the Report, a contract is effective if there is a sale and the contract is delivered to the buyer. The formation of a contract does not depend on the existence of offer, consent and consideration because the Report recognizes the commercial reality that standard form contracts are not based on the consent of the parties and do not reflect the traditional legal paradigm of a contract.

The proposed statute protects consumers from abusive standard terms. First, it establishes special rules for terms commonly found in standard form contracts. Second, it invalidates any term that would have broken the deal had a reasonable consumer had knowledge of the term prior to making the transaction. At the same time, the proposed statute permits businesses to use standard form contracts to control risk and to cut costs. Current law governing standard form contract terms is outdated and capable of producing arbitrary results. The doctrines of unconscionability, frustration of reasonable expectations and unfair surprise do not provide sufficient criteria to evaluate the enforceability of standardized terms. Rather, these doctrines rely on the court's subjective judgment of terms and thereby, due to different judicial temperaments, prevent the parties from knowing in advance whether their contract terms are valid. The proposed statute provides specific standards to determine the enforceability of standard form contract terms.

F. Digital and Electronic Signatures

In 1998, the Commission completed its Final Report and Recommendations Relating to Digital and Electronic Signatures (see Appendix F). The project involved identifying statutory barriers to the use of modern electronic technologies in commercial and government transactions. The Report proposes the elimination

or revision of statutory definitions of the term “writing” to make it clear that the term “writing” includes both traditional paper and ink documents, as well as electronically generated documents. The Report also proposes legislation permitting State agencies to adopt regulations defining how statutory writing and signature requirements will be satisfied as they migrate to electronic record-keeping and communications technologies.

G. ~~Environmental Protection – Land Use Regulation~~

In 1998, the Commission completed its Final Report and Recommendations Relating to Environmental Protection – Land Use (see Appendix G). The proposed subtitle “Land Use Regulation” contains a series of chapters each of which, except for the first and the last two, give the Department of Environmental Protection regulatory authority over land use in a specified area or over a certain type of project or development. The first chapter (Construction permits) sets forth time periods within which most permits must be processed. The last two chapters establish independent bodies, *i.e.*, the Pinelands Commission and the Hackensack Meadowlands Development Commission, and empower those bodies to regulate land use in the geographic areas within their jurisdiction. With the exception of the Waterfront Development Act, circa 1914, the regulatory authority conferred in these proposed chapters originated in legislation enacted from the early 1960's onward. This proposed subtitle consolidates these chapters into a single subtitle to facilitate easy reference to various statutory schemes regulating land use through a permit application and review process.

IV. TENTATIVE REPORTS

In 1998, the Commission published seven 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. Standard Form Contracts

In 1998, the Commission published its Tentative Report on Standard Form Contracts (see Appendix H). Later that year, the Commission submitted its Final Report and Recommendations on Standard Form Contracts (see Appendix E).

B. Digital and Electronic Signatures

In 1998, the Commission published its Second Tentative Report on Digital and Electronic Signatures (see Appendix I). Later that year, the Commission submitted its Final Report and Recommendations on Digital Signatures (see Appendix F).

C. Juries

In July 1998, the Commission published its First Tentative Report on Juries (see Appendix J). The Commission substantially revised the report in response to public comment and published a Second Tentative Report in December (see Appendix N). The current jury statutes were enacted in 1995 in response to a report filed by the Commission in 1992. While this enactment represented a comprehensive revision of the law regarding juries, no enactment can be the last word on a subject. Issues always arise that require reexamination of statutes, even those recently revised.

Most important, after the enactment of the jury statute, the Constitution was amended to provide for State funding of the judicial system. As a result, some jury-related functions were transferred from county officers to state judicial employees. The statutes must now be corrected to reflect that change. In addition, the Commission recommended that references to the three separate sessions of the Superior Court be deleted. The division of the court year into sessions now has limited practical effect, but the references to sessions causes scheduling problems, especially in regard to grand juries.

The Commission also recommended the enactment of new provisions specifying that a person who is summoned for jury service and not chosen for a jury within two days be released as having completed jury service. That provision represents the practice in a majority of counties, but there are a few where prospective jurors are held for a full week. The statutory requirement implements the expectation that jury reform adopted three years ago would allow the implementation of a two day or one trial rule throughout the state.

D. Public Transportation

In 1998, the Commission published its Tentative Report relating to Public Transportation (see Appendix K). This Tentative Report was undertaken as part of the project to revise the laws relating to transportation. It includes all subject matter on public transportation now found in Title 48 - Public Utilities. The proposed statutes on public transportation are new. The current statutes on public transportation in Title 48 -- Public Utilities are intermixed with statutes on kinds of public utility unrelated to transportation. The current statutory material is old and contains detailed provisions on subjects that are not now of primary importance. When the statutes in this area were enacted, public transportation companies were powerful economic forces. The situation has changed; there is now little to regulate. Governmental entities or interstate operations acting by federal authority provide most rail and bus service. There are some bus companies and a few rail companies subject to state regulation. These chapters provide authority for the Department of Transportation to require licenses for those public transportation operations and to regulate those companies as to safety, service and rates. However, the proposed statutes do not require the Department to regulate public transportation in ways that no longer serve any public purpose.

E. Oaths and Affidavits

In 1998, the Commission published its Tentative Report relating to Oaths and Affidavits (see Appendix L). Title 41, Oaths and Affidavits, is a collection of provisions concerned both with official oaths taken by public officers and with so-called "ordinary" oaths and affidavits used for various purposes. This proposed revision of the entire Title eliminates some no-longer-necessary provisions, including provisions concerning the Western Board of Proprietors, and some superseded provisions criminalizing perjury and false swearing. These provisions have been superseded by Title 2C, and are recommended for repeal in other projects completed by the Commission. Those provisions deemed to have continuing validity have been reorganized and regularized. A new provision permitting a certification in lieu of oath has been added.

F. Uniform Child Custody Jurisdiction and Enforcement Act

In 1998, the Commission published its Tentative Report relating to the Uniform Child Custody Jurisdiction and Enforcement Act (see Appendix M). New Jersey adopted its predecessor, the Uniform Child Custody Jurisdiction Act (UCCJA) in 1979. The Act aimed to diminish the problems which thousands of children endured annually as they were shifted from state to state and from family to family while their parents or other persons battled over their custody.

In 1997, the National Conference of Commissioners on Uniform State Laws, completed the Uniform Child Custody Jurisdiction and Enforcement Act (1997) (UCCJEA) to replace the Uniform Child Custody Jurisdiction Act (UCCJA). The Uniform Child Custody Jurisdiction and Enforcement Act revises child custody law in the context of federal statutes and inconsistent case law. It provides a remedial process to enforce custody and visitation determinations.

The Tentative Report recommends adoption of the 1997 Act. In deciding on the form of the Act, the Commission accepted optional provisions on Native American tribal decisions and on non-disclosure of identifying information that would jeopardize a party or a child in a custody proceeding. The Commission also decided to supplement the Uniform law with two sections that were added to the UCCJA by the Legislature after its enactment in 1979. The Commission also approved two differences from the uniform text of UCCJEA. It reworded Section 105, International Application of Act, subsections (a) and (c), giving New Jersey courts greater authority to exercise discretion regarding custody judgments made in foreign countries. It also made a small change in wording of subsection 209(a) to make it clear that certain residence data need not be disclosed if the court finds that the data must be protected in the interest of personal safety.

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 1998, the Commission issued final reports on the proposed subtitled "Tidelands" and "Land Use Regulation" (see Final Reports above). Work continued on the subtitle "Pollution Prevention, Control and Remediation."

B. Common Interest Ownership Act

In 1997, the Commission began a project to draft 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 of these common interest ownership communities. The Commission considered the Uniform Common Interest Ownership Act but decided that it would be preferable to write a simpler and clearer statute based both on the Uniform Law and on existing New Jersey provisions. A report should be filed on this subject during 1999.

C. Property Tax

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. The project has been delayed by the tragic death of Judge Lasser last summer. However, a report should be filed on this subject during 1999.

D. Proprietors

In 1998, the Commission approved a project to revise the laws related to proprietors. In July 1998, the Department of Environmental Protection acquired the remaining property interests of the Eastern Board of Proprietors, a corporate entity which first acquired these property interests in the seventeenth century from the grantees of the English King Charles II. In addition to two identified parcels of land adjacent to State parks, the State also acquired the residual land ownership rights to approximately one-half of the State's geographical area. As a result, land owners in the State who formerly had recourse to a private land company to resolve certain issues of property ownership now face the prospect of dealing with the State bureaucracy. Title questions which formerly could be resolved expeditiously and at low cost may now become time-consuming and expensive to resolve because the current governmental mechanisms are designed to regulate conveyances of the State's land interests, rather than to facilitate the resolution of questions about the land title of private parties.

The purpose of this project is to provide a relatively simple and expeditious mechanism for resolving certain ownership issues which implicate the State's newly-acquired residual ownership rights in the land formerly owned by the Eastern Board of Proprietors.