

MINUTES OF COMMISSION MEETING
July 21, 2005

Present at the New Jersey Law Revision Commission meeting held at 153 Halsey Street, 7th Floor, Newark, New Jersey, were Commissioners Albert Burstein, James Woller, and Sylvia Pressler. Professor William Garland of Seton Hall Law School attended on behalf of Commissioner Patrick Hobbs.

Also present at the meeting was David Ewan of the New Jersey Land Title Association.

Minutes

The Minutes of the meeting of June 16, 2005 were accepted as submitted.

Title 39 – Motor Vehicles

Laura Tharney provided a general description of Chapter 6 entitled “Learner’s and Examination Permits” indicating changes made to existing law. In 39A:6-L1, the definitions section, she noted that the term “supervised by” had been removed and explained that definitions of learner’s permits and examination permits had not been included in this section since the definitions section generally does not contain substantive provisions and caution would dictate that including substance in that section would necessitate that it be duplicated in other sections of the statute. The Commission then reviewed the draft Chapter and directed that the following changes be made:

39A:3-L2: (1) The term “validated” in subsection (b) be changed to “valid”; (2) an “or” be added after subsection (a); and (3) subsection (c) clarify that the supervising driver must be 21 years of age.

39A3-L3: Commissioner Pressler asked if two separate sections should exist for learner’s and examination permits. Subsection (g) could be separate. Ms. Tharney will review the sections and make the necessary changes.

39A:6-L5: The Commission asked Ms. Tharney to verify the age requirements for provisional licenses, and: (1) in subsection (c) to delete the phrase “no more than a” and to replace the term “other motorists” with the term “the public”; (2) in subsection (d) to delete the phrase “in a manner appropriate”; (3) in subsection (e) clarify the nature of the provisional license: its duration, conditions, convertibility into a basic license, renewal, and termination date; and (4) assure consistency with L8(a)(6).

39A:6-L6: (1) In subsection (b)(1) delete the phrase “which in the judgment of the local police is”; and (2) in subsection (b)(2) replace the term “religion-activity” with “charitable, religious, or educational organization.”

39A:6-L7: (1) Delete the word “general” in the first sentence; (2) add subsection (d) referring to “special licenses as authorized by this Act”; and (3) in subsection (b) spell “busses” without the double ss.

39A:6-L8: (1) In subsection (a)(6) correct spelling error in line three, *i.e.*, change “tot” to “to”; (2) in subsection (e) conform that section with CDL language indicating that the examination would be read to those who are unable to read, and address issue of whether other disabilities would qualify for assistance with the testing process (dyslexic or reading-impaired individuals provided additional time to take the test, etc.); and (3) in subsection (d) find out how foreign licenses from other countries are handled.

39A:6-L9: The Commission expressed concerns about subsection (c) empowering the Commission to refuse to grant a driver’s license or permit. The concern was based on the general nature of the language failing to circumscribe the discretion of the Commission and the lack of due process for the applicant. The Commission suggested that the DMV Commission issue a tentative ruling in cases of denial. It also suggested: (1) in subsection (c) to add after the word “person” the following language: “on the ground of infirmity that inhibits the safe operation of a vehicle” and deleting the remainder of the subsection to incorporate the Commission’s decision.

39A:6-L10: The Commission recognized that fixed dollar amounts are a problem in statutes. The Commission asked whether the MVC Commissioner has general power to set fees and asked to learn the percentage of motor vehicle fees comprising state income. Commissioner Woller asked why the draft uses both the terms “Commission” and “Commissioner.” Ms. Tharney said that the draft is preserving the terms used in the statutes.

39A:6-L13: (1) In subsection (c) add language that a person who has been denied a permit or license has a right to notice and opportunity to be heard. For non-notice revocation, a hearing is required afterwards.

39A:3-L14-16: The Commission noted that there might be a need to list other types of endorsements used on licenses.

39A:3-L15: (1) Add language “Special License for” in the header.

39A:3-L-16: The Commission determined that this section requires substantial revision, specifically: (1) in subsection (a)(2) delete the phrase “the transportation of passengers, except a bus used in” and after the term “ride sharing arrangements” to delete “, as” and replace with “or”. This section specifically must address the existence of car-pooling and vehicle capacity size. (See subsection (a)(1) which does not mention “school.” Subsection (i) mentions “articulated vehicle” which is an undefined term.)

39A:3-L17: The Commission expressed concern about the unfettered discretion contained in subsection (e) and the meaning of the term “deemed not a proper holder.” Consistent with earlier decisions, the Commission asked that there be established procedures for notice and hearings and the establishment of standards. The discussion led to whether there should be a single section to deal with this umbrella issue or whether the due process standards should be built into specific sections where necessary. The Commission asked for a clarification in subsection (f) of what the holder of an agricultural license is entitled to.

39A:3-L18: (1) In subsection (a) add after license the term “an operator of” and (2) remove the entire section, which really is a registration matter.

39A:3-L19: (1) In subsection (c) add a requirement of review.

39A:3-L20: (1) Add “organ donor” in header, and locate other organ donor provisions; (2) in subsection (c) conform language with the Health Act; (3) in subsection (e) clarify the meaning of the phrase “private person or entity acting on behalf of a federal, State or local agency” and delete words “for value” after first two words; and in line two change “that” to “who” (the Commission noted that there was recent federal law on the subject); and (4) in subsection (j) complete blank cross-reference.

39A:3-L21: (1) In subsection (a) add the term “upon request”; (2) in subsection (f) include a duty to report lost documentation; and (3) remove subsection (h) and treat it as separate section.

39A:3-L23: The Commission asked to add a frequency requirement for the reports to make an efficient schedule.

39A:6-L25: Add due process requirement to subsection (a).

39A:3-L28: Add language stating that the Commissioner cannot impose a fee if the suspension or revocation is deemed improper.

Uniform Residential Mortgage Satisfaction Act

The National Conference of Commissioners on Uniform State Laws released in October 2004 a model Act entitled “Uniform Residential Mortgage Satisfaction Act.” The Act addresses problems stemming from changes in the residential mortgage industry, primarily the emergence of the secondary market for mortgage sales (mortgage backed securities), the emergence of large regional and national banks through consolidation, and the use of mortgage service companies. These changes may result in difficulties in recording a notation or document in satisfaction of the mortgage when it is paid off thereby placing the buyer and seller of the property in a position of risk and the buyer’s

bank in a position of not knowing its order of priority. In response, all states have enacted statutes to address this problem but the approaches differ substantially. The Act attempts to harmonize the law in this area.

The Act gives the mortgagee “30 days to prepare and submit for recording a satisfaction document beginning at the time the mortgagee receives full payment or performance.” In the event of failure, the mortgagee is liable for actual damages caused by its failure to record the satisfaction. If after the lapse of the 30-day period, the landowner gives notice of that failure to the mortgagee and the mortgagee fails to provide the satisfaction within an additional 30-day period, then the landowner may recover statutory damages and attorney fees in addition to actual damages. In addition, the mortgagee has a duty to provide a payoff statement within 10 days of receiving a request, to identify the persons who may make the request and to specify the minimal content the payoff statement must contain, including a per diem amount. “The Act provides that a mortgagee that issues a payoff statement that contains an erroneous payoff amount is precluded from enforcing a security instrument against any person who has reasonably and detrimentally relied upon the erroneous payoff amount.” The Act also contains a self-help satisfaction procedure.

The Commissioners discussed the Act, the problems associated with recording satisfactions under the new business environment and of getting accurate and timely payoff statements. The Commissioners also discussed the differences between the model Act and New Jersey law: the model act is broader and contains different time periods and procedures. David Ewan of the Land Title Association explained key points of the model law to the Commission and explained practical problems encountered in New Jersey in the area of the failure to record mortgage satisfaction and obtain accurate payoff statements. Mr. Ewan believes that the model law is well done and deserves further study and review by the Commission. The Commission asked Mr. Cannel and Mr. Ewan to examine in greater detail the model law and its New Jersey counterpart, as well as a NJ Bar Association memorandum on a relate subject, and to report to the Commission at the next meeting.

Title 44 – Poor Law

Judy Ungar reported on the first memorandum to the Commission regarding a review of the Poor statutes. She stated that most of the statutes were ripe for repeal and that the object of the project would be to retain only those which are necessary under modern practices. The Commission approved moving forward with the project to revise all statutes related to the Poor law.

Miscellaneous

The next meeting of the Commission is scheduled for September 15, 2005.