



NEW JERSEY LAW REVISION COMMISSION

Draft Tentative Report Relating to Repeal of Anachronistic Statutes

January 8, 2018

The New Jersey Law Revision Commission is required to “[c]onduct a continuous examination of the general and permanent statutory law of this State and the judicial decisions construing it” and to propose to the Legislature revisions to the statutes to “remedy defects, reconcile conflicting provisions, clarify confusing language and eliminate redundant provisions.” *N.J.S. 1:12A-8*.

This Report is distributed to advise interested persons of the Commission's tentative recommendations and to notify them of the opportunity to submit comments. Comments should be received by the Commission no later than **March 09, 2018**.

The Commission will consider these comments before making its final recommendations to the Legislature. The Commission often substantially revises tentative recommendations as a result of the comments it receives. If you approve of the Report, please inform the Commission so that your approval can be considered along with other comments. Please send comments concerning this Report or direct any related inquiries, to:

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Executive Summary

The New Jersey Law Revision Commission has been explicitly directed by the Legislature to identify anachronistic and redundant provisions in the law.¹ In accordance with the Commission's statutorily mandated responsibilities, the following statutes were examined to determine their current applicability, viability, and potential ongoing relevance in the State of New Jersey.²

As the Commission has noted in prior Reports dealing with anachronistic statutes, statutes may be deemed anachronistic for a variety of reasons. In some cases, statutes have become invalid because they have been deemed unconstitutional or have been superseded by more recently enacted statutes or regulations. Other statutes may be legally enforceable but, in practical terms, may have ceased to have operative effect with the passage of time. Still other statutes relate to offices or institutions which no longer exist, or they deal with problems important at one time but which have ceased to be relevant.³

This Report addresses current New Jersey statutes in the following specific areas:

- Definition of “Present War” in the New Jersey Statutes
- Transportation of the “Poor”
- Sleigh Bells on Horses Attached to a Sleigh
- Required Bicycle Bells - Audible Signal
- Taking and Sale of Bittersweet

Where appropriate, recommendations have been made to repeal provisions that are no longer relevant or necessary as a result of developments subsequent to their enactment. It should be noted that the statutory sections identified in this Report do not represent all of the sections in the New Jersey statutes that may be appropriate for repeal, and the Commission's work in this area is ongoing.

Discussion

Definition of “Present War” in the New Jersey Statutes

In 1942, the New Jersey Legislature passed a statute to streamline the passage of laws relating to the United States' war with Japan, Germany, and Italy. The statute reads as follows:

N.J.S. 1:1-2a. “Present war” and similar phrases

¹ N.J.S. 1:12A-1 *et seq.*

² It must be noted that Jordan Shedlock and Richard Comerford from the Office of Legislative Services, and Robert Heym and Jones Addo of the New Jersey State Library contributed significant research support to this effort.

³ *See, for example*, John M. Cannel, New Jersey Law Revision Commission Final Report Relating to Repeal of Anachronistic and Invalid Statutes. p.2 (March 2012).

Unless it be otherwise expressly provided or there is something in the subject or context repugnant to such construction, the following words, phrases and clauses, namely: “present war,” “present war emergency,” “the existing state of war,” “present defense emergency,” when used or named within this State in any manner whatsoever with relation to a period of time shall mean so long as the United States of America continues in the present wars with the governments of Japan, Germany and Italy, or any of them, and until the making of a treaty or treaties of peace concluding all of said wars.⁴

This provision was enacted in order to “save time and difficulty in drafting legislation,” and refers to World War II.⁵ Originally appearing in more than twenty statutes, eight statutes that contain the phrase “present war” remain in the New Jersey statutes.⁶ The phrase “present war emergency” appeared in five statutes, however, N.J.S. 1:1-2a is the only one which remains in effect. The phrases “the existing state of war” and “present defense emergency” only appear in N.J.S. 1:1-2a.

One of the statutes still in effect containing the phrase “present war” is entitled “Acknowledgments or proofs made before officer of United States army or navy during war with Germany or one year thereafter.”⁷ While the statute references the “present war,” it was enacted in 1918, and references World War I, rather than World War II. Of the statutes currently in effect, the phrase “present war” is mentioned in connection with the following areas:

- The authority to accept federal grants for “war and defense activities.”⁸
- Policemen, firemen, and motor vehicle inspectors; time spent in armed forces.⁹
- Payments made by housing authorities.¹⁰
- Public Works allotments.¹¹
- Compensation for Blind Soldiers, Sailors, and Marines (Veterans)¹²
- Vacancies in park police system caused by entry into armed forces during war.¹³

The statutory provisions identified above are included below for purposes of analysis and outreach.

⁴ N.J.S. 1:1-2a.

⁵ L.1942, c. 72, p. 314, § 1, eff. May 2, 1942.

⁶ See *Publix Asbury Corp. v. City of Asbury Park*, 18 N.J. Super. 286 at 292, (Ch. Div. 1951).

⁷ N.J.S. Val.:4-1.1.

⁸ N.J.S. App. A:10-1, N.J.S. App. A:10-5.

⁹ N.J.S. 38:16-6.

¹⁰ N.J.S. Val.:19-30A.9.

¹¹ N.J.S. 52:27C-34.

¹² N.J.S. 38:18-1 There is currently a bill introduced in the Legislature, which has passed the Assembly and has advanced through committee in the Senate, A4366/S740, which would address the issue of the “present war” phrase in this section, but would not impact any of the other instances of “present war” in the New Jersey statutes.

¹³ N.J.S. 40:37-154.1.

N.J.S. App. A:10-5 (L. 1942, c.226, p.607, §5, eff. May 14, 1942).

N.J.S. App. A:10-5 confers authority to accept grants of funds, grants and loans of equipment, supplies, materials, and other property; to use and expend such resources; and to engage in activities necessary to deploy such resources.¹⁴ App. A:10-5 provides:

App.A:10-5. Authority conferred to continue only during present war

The authority hereby conferred to accept grants and loans shall continue in effect so long as the United States of America continues in the present wars with the governments of Japan, Germany and Italy, or any of them, and until the making of a treaty or treaties of peace concluding all of said wars.

Since the authority is only granted to accept grants and loans during World War II, repeal of the provision appears as though it would be appropriate. Since App.A:10-1 and all other subchapters derive their authority from App. A:10-5, they appear appropriate for repeal but the goal of outreach is to determine if these provisions remain viable in any regard.

N.J.S. 38:16-6

N.J.S. 38:16-6 addresses time spent by policemen, firemen, and motor vehicle inspectors. The statute states:

Any time spent by any member of a police or fire department of any municipality or county of this State or by any State motor vehicle inspector in the armed forces of the United States during the present war shall be counted as time spent in the active service of the police or fire department of such municipality or county or of the State Department of Motor Vehicles, and any such policeman, fireman or motor vehicle inspector shall be entitled to be advanced in grade and to all increased pay that he might have received had he not entered the service of the United States but remained in active service in such police or fire department or State Department of Motor Vehicles.

Since this provision is granted validity in accordance with the continuation of World War II, this provision, too, seems as though it is appropriate for repeal. Outreach is intended to determine whether policemen, firemen, or motor vehicle inspectors rely on this provision in order to obtain credit for active military service, and the corresponding advances in grade and pay.

Val.:19-30A.9

A reference to the term “present war” also appears in New Jersey’s Validating Acts. The Act validating notes and bonds issued by a housing authority is set forth in Val.:19-30A:9. The validating act reads as follows:

¹⁴ N.J.S. App. A:10-1.

3. All proceedings, acts and things heretofore undertaken or done in or for the authorization, issuance, execution and delivery of notes and bonds by housing authorities for the purpose of financing or aiding in the development or construction of a housing project or projects are hereby validated and declared legal in all respects. Any payments to public bodies in the State heretofore made by a housing authority are hereby validated and declared legal in all respects, and **until the termination of the present war** a housing authority is hereby authorized to make payments to public bodies in the State in such amounts as it finds desirable, notwithstanding any statutory limitation on the amount of such payments. All notes and bonds heretofore issued by housing authorities are hereby validated and declared legal in all respects.¹⁵

The language of the validating act appears to be self-terminating. This portion of the statute is to remain in effect, "...until the termination of the present war..." A reference to this validating act does not appear when conducting a search using New Jersey's statutory database.¹⁶ The validating act is, however, referenced in other electronic databases, such as Westlaw, in addition to print versions of the statutes.

It is unlikely that housing authorities are continuing to rely upon this provision to issue or disburse funds from notes and bonds. Further research and outreach will help to determine definitively whether housing authorities are continuing to operate in reliance on this provision; or, that repeal of this statute is appropriate.

N.J.S. 52:27C-34

N.J.S. 52:27C-34 was part of the Public Works Reserve (N.J.S. 52:27c-28 through N.J.S. 52:27c-39) which was created in New Jersey in 1944.¹⁷ The Public Works Reserve worked in conjunction with the Federal Works Agency which was operational from 1939 to 1949.¹⁸ The statute referencing the "present war," N.J.S. 52:27C-34, reads as follows:

52:27C-34. Allotments toward cost of plans and specifications

The department may make allotments to any county, municipality or school district, all of which are hereinafter referred to as any "political subdivision," toward the cost of preparing detailed plans and specifications after the effective date of this act for local public works or improvements to be undertaken after the termination of the present war.

¹⁵ Val.:19-30A:9 (*emphasis added*).

¹⁶ <http://lis.njleg.state.nj.us/nxt/gateway.dll?f=templates&fn=default.htm&vid=Publish:10.1048/Enu> (*last visited Jan 08, 2018*).

¹⁷ N.J.S. 52:27c-28 through N.J.S. 52:27c-39; L.1944, c. 85, art. 4, p. 177, § 28.

¹⁸ Smith, Jason Scott. *Building New Deal Liberalism: The Political Economy of Public Works, 1933–1956*. New York: Cambridge University Press, 2006.

The “present war” referenced in the statute has terminated, and the Federal Works Agency with which the Public Works Reserve of New Jersey was created to interact has been dissolved. As a result, all of the provisions of N.J.S. 52:27c-28 through N.J.S. 52:27c-39 appear to be appropriate for repeal at this time.

N.J.S. 38:18-1

N.J.S. 38:18-1 is currently operating as part of the statute which controls the annual payments by the State to veterans with certain wartime service-connected disabilities. Accordingly, N.J.S. 38:18-1 is not recommend for repeal at this time, even though the current language of the statute references the phrase “present war.” There was a bill pending in the 2016-2017 legislative session which would have addressed the issue of the “present war” language in N.J.S. 38:18-1. Staff will monitor to determine whether the relevant bill is refiled in the upcoming session and, if not, will bring this issue to the attention of the Legislature.

N.J.S. 40:37-154.1

N.J.S. 40:37-154.1 deals with vacancies in the New Jersey State Park Police system caused by entry into armed forces during war. The text of the statute is as follows:

Whenever one or more vacancies occur in the park police system established by the park commission of any county having a population of more than 200,000 inhabitants now governed by the provisions of sections 40:37-96 to 40:37-174 of Title 40 of the Revised Statutes, and such vacancies occur by reason of the entry of one or more policemen into the military or naval service of the United States during the present war, the county park commission may appoint temporarily one or more substitutes on full or part time to perform the duties of such policemen during his or their absence; provided, however, the employment of such person or persons shall continue only during the present state of war, unless such employment be sooner terminated by the appointing authority, and such appointees shall not be regular members of the park police system and neither they nor their dependents shall be members of or entitled to any benefits from either the park police pension or retirement fund managed and controlled by the park commission or any pension fund existing in the county in which they are appointed; provided further, however, that the provisions of this act shall not apply to any regular appointment made by the appointing authority to fill a vacancy not caused by the entry of a member of the department into the armed forces.

While it is unlikely that this provision remains in use by the park police system, particularly since the provision references World War II with the phrases “present war”

and “present state of war,”¹⁹ it is anticipated that outreach will clarify whether the statute should be modified or repealed in its entirety.

Based on the foregoing, repeal of N.J.S. 1:1-2a appears to be appropriate as a result of the fact that the phrase “present war” is outdated and no longer applies to the conflict which was initially referenced, namely World War II.²⁰ Since the other statutes referenced above, with the exception of N.J.S. Val.:4-1.1, rely on the existence of the definition of “present war” in N.J.S. 1:1-2a for context Staff anticipates that outreach will aid in the determination of whether these provisions are ripe for amendment or repeal. In the case of N.J.S. Val.:4-1.1, repeal seems appropriate in light of the fact that the provision relates to World War I.

Transportation of the “Poor”

In 1921 and 1922, the Legislature created the New Jersey Commission to Investigate, Codify and Revise the Laws Relating to the Settlement and Relief of the Poor.²¹ In 1923, that Commission produced a Report which made recommendations which resulted in the enactment of N.J.S. 44:1-124.²² The text of the statute is as follows:

N.J.S. 44:1-124. Bringing poor person into municipality or county unlawfully; misdemeanor

A person who shall send, bring, remove or entice to remove, or cause to be sent, brought or enticed, a poor person into a municipality or county from any other municipality or county within this state without first having obtained the consent of the overseer of the municipality or the superintendent if there is no overseer appointed and qualified therein, or the county welfare board of the county, as the case may be, or from any other state into any municipality or county within this state without first having obtained the consent of the commissioner and furnishing suitable bond, and there leave or attempt to leave the person without first having obtained that consent, in order that the support or maintenance of the poor person upon the municipality or county may be avoided, shall be guilty of a misdemeanor, and the poor person shall not gain a legal settlement thereby and shall be returned from whence he came in the manner provided by law.²³

According to the bill statement, “[i]t endeavors so to revise the laws concerning the poor that within reasonable and proper limits due economy and better supervision of the situation may

¹⁹ Note, N.J.S. 40:37-154.1 is the only statute in the New Jersey statutes which includes the phrase “present state of war.”

²⁰ The Legislature has already taken some action in this regard, namely, Assembly Bill No. 5169 in the 2016-2017 legislative session would repeal N.J.S. 1:1-2a, however, the bill has not advanced.

²¹ A142, 147th Leg., Reg. Sess. (NJ 1924).(L.1924, c. 132, § 70, p. 286 [1924 Suppl. § 161-193], amended by L.1931, c. 392, § 18, p. 1244.).

²² *Id.*

²³ N.J.S. 44:1-124.

be obtained for the benefit of the State and its various subdivisions, with the hope that so far as possible the causes of dependency may be eliminated."²⁴

The bill is summarized as follows:

The proposed legislation will, in effect, tend to eliminate the causes of dependency and make more adequate the means to deal with the poor. It is also the object of the proposed legislation that the old system of handing out temporary relief or alms will be gradually done away with and poor persons will be so helped that they may be enabled to help themselves and not be further pauperized by the giving to them of a meal ticket, or a mere order for food for the day, or a bag of coal.²⁵

Similarly, in 1931, the State of New Jersey Pension Survey Commission produced a report which, in part, made recommendations on the establishment of county welfare boards and suggested revisions to provisions regarding the "settlement and relief of the poor."²⁶ These recommendations led to the enactment of N.J.S. 44:4-79.²⁷ The text of the statute is as follows:

N.J.S. 44:4-79. Bringing poor person into county unlawfully; misdemeanor

A person who shall send, bring, remove or entice to remove, or cause to be sent, brought or enticed, any poor person into a county from any other county within this state without first having obtained the consent of the county welfare board of the county, or from any other state into any county within this state without first having obtained the consent of the commissioner and furnishing suitable bond, and there leave or attempt to leave the person without first having obtained that consent, in order that the support or maintenance of the person upon the county may be avoided, shall be guilty of a misdemeanor, and the poor person shall not gain a legal settlement thereby and shall be returned from whence he came in the manner provided by law.²⁸

The bill statement is as follows:

This is the proposed revision of the present law for the settlement and relief of the poor as recommended by the State Pension Survey Commission to the present session of the Legislature. The revision is designed to set up uniform county administrative units of dependency relief under the denomination of county welfare boards throughout the State, in line with the action taken in many other states, the commission being convinced that such is the only practical method by which poor relief can be administered consistently, uniformly and adequately throughout the State. Such a recommendation is also included in the report of the

²⁴ *Id.*

²⁵ *Id.*

²⁶ A318, 155th Leg., Reg. Sess. (NJ 1931). (L.1931, c. 373, § 45, p. 934.).

²⁷ *Id.*

²⁸ N.J.S. 44:4-79.

"Commission to Investigate County and Municipal Taxation and Expenditures" in the interest of economy and efficiency of operation. Under this plan of administration, the responsibilities, functions and duties of the office of overseers of the poor will be taken over by the county welfare board in its jurisdiction, and the county welfare houses under the supervision of such county welfare boards would replace municipal almshouses and poor houses. The above proposed revision also eliminates complication and apparent impractical methods of administrative procedure. The, obvious necessity of the proposed change to promote uniformity, economy and adequacy of poor relief and administration in New Jersey is readily discernible from the context of Report Number One, Part Two, of the State Pension. Survey Commission, which sponsors the above legislation.²⁹

It is of note that, according to a law from 1941, N.J.S. 44:8A-48, these provisions are "hereby superseded insofar as they are inconsistent with the provisions of this act" ("this act" is: N.J.S. 44:8A-1 to 44:8A-47 ("Legal Settlement of Needy Persons") which was itself repealed by L.1977, c. 408, § 5, eff. May 24, 1978). These two laws, however, still appear in the current version of the New Jersey statutes.

Although these two statutes are still contained in the law, their constitutionality is questionable, their continued appearance there appears to be inconsistent with more current statutes, and they may be likely to cause confusion as a result.³⁰ Accordingly, repeal of these statutes appears to be appropriate at this time.

Sleigh Bells on Horses Attached to a Sleigh

The image of a sleigh being drawn over snow-covered roads by a team of horses is popular in the American lexicon. As early as 1915, and possibly even prior to that, New Jersey enacted statutory language requiring sleigh bells be attached to horses pulling a sleigh.³¹ The current statute requiring horse-drawn sleighs to employ sleigh bells reads as follows:

N.J.S. 39:4-15. Sleigh bells on horses attached to a sleigh

²⁹ *Id.*

³⁰ *See Saenz v. Roe*, 526 U.S. 489 at 500 (1999). The United State Supreme Court held that imposing a durational residency requirement on recipients of Temporary Assistance to Needy Families (TANF) benefits violated the Fourteenth Amendment right to travel. *See also Sanchez v. Dep't of Human Servs.*, 314 N.J. Super. 11 at 17 (App. Div. 1998). The New Jersey Superior Court Appellate Division held that a program which created a two-tier welfare system infringed upon fundamental right to travel guaranteed by the Federal Constitution.

³¹ P.L. 1915, c. 156 ("An Act providing for the regulation of vehicles, animals, and pedestrians on all public roads and turnpikes and prescribing and regulating process and the service thereof and proceedings for the violation of the provisions of the act and penalties for said violations, and granting authority to towns, cities, boroughs and townships, under certain restrictions for the adoption of ordinances further regulating vehicles, pedestrians, and animals, and designating the authorities to enforce its provisions, and defining their powers and their authority")

No person shall drive a horse attached to a sleigh or sled on a highway unless there are a sufficient number of bells attached to the horse's harness to give warning of its approach.³²

An initial question is whether operating a sleigh on a New Jersey roadway is permitted at all. N.J.S. 39:4-25.1 addresses the rights and duties of persons riding or driving animals:

Every person riding an animal or driving any animal-drawn vehicle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by chapter four of Title 39 of the Revised Statutes and all supplements thereto, except those provisions thereof which by their very nature can have no application.³³

N.J.S. 39:4-25.1 appears to allow the activity of operating a horse-drawn sleigh on the roads of New Jersey.

Turning to the function of bells on horse-drawn sleighs, the use of bells on horses peaked in popularity in the 1800's since horse-drawn sleighs and carriages functioned as a popular means of transportation.³⁴ In addition to serving as decoration, sleigh bells functioned as an important safety feature because some sleighs were heavy and difficult to stop quickly.³⁵ Also, the runners on the snow were largely silent, therefore the bells were required to warn pedestrians and riders of horses, or drivers of other vehicles, that a sleigh was approaching.³⁶ In the 1900's, the use of sleigh bells declined precipitously due to the increasing use of the automobile as the primary means of travel, which coincided with the subsequent decline in the use of horse-drawn sleighs.³⁷

Despite the rarity of encountering horse-drawn sleighs on our modern roadways, both because of the overwhelming use of automobile travel and the lack of snow-covered thoroughfares due to modern snow removal techniques, the Yellow Pages contain 389 results for the search term "horse drawn sleigh rides" in New Jersey.³⁸ It is also possible that individuals endeavor to operate horse-drawn sleighs on snow-covered roads in a non-commercial context. Whether sleigh rides involve public roadway travel, or whether they are conducted on roadways that would potentially involve public traffic, it appears likely that other safety features, such as lights or reflectors, may now be more effective at preventing the kinds of accidents the sleigh bells were initially intended to guard against. In addition, modern vehicles are more insulated from outside noises than they were historically, and sleigh bells would be of limited effect in providing warning to the cars' occupants. Therefore, repeal of this statute appears to be appropriate at this time.

³² N.J.S. 39:4-15.

³³ N.J.S. 39:4-25.1

³⁴ *History of Horse and Sleigh Bells*. <https://classicbells.com/info/History.html>. (last visited Jan. 3, 2018).

³⁵ Joan Gilbert, *Dashing Through the Snow!*. https://www.horseshowcentral.com/articles/history/driving_sleighs. (last visited Dec. 15, 2017.)

³⁶ *Id.*

³⁷ *History of Horse and Sleigh Bells*. <https://classicbells.com/info/History.html>. (last visited Jan. 3, 2018).

³⁸ Yellow Pages. <https://www.yellowpages.com/nj/horse-drawn-sleigh-rides>. (last visited Dec. 7, 2017).

Required Bicycle Bells - Audible Signal

In the 1890s, many municipalities passed ordinances to regulate bicycles due to the increased popularity and use of bicycles as a mode of transportation.³⁹ Many of these ordinances required lights when a bicycle was operated at night, and bells which were intended to give sufficient warning to prevent collisions with pedestrians and other vehicles.⁴⁰ As one article of the day put it:

“The dealers in bicyclers supplies in this city say they are having an increased demand for lamps and bells. This is a pretty sure indication that the new ordinance, regarding bicycle riding is being observed. This is no more than is naturally to be expected, as those who ride bicycles are mostly ladies and gentlemen, and as such they hold the laws in proper respect and observance, whereby the public safety and comfort is promoted.”⁴¹

Ordinances varied greatly, some calling for audible bells which could be heard up to 50 feet from an intersection, others calling for a bell or whistle that could be heard 100 feet from an intersection. This appears to have led to a certain amount of animosity between pedestrians and operators of other vehicles and bicyclists, or “wheelmen” as they were termed at the time.⁴² Because of the variety of regulations, in 1869 the Legislature passed legislation consolidating and codifying the nomenclature, ultimately culminating in the passage of N.J.S. 39:4-11.⁴³ The statute reads as follows:

N.J.S. 39:4-11. Audible signal

No person shall operate a bicycle unless it is equipped with a bell or other device capable of giving a signal audible for a distance of at least one hundred feet, except that a bicycle shall not be equipped with nor shall any person use upon a bicycle any siren or whistle.⁴⁴

The mid 1800’s through the early 1900’s saw tremendous development of new and varied transportation technologies.⁴⁵ At the time the statute was enacted, bicycles were competing on

³⁹ See P.L. 1888, c. 157 (“An act in relation to the use of bicycles and tricycles,” codified in the General Statutes of 1709-1895 in Roads, sections 570-573) declared bicycles to be “carriages” with the same rights and restrictions as other vehicles on the road. It allowed regulations, rules, and ordinances that would govern their use, including requiring – or prohibiting – the use of bells.

⁴⁰ *The Bell Ordinance All Right*. The Courier-News (Bridgewater, New Jersey). Fri, Jun 10, 1892 Main Edition at 3.

⁴¹ The Daily Times (New Brunswick, New Jersey). Fri, Jul 7, 1893 · Page 2.

⁴² *Objectionable Gongs*. Jersey Journal, Oct. 15, 1896.

⁴³ See P.L. 1896, c. 8, “An Act to regulate the use of bicycles, tricycles and similar vehicles and to require uniformity of ordinances affecting the same.” See also N.J.S. 39:4-11.

⁴⁴ N.J.S. 39:4-11.

⁴⁵ Jay Young. *Infrastructure: Mass Transit in 19th- and 20th-Century Urban America*, March 2015. americanhistory.oxfordre.com/view/10.1093/acrefore/9780199329175.001.0001/acrefore-9780199329175-e-28.

public roadways with horses, pedestrians, and ultimately with automobiles.⁴⁶ Also, the technology which would eventually become motorcycles was simultaneously evolving.⁴⁷

Today, automobiles, motorcycles, and bicycles perform distinct functions and bodies of regulations and laws have developed that address safety issues relating to each mode of transportation. Additionally, bicycles have developed more so into recreational vehicles, and serve less as a primary mode of transportation.⁴⁸ Bicycles also have become more accepted and more common in today's transportation ecosystem.⁴⁹ As a result of these developments, the functioning of this statute in current modern practice no longer comports with the purposes for which it was initially enacted and repeal of the provision appears to be appropriate.

Taking and Sale of Bittersweet

In the early 1930's the bright colored berries of the bittersweet plant were widely used for decorative purposes to the point that the resource in the state was being significantly depleted. Additionally, the berries represented a food source for native species of partridge who depended on the berries during months when the ground is snow covered. In 1935, in response to this problem, the Legislature passed a bill which was enacted into law prohibiting the taking or sale of "bittersweet" growing in the wild. The text of the statute currently reads as follows:

N.J.S. 23:4-64. Sale of bittersweet prohibited; penalty; enforcement

It shall be unlawful to take for the purpose of sale, sell, or expose for sale, any bittersweet growing in the wild, under a penalty of ten dollars⁵⁰ for each offense. This section shall not apply to the sale of this vine in any form for medicinal purposes.

This section shall be enforced by the persons authorized and in accordance with the provisions of chapter 10 of this title (§ 23:10-1 et seq.).⁵¹

The bill statement that accompanied the original legislation reads as follows:

Bittersweet berries is one of the principal foods of our native partridge and other bird life in mountainous sections and is practically the only food left above ground in deep snow for these birds. It is being rapidly depleted due mostly to being commercialized for decorative purposes.

⁴⁶*Id.*

⁴⁷ Setright, L.J.K. (1979). *The Guinness book of motorcycling facts and feats*. Guinness Superlatives. pp. 8–18.

⁴⁸ Babaian, Sharon. *The Most Benevolent Machine* (Ottawa: Museum of Science and Technology, 1998), p.71.

⁴⁹ *See Id.*

⁵⁰ A fine of \$10.00 in 1935, the year in which the bill was introduced, adjusting for inflation, is equivalent to \$181.37 in November of 2017, the latest date for which CPI data is available. *See* United States Bureau of Labor Statistics CPI Inflation Calculator. <https://data.bls.gov/cgi-bin/cpicalc.pl?cost1=10&year1=193501&year2=201711> (last visited Jan. 3, 2018).

⁵¹ N.J.S. 23:4-64.

The language of the statute originally, and erroneously, prohibited the taking of *Solanum dulcamara*, which today is commonly known as Nightshade.⁵² While Nightshade is known as "bittersweet," it is not the form of plant life the statute's sponsor intended to protect.⁵³ American Bittersweet, or *Celastrus scandens*, also known as "false bittersweet," was the plant initially intended to be protected by the original statute.⁵⁴ The language of the original statute was amended in 1936 to its current form prohibiting the taking of *all* "bittersweet" and omitting any reference to the Latin name of the plant which was prohibited to be taken.

Currently, American Bittersweet is not listed on the New Jersey Department of Parks and Forestry List of Endangered Plant Species and Plant Species of Concern.⁵⁵ (New York State, however, lists American Bittersweet as "Exploitability Vulnerable."⁵⁶) *Celastrus orbiculatus*, commonly known as Oriental bittersweet or Asiatic bittersweet, is listed as an invasive species by the United States Department of Agriculture.⁵⁷ It is similar in appearance to American Bittersweet, but it grows as a vine that can smother other plants and uproot trees due to its weight.⁵⁸ It may be used for decorative purposes as well, but due to its invasive nature, its use is discouraged.⁵⁹

The original purpose of the statute was to safeguard indigenous bittersweet from depletion. While bittersweet is still sometimes used for decoration, the conditions and considerations which led the Legislature to ban the taking or sale of "bittersweet" in New Jersey no longer appear to be in effect, particularly given that the New Jersey Division of Parks and Forestry no longer lists bittersweet as endangered. Since the statute is no longer serving the purpose for which it was initially enacted, repeal of the statute appears to be warranted at this time.

Conclusion

Pursuant to its statutory mandate, the Commission identified the outdated, unconstitutional, or anachronistic statutes discussed above, namely the definition of "present war" referring to World War II, laws addressing the transportation of the poor, bells on sleighs and bicycles, and the taking of bittersweet. These statutes no longer serve

⁵² S70, 157th Leg., Reg. Sess. (NJ 1935). (L.1935, c. 201, § 1, p. 482, amended by L.1936, c. 236, § 1, p. 734.).

⁵³ "Berries" for Legislature! - Bittersweet Sale Banned in English, Something Else In Latin - *Solanum Dulcamara* Apparently Confused with *Celastrus Scadens*. Trenton Evening Times, Nov. 20, 1935.

⁵⁴ *Id.*

⁵⁵ New Jersey Div. of Parks and Forestry. <http://www.state.nj.us/dep/parksandforests/natural/heritage/njplantlist.pdf>. (last visited Dec. 15, 2017).

⁵⁶ United States Dpt. of Agriculture. <https://plants.usda.gov/java/threat?stateSelect=US36&statelist=states>. (last visited Jan. 3, 2018).

⁵⁷ United States Dpt. of Agriculture. <https://www.invasivespeciesinfo.gov/plants/bittersweet.shtml>. (last visited Dec. 15, 2017).

⁵⁸ Fryer, J.L. 2011. *Celastrus orbiculatus*. In: Fire Effects Information System. U.S. Department of Agriculture, Forest Service, Rocky Mountain Research Station, Fire Sciences Laboratory.

⁵⁹ United States Dpt. of Agriculture. <https://www.invasivespeciesinfo.gov/plants/bittersweet.shtml>. (last visited Dec. 15, 2017).

the purpose for which they were initially enacted by the Legislature and the Commission recommends repeal of the above-identified statutes at this time.