

**REPORT AND RECOMMENDATIONS
ON
STATUTES TO BE REPEALED**

**NEW JERSEY LAW REVISION COMMISSION
15 Washington Street
Newark, New Jersey 07102
(201)648-4575
March 1989**

REPORT AND RECOMMENDATIONS

This project grew out of a general survey of the statutes undertaken by the Commission as a preliminary step toward recompilation. In the process of that survey, the Commission identified a substantial number of statutory sections which have ceased having any practical effect. The Commission recommends that these statutes be repealed.

The reasons that particular statutes should be repealed vary, but fall into several categories. Some statutes are invalid because they have been found unconstitutional or have been superseded. See, for instance, C. 56:7-1 to 7-17, declared unconstitutional in Lane Distributors v. Tilton, 7 N.J. 349 (1951) and N.J.S. 2A:82-8, one of a number of statutes superseded by the New Jersey Evidence Rules as provided by N.J.S. 2A:84A-40 (Official footnote to Evid. R. 70).

A larger number of statutes are those which may well be legally enforceable but which have ceased to have any operative effect with the passage of time. Some are anachronistic because they relate to offices or institutions which no longer exist. See, for instance, R.S. 44:1-73 to 1-79, dealing with overseers of the poor. Others are anachronistic because they deal with problems which were important at one time but which have ceased to be relevant to modern society. In their modern context they amount to unnecessary regulation. See, for instance, R.S. 45:20-1 to 20-3 regulating millers of grain. Still others deal with problems which have relevance but deal with a problem in a way which has become totally unacceptable. See, for instance, R.S. 8-14 which limits the amount to be spent on food for a prisoner to \$.50 a day.

The following analysis of these statutes divides them into the categories outlined above and explains the reasons for recommending repeal as to each. In addition, the Appendix to this memorandum lists the statutes in order by title and section and summarizes briefly the reasons for each recommendation.

The particular sections proposed for repeal are not all of the anachronistic or superseded sections in the New Jersey statutes. It appears that perhaps as much as ten to twenty percent of the current statutory material falls into those categories. The Commission intends to continue this project and report periodically, identifying sections which should be repealed.

This Commission is explicitly directed to identify anachronistic and redundant provisions in the law. C. 1:12A-8(a). Thus, this project falls directly within the Commission's duties. However, this project has added importance. Many of these provisions, especially those which have been superseded, continue to look like valid law. Removal of some of these provisions serves the function of removing ambiguities from the law. Their retention can be deceptive.

I. SUPERSEDED STATUTES

2A:11-55 - Records and certified copies as evidence
2A:81-1 - General rule on witness competency
2A:81-8 - Privilege of criminal defendant
2A:81-12 to 2A:81-14 - Competency of various witnesses
2A:82-2 - Authentication of signatures
2A:82-8 to 2A:82-9 - Documents as evidence
2A:82-11 - Surveys as evidence
2A:82-14 to 2A:82-16 - Ordinances and municipal records as evidence
2A:82-20 to 2A:82-23 - Instruments as evidence
2A:82-25 - Evidence of foreign law
2A:82-27 - to 2A:82-37 Evidence of foreign law; judicial notice; definitions of terms

All of these statutes were specifically identified in a footnote to a rule of evidence as inconsistent with, or included by, that rule. These references make the statutes in question invalid. See, N.J.S. 2A:84A-40.

II. STATUTES HELD UNCONSTITUTIONAL

C.51:7-1 to C.51:7-9 - Interstate transportation of anthracite

These sections regulate the interstate shipment of anthracite. They were held to be a violation of the United States Constitution in Dickerson v. N.J. State Dept. of Weights and Measures, 33 F.Supp. 431 (D.C.N.J. 1940) rev'd on other grounds 312 U.S. 656. Notwithstanding that the ruling of unconstitutionality is not legally definitive, it appears to have been accepted as correct, and the provisions have never been enforced.

C.56:7-1 to C.56:7-17 - Unfair Cigarette Sales Act of 1948

These sections comprise the Unfair Cigarette Sales Act of 1948 held unconstitutional by Lane Distributors, Inc. v. Tilton, 7 N.J. 349 (1951). After that ruling, the Legislature passed a new act correcting the defects but never repealed the old one. See C.56:7-18 et seq.

III. ANACHRONISTIC STATUTES

4:21-8 to 4:21-10 - Trespass by swine

These sections, dating from the early 19th century, provide remedies for trespass by swine, allowing slaughter of the offending animals and delivery of the meat to the county overseer of the poor. The matter is covered by more modern statutes dealing generally with trespass by animals. See, e.g., 4:20-22 to 24 and 4:21-1 to 7.

26:4-10 - Public drinking cups

This penal provision forbids the use of public drinking cups. Such a specific prohibition is unnecessary in light of present standards of sanitation.

26:4-11 - Transportation of infected persons and items

This section limits acceptance by a common carrier of persons infected with communicable diseases, or their infected clothing or bedding.

26:4-50 to 26:4-53 and 26:4-57 - Involuntary commitment of typhoid carriers

These sections provide for involuntary examination and commitment of typhoid and paratyphoid carriers. Advances in medical treatment make this section unnecessary.

30:8-14 - Victualing county prisoners

This section limits the amount to be spent for victualing a prisoner in county jail to \$.50 a day. Inflation has made this provision unenforceable.

38:21-1 - World War I veterans

This section prohibits the garnishment of wages of a World War I veteran for debts incurred before or during that war. Over the years statutes of limitations have made this provision irrelevant.

41:2-18 to 41:2-20 - Administration of oaths

46:27-1 to 46:27-2 - Surveyors General

These sections relate to the Proprietors of East Jersey and West Jersey, the body which governed the territory now comprising this State in colonial times. The Proprietors lost most of their governing power in 1708.

The provisions in Title 41 which relate to the Proprietors allow the West Jersey Proprietors to take oaths in matters in which they are settling disputes. However, their power to settle disputes seems to have been lost before the Revised Statutes of 1937. The Title 46 provisions establish the Surveyors General of East Jersey and West Jersey as public officers. While the Surveyors General continue to exist, they are private officers now of the East and West Jersey boards of proprietors, which function as private land companies.

44:1-134 to 44:1-138 - Children committed to almshouses

These sections require the overseer of the poor to inform the State Board of Child Guardians of children who are committed to almshouses.

44:1-155 to 44:1-156 - Liability of master landing sick or incapable poor persons

44:4-116 to 44:4-117 - Liability of master landing sick or incapable poor persons

These parallel pairs of sections make the master of a vessel liable if he lands poor people in the State of New Jersey.

48:18-1 to 48:18-17 - Tunnel companies

These sections provide for the establishment of companies building tunnels under the Delaware River.

48:18A-1 to 48:18A-4 - Turnpike and plank road companies

These sections provide procedures for the termination of private turnpike and plank road companies. No such companies remain.

III. UNNECESSARY REGULATIONS

29:4-1 to 29:4-4 - Guest registers

These sections require guest registers in hotels containing ten or fewer rooms. There is no similar requirement for larger hotels.

45:20-1 to 45:20-3 - Millers of grain

These sections limit millers of grain to a fee of 1/10th of the grain ground and requires them to have on their premises a standard bushel measure and a strike to level the grain in it.

48:8-1 to 48:8-17 - Ferries and steamboats

These sections separately regulate ferries and steamboats. Even with the reinstatement of water transportation, the subjects of these sections seem inappropriate to modern concerns.

- 51:1-30 to 31 - Milk bottles**
- 51:1-31.1 to 31.10 - Frozen desserts**
- 51:1-32 - Thread**
- 51:1-36 to 51:1-37.1 - Ice**
- 51:1-38 - Solid fuel**
- 51:1-39 - Charcoal**

These sections regulate the quantity marking and package sizes permitted for milk bottles, ice cream, thread, ice, solid fuels and charcoal. All seem unnecessary given general regulation of these subjects by such sections as 51:1-29, 51:1-61 and 51:1-97 which provide for marking of packages, regulation concerning size of packages and penalties for false weight or measure. In addition, the particular regulations on ice and charcoal are unenforceable given the change in the nature of most sales of those commodities.

IV. RELATING TO NONEXISTENT OFFICERS OR INSTITUTIONS

30:9-28, 30:9-29, 30:9-35 to 30:9-44.3 and 30:9-61 to 30:9-69 - County Hospitals for Communicable Diseases

These sections regulate County Hospitals for Communicable Diseases. While there seem to be some county hospitals which originally had this function, the institution provided for in this material is one dealing exclusively with communicable diseases. No such institution now exists.

30:9-70 to 30:9-81 and 30:9-85 to 30:9-86 - Municipal Hospitals for Communicable Diseases

These sections regulate municipal hospitals for communicable diseases. No such institution now exists.

44:1-3 to 44:1-9, 44:1-64 to 44:1-72, 44:2-1 to 44:2-9 and 44:3-3 to 44:3-4 - Welfare houses

These sections provide for regulation of municipal and county welfare houses. These institutions, originally called "poor houses" or "almshouses," provided a system of indoor relief superseded by the current welfare system in the 1930's.

44:1-73 to 44:1-79, 44:1-81 to 44:1-85, and 44:1-87 to 44:1-94 - Overseers of the poor

These sections provide for municipal overseers of the poor. This office was abolished and replaced by that of municipal welfare director. See 44:1-73.1.

STATUTES RECOMMENDED FOR REPEAL

| SECTIONS | DESCRIPTION | REASONS |
|---|---|---|
| <u>N.J.S.</u> 2A:11-51, 81-1, 81-8, 81-12, 81-13, 81-14, 82-2, 82-8, 82-9, 82-11, 82-14, 82-15, 82-16, 82-20, 82-21, 82-22, 82-23, 82-25, 82-27, 82-28, 82-29, 82-30,82-31, 82-32, 82-33, 82-34, 82-35, 82-36, 82-37. | Law on admission of evidence. | Specifically superseded by New Jersey Rules of Evidence, <u>N.J.S.</u> 2A:84A-40. |
| <u>R.S.</u> 4:21-8, 21-9, 21-10. | Remedy for trespass by swine. | Anachronistic. |
| <u>R.S.</u> 26:4-10. | Forbids public drinking cups. | Anachronistic. |
| <u>R.S.</u> 26:4-11. | Forbids acceptance by a common carrier of clothing or bedding of a person infected with communicable disease. | Anachronistic. |
| <u>R.S.</u> 26:4-50, 4-51, 4-52, 4-53 and 4-57. | Allows involuntary commitment of typhoid and paratyphoid carriers. | Anachronistic. |
| <u>R.S.</u> 29:4-1, 4-2, 4-3, 4-4. | Requires guest registers in hotels containing fewer than 11 rooms. | Unnecessary regulation. |
| <u>R.S.</u> 30:8-14. | Limits to \$.50 a day the amount to be spent for feeding prisoners. | Anachronistic. |
| <u>R.S.</u> 30:9-28, 9-29, 9-35, 9-36, 9-37, 9-38, 9-38.1, 9-39, 9-40, 9-41, 9-42, 9-43, 9-44, 9-44.1, 9-44.2, 9-44.3, 9-61, 9-62, 9-63, 9-64, 9-65, 9-66, 9-67, 9-68, 9-69. | Regulates county hospitals for communicable diseases. | Relates to nonexistent institution. |
| <u>R.S.</u> 30:9-70, 9-71, 9-72, 9-73, 9-74, 9-75, 9-76, 9-77, 9-78, 9-79, 9-80, 9-81, 9-85, 9-86. | Regulates municipal hospitals for communicable diseases. | Relates to nonexistent institution. |
| <u>R.S.</u> 38:21-1. | Prohibits the garnishment of the wages of a World War I veteran for debts incurred before or during that war. | Anachronistic. |
| <u>R.S.</u> 41:2-18, 2-19, 2-20 | Empowers the proprietors of West Jersey to administer oaths. | Anachronistic. |
| <u>R.S.</u> 44:1-3, 1-4, 1-5, 1-6, 1-7, 1-8, 1-9, 1-64, 1-65, 1-66, 1-67, 1-68, 1-69 1-70, 1-71, 1-72, <u>R.S.</u> 44:2-1, 2-2, 2-3, 2-4, 2-5, 2-6, 2-7, 2-8, 2-9, <u>R.S.</u> 44:3-3, 3-4. | Regulates municipal and county welfare houses. | Relates to nonexistent institutions; largely superseded by 44:8-1 <u>et seq.</u> |

| | | |
|--|---|--|
| <u>R.S.</u> 44:1-73, 1-73.1, 1-73.2, 1-73.3, statute; 1-73.4, 1-73.5, 1-73.6, 1-73.7, 1-74, 1-75, 1-76, 1-77, 1-78, 1-79, 1-81, 1-82, 1-83, 1-84, 1-85, 1-87, 1-88, 1-89, 1-90, 1-91, 1-92, 1-93, 1-94. | Provides for municipal overseers of the poor. | Relates to office abolished by <u>C.</u> 44:1-73.1 <u>et seq.</u> |
| <u>R.S.</u> 44:1-134, 1-135, 1-136, 1-137, 1-138. | Requires the Overseer of the Poor to inform the State Board of Child Guardians of children who are committed to almshouses. | Anachronistic. |
| <u>R.S.</u> 44:1-155, 1-156, <u>R.S.</u> 44:4-116, 4-117. | Makes the master of a vessel liable if the master lands poor people in the State of New Jersey. | Anachronistic. |
| <u>R.S.</u> 45:20-1, 20-2, 20-3. | Limits fee charged by millers. | Unnecessary regulation. |
| <u>R.S.</u> 46:27-1, 27-2. | Provides for the public office of Surveyor General of the Eastern and Western Divisions of the Province of New Jersey. | Anachronistic. |
| <u>R.S.</u> 48:8-1, 8-2, 8-3, 8-4, 8-5 8-6, 8-7, 8-8, 8-9, 8-10, 8-11 8-12, 8-13, 8-14, 8-15, 8-16, 8-17. | Regulates ferries and steamboats. | Unnecessary regulation. |
| <u>R.S.</u> 48:18-1, 18-2, 18-3, 18-4, 18-5, 18-6, 18-7, 18-8, 18-9, 18-10, 18-11, 18-12, 18-13, 18-14, 18-15, 18-16, 18-17. | Provides for the establishment of companies to build tunnels under the Delaware River. | Anachronistic. |
| <u>R.S.</u> 48:18A-1, 18A-2, 18A-3, 18A-4. | Termination of private turnpikes and plank roads. | Anachronistic. |
| <u>R.S.</u> 51:1-30, 51:1-31, 1-31.1, 1-31.2, superseded, 1-31.3, 1-31.4, 1-31.5, 1-31.6, 1-31.7, 1-31.8, 1-31.9, 1-31.10, 1-32, 1-36, 1-37, 1-37.1, 1-38, 1-39. | Regulates quantity, marking and package sizes for milk bottles, ice cream, thread, solid fuels and charcoal. | Unnecessary regulation; <u>see R.S.</u> 51:1-29, 1-61, and 1-97. |
| <u>R.S.</u> 51:7-1, 7-2, 7-3, 7-4, 7-5, <u>N.J.</u> 7-6, 7-7, 7-8, 7-9 656. | Regulates interstate shipment of anthracite. | Unconstitutional; <u>see Dickerson v. Dept. of Weights and Measures</u> , 33 F.Supp. 431 (D.C.N.J. 1940) rev'd on other grounds 312 U.S. |
| <u>C.</u> 56:7-1, 7-2, 7-3, 7-4, 7-5, 7-6, <u>Distributors v. Tilton</u> , 7 N.J. 349 (1951). 7-7, 7-8, 7-9, 7-10, 7-11, 7-12, 7-13, 7-14, 7-15, 7-16, 7-17. | Unfair Cigarette Sales Act of 1948. | Unconstitutional; <u>see Lane</u> |