

**ANNUAL REPORT OF THE
NEW JERSEY LAW REVISION COMMISSION
1993**

Report to the Legislature of the State of New
Jersey as provided by C. 1:12A-9.

February 1, 1994

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I. COMPOSITION OF THE COMMISSION

The composition of the Commission in 1993 was:

Albert Burstein, Chairman, Attorney-at-Law

Roger I. Abrams, Dean, Rutgers Law School - Newark, Ex officio,
Represented by **Robert Carter**, Professor of Law (from 6/93)

Bernard Chazen, Attorney-at-Law

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

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

Thomas N. Lyons, Attorney-at-Law

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

Ronald J. Riccio, Dean, Seton Hall Law School Ex officio,
Represented by **Ahmed Bulbulia**, Professor of Law

Peter Simmons, Dean, Rutgers Law School - Newark, Ex officio (until 6/93)

Gary W. Stuhltrager, Chairman, Assembly Judiciary, Law and Public Safety
Committee Ex officio

John M. Cannel, Executive Director
Maureen E. Garde, Counsel
John J. Burke, Staff Attorney
Judith Ungar, Staff Attorney

II. HISTORY AND WORK OF THE COMMISSION

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.

The Commission began operation in 1986; however, the concept of permanent, institutionalized statutory revision and codification is not new in New Jersey. The first Law Revision Commission was established in 1925. That commission produced the Revised Statutes of 1937. The intent of the Legislature was that the work of revision and codification continue after the Revised Statutes, so the Law Revision Commission continued in operation. After 1939, its functions passed to a number of successor agencies. Most recently, statutory revision and codification were among the duties of Legislative Counsel (N.J.S. 52:11-61). By L.1985, c.498, the Legislature transferred the

functions of statutory revision and codification to the New Jersey Law Revision Commission.

III. PROJECTS AND RECOMMENDATIONS

In 1993, the New Jersey Law Revision Commission filed two final reports on the subjects of the regulation of Professions and Occupations and Article 9 of the Uniform Commercial Code.

A. Professions and Occupations

The Commission filed a Final Report and Recommendations Relating to the regulation of Professions and Occupations (see Appendix A).

Title 45 of the Revised Statutes contains provisions regulating the practice of certain professions and occupations. These provisions have accreted over the years beginning in the nineteenth century. Chapter 1 of the title contains general provisions; each of the other chapters is devoted to the regulation of a particular profession or occupation.

In 1978, the Legislature enacted the Uniform Enforcement Act, C. 45:1-14 to -26, to make uniform the enforcement provisions in Title 45. The purpose of the Act was to establish consistent standards for licensee conduct. One provision of the Act (45:1-26) declared that all inconsistent acts were superseded and repealed.

A year later, the Legislature enacted L.1979 c.432, which specifically repealed most of the sections of Title 45 that had been generally repealed by the Uniform Enforcement Act. However, a few sections which seem to have been affected by the general repealer were nevertheless left in place. Each of these sections establishes grounds for revocation of the license to practice a particular health care profession.

The continuation of certain license revocation provisions creates uncertainty in the law on this subject. Conflicting arguments can be made that the grounds for the

revocation of a professional license are those in the provision of the Uniform Enforcement Act, 45:1-21, in the applicable unrepealed section, or in both.

It is the goal of this report to recommend statutory amendments to make the Uniform Enforcement Act provisions apply comprehensively to all professional boards within the Division of Consumer Affairs.

B. Uniform Commercial Code Article 9 - Secured Transactions

In 1993, the Commission filed a Find Report and Recommendations Relating to Article 9 of the Uniform Commercial Code (see Appendix B), recommending the adoption of a central filing system for financing statements.

At present, New Jersey provides for a system of local level and state level filing depending on the classification of collateral. Because some collateral is difficult to classify, the present filing system results in duplicate filing and multiple jurisdiction searches. Duplicate filing imposes additional costs on debtors for filing and search costs passed onto them. The Commission's recommendation designates the Secretary of State's Office as the proper place for filing all financing statements and thus simplifies and reduces the cost of the filing process.

IV. PROJECTS AWAITING FINAL RECOMMENDATION

A. Transportation

1. Public Transportation

In 1993, the Commission completed a Tentative Report Relating to Public Transportation and distributed it for public comment (see Appendix C).

This report, a part of the project to revise the laws relating to transportation, concerns the authority to regulate public transportation companies. That authority is now given to the department by a 1978 executive reorganization plan which transferred the authority from the Public Utility Commission. The statutes on public transportation are now found in Title 48 Public Utilities, and concern autobusses, ferries and steamboats, railroads, street railways, taxicabs, autocabs and jitneys, and horsedrawn vehicles operated for hire. These chapters are intermixed with others on kinds of public utility unrelated to transportation. The report proposes a subtitle composed of chapters 31 through 34 of the new title 27A to deal with these subjects.

The first chapter contains a few provisions that apply to all kinds of regulated public transportation. The second chapter concerns public highway transportation. The third chapter provides for regulation of railroads, and the last chapter allows the Department of Transportation to regulate waterborne transportation. At present, the only regulation of this transportation is the few, anachronistic, provisions on ferries and steamboats.

2. Highways

The Commission completed a Tentative Report and Recommendations Relating to Highways and distributed it for public comment (see Appendix D).

This report is the largest part of the project to revise the laws relating to transportation. It includes all of subject matter now covered by Title 27 Highways. The nature of the revision by the Commission varies with the nature of the material revised.

In some cases, entirely new statutes have been written. Where the source material is relatively new, it has been merely edited to make it consistent in form with the other parts of the proposed new Title 27A Transportation.

3. Traffic Control Devices

In 1992, the Commission completed a Tentative Report and Recommendations Relating to Traffic Control Devices and distributed it for public comment. As of the close of the year, the Commission was awaiting response to the draft from the Department of Transportation. A copy of the Tentative Report was appended to last year's Annual Report.

B. Contempt

In 1993, the Commission completed a Second Tentative Report and Recommendations Relating to Contempt (see Appendix E).

The contempt project entails the revision of chapter 10 of Title 2A. This chapter pre-dates the 1947 Constitution, and includes a mixture of procedural and substantive elements that have not been reexamined in light of subsequent developments in the law of contempt.

The entire law governing contempts of court is a mixture of statutory law, judicial decisions and court rules. As is the case with many of the chapters in Title 2A, the overlap between statutes and court rules, and the necessity of consulting judicial opinions, makes this a confusing area of the law. In this project the Commission is attempting to simplify the statutory law governing criminal contempts which are not dealt with as indictable offenses under Title 2C. The subject of civil contempts, i.e., relief in aid of litigants' rights, has been left to court rule.

The New Jersey Supreme Court decision in In Re Daniels, 118 N.J. 51, 60 (1990), addressed many of the outstanding issues in the law of non-indictable, criminal contempt. The Commission used that opinion as a guide in fashioning a proposed statute

which balances the need of the courts to control the conduct of those who appear before it, with the constitutional principles of due process and the right to counsel and trial by jury. The Commission has taken the view that the criminal contempt power should be used only sparingly, in cases in which other remedies, such as imposition of sanctions pursuant to court rules or invocation of the attorney disciplinary process, are inadequate.

In the process of revision the First Tentative Report, Commission staff met with the Supreme Court Civil Practice Committee to consider that group's responses to the Commission's report. In June, subsequent to these meetings, the New Jersey Supreme Court requested additional time to respond to the Commission's recommendations. As of the close of the year, the Commission was awaiting the Court's response.

C. Distraint/Artisan's Liens

The Commission completed a Tentative Report Relating to Distraint/Artisan's Liens and distributed it for public comment (see Appendix F).

This report continues the Commission's project to revise Title 2A of the New Jersey Statutes. It deals with the general areas of a creditor's right to distress, the right to hold a tenant's goods to satisfy a claim for rent, and artisan's liens, the right of a person who works on goods of another to a lien on those goods for the work performed. The current statutes include a general distress statute and several particular statutes dealing with kinds of distress or artisan's liens. New Jersey distress and lien statutes are problematical: several have been held unconstitutional; they treat common situations inconsistently; their exact scope of coverage is difficult to ascertain from the statutory language.

The proposed revisions are intended to replace both the general distress statute as well as two additional statutes that allow owners of hotels and lofts to distraint property of tenants.

The six New Jersey artisan's lien statutes pertain to a variety of goods and provide disparate procedures for dealing with common issues. This proposed statute replaces all but one of these statutes and provides a uniform method for dealing with all similar situations which may arise in the future. In allowing rather than requiring, sale of marketable goods, the proposed statute avoids state action which could trigger Fourteenth Amendment concerns, and permits either party in dispute to bring an action involving notice and an opportunity to be heard judicially prior to divestment.

D. Lost or Abandoned Property

The Commission completed a Tentative Report Relating to Lost or Abandoned Property and distributed it for public comment (see Appendix G).

As part of its projects dealing with distress and artisan's liens, questions arose about the law of abandoned property. Research revealed that there was no statute and little case law establishing rights and obligations in regard to lost or abandoned chattels. As a result, the Commission decided to draft a new statute on the subject.

The primary purpose of this new statute is to establish procedures for dealing with lost or abandoned property which promote return of lost property to the owner and which protect the expectations of the finder. The statute defines lost property and abandoned property, and provides procedures and remedies which prescribe the powers and duties of finders and owners of the property, and of relevant government employees. It provides for the disposition of lost property that remains unclaimed by the owner and by the finder. The statute exempts from its application limited types of property.

E. Codification of Criminal Law

The Commission completed three Tentative Reports Relating to Criminal Law and distributed them for public comment (see Appendix H, I and J).

The purpose of these reports is to complete the task begun in 1978 with the enactment of the Code of Criminal Justice. The Code was intended by its drafters, the Criminal Law Revision Commission, to recodify all of the substantive criminal law in Title 2A. Unfortunately this codification has not yet been achieved.

First, for a variety of reasons, a few sections were left when most of the offenses in Title 2A were specifically repealed. Similarly, when the Comprehensive Drug Reform Act compiled drug offenses into the Criminal Code, a few crimes were left in Title 24. In its report on Compilation of Criminal Law into the Criminal Code, Title 2A Criminal Statutes and Title 24 Controlled Dangerous Substance Law (see Appendix H), the Commission recommends that the Legislature incorporate into the Criminal Code those Title 2A and Title 24 provisions with continuing validity. Provisions that are obsolete or superseded by other law are recommended for repeal. Provisions that are regulatory in nature are recommended for compilation in other titles of the statutes.

Second, while most of the criminal law is compiled in Title 2C, the Code of Criminal Justice, statutes defining various offenses remain scattered throughout other titles. In the majority of cases, these statutes are properly compiled. Offenses closely related to regulatory systems may be appropriately placed with other statutes on the same subject. However, the majority of these statutes were enacted before the Criminal Code. As a result, some have become unnecessary because of the more general provisions of the Code. In addition, many are phrased in pre-Code language and define "misdemeanors" rather than crimes graded by degree. In the Tentative Report on the Compilation of Criminal Law into the Criminal Code, Correction of Statutes Defining Misdemeanors (Appendix I), the Commission examines most of the penal provisions that are outside Titles 2A, 2C and 24 to determine whether they should be repealed as superseded by the Criminal Code, should be incorporated into the Criminal Code, or should be amended to be made consistent with the Criminal Code.

The Commission filed a separate report, Tentative Report and Recommendations on the Compilation of Voting Offenses into the Criminal Law (Appendix J), Those offenses are now scattered throughout Titles 18A, 19, and 40 of the statutes. As a result, the report recommends the replacement of most of the current voting offenses with a new chapter of the Criminal Code. The chapter is designed to be a clear, coherent statement of the voting offenses that are applicable to the general public. The offenses are stated in general terms so that they reach any kind of conduct that involves the evil sought to be prevented.

F. Fencing

The Commission completed a Tentative Report Relating to Fencing, N.J.S. 2C:20-7.1 and distributed it for public comment (see Appendix K).

The current New Jersey statute on fencing, or trafficking in stolen property is N.J.S. 2C:20-7.1. That statute is poorly drafted. Its most serious problem is that it does not specify a penalty for violation and as a result is not enforceable.

The Commission report recommends amendments to harmonize the statute with the rest of the Criminal Code chapters on theft. These amendments provide penalties and a consistent approach to elements of the offense and defenses to it.

V. PROJECTS UNDER CONSIDERATION

A. Environmental Protection Statutes

In 1993, the Commission entered into a working agreement with the Department of Environmental Protection and Energy to revise the state's extensive environmental statutes. The project was suggested by Senator Robert E. Littell. Thus far, Commission staff has identified the numerous statutes which will be included in the project, which are currently scattered throughout 13 existing titles of the New Jersey Statutes. These statutes have been reorganized into a proposed new title to be called "Environmental Protection and Energy."

The Commission's working plan involves reorganizing the environmental statutes into eight new subtitles. (A copy of the outline of the proposed new title is included in this Report as Appendix L.) A working draft of one of the subtitles is virtually complete, and research and drafting work is in progress on four other subtitles. It is expected that it will take two years to complete the entire project.

B. Lis Pendens

The Commission completed a draft of the Lis Pendens statutes in Title 2A, chapter 15 (see Appendix M). The project is part of the Commission's continuing project to revise the statutes in Title 2A concerning the administration of civil justice. The lis pendens procedure permits a party who institutes an action seeking to affect title to real property to provide constructive notice to potential purchasers of the pendency of the action, thus preserving the subject matter of the action until final judgment.

The Commission's proposed revision retains the substance of the existing statute, but greatly simplifies its provisions and addresses the constitutional questions raised in judicial decision.

The draft appended to this Report was approved by the Commission but held pending the completion of related Commission projects concerning judgments.

C. Judgments

The Commission began a project to revise the law regarding judgments and executions. This project is a continuation of the effort to revise the statutes in Title 2A concerning the administration of civil justice.

Much of the law on judgments and executions is archaic. It is the purpose of the project to simplify the law and to bring it to conformity with current practice. The project will probably be completed in 1994.

D. Statute of Limitations

The expiration and tolling of statutory periods of limitation has always been a source of confusion, resulting in litigation. New Jersey's general statutory periods of limitation are contained in chapter 14 of Title 2A, but many more periods of limitation are scattered throughout the statutes. Late in 1992, the Commission staff embarked upon a project to revise the law concerning statutes of limitation and, perhaps, to codify as many as possible in a single chapter. The staff has begun to identify as many statutory periods of limitation as possible, as a means of determining the feasibility of a project to simplify and generalize the many different provisions. Thus far, the project has resulted in the identification of hundreds of statutes.

In addition, staff has begun to determine the historical basis for the different periods of limitation imposed in the current statutes. Research on that subject has thus far concentrated on the general statutes of limitation in chapter 14 of Title 2A.

E. Uniform Partnership Act

In 1993, the National Conference of Commissioners on Uniform State Laws approved and recommended for enactment in all the states the revised Uniform Partnership Act (UPA). The revised UPA governs the partnership form of business organization and replaces the original Uniform Partnership Act enacted in 49 states, including New Jersey, and the District of Columbia. Staff has reviewed the revised UPA and has determined that it improves the original statute by providing a modern statement of partnership law. Staff proposes that the Commission recommend that the Legislature adopt the revised UPA and repeal the original act.

VI. COMMISSION RECOMMENDATIONS ENACTED INTO LAW

In 1993, three Law Revision proposals became law: L.1993, c.74 enacted the Commission's recommendation regarding the Tax Court; L.1993, c.293 enacted the Commission's proposal regarding the Municipal Courts; and L.1993, c.317 enacted the Commission's proposal recommending the enactment of the Uniform Foreign Money Claims Act.