

ANNUAL REPORT OF THE
NEW JERSEY LAW REVISION COMMISSION
1995

Report to the Legislature of the State
of New Jersey as provided by C.
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11. HISTORY AND PURPOSE OF THE COMMISSION

In 1985, the Legislature enacted a statute creating the Law Revision Commission.' 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 32 reports with the Legislature of which 16 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 will begin to publish its reports on the internet. In this way, the Commission intends to field more comments on tentative reports and to 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 Law Revision Commission was created by L.1985, c498, 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 an 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 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 agencies, most recently the Legislative Counsel.² In 1985, the Legislature then transferred the functions of statutory revision and codification to the New Jersey Law Revision Commission.³

III. LEGISLATIVE ACTION

In 1995, the Legislature enacted into law four of the Commission's recommendations contained in its Final Reports. They are: Uniform Commercial Code Article 3 - Negotiable Instruments and Article 4 - Bank Deposits - Collections (L.1995, c.28); Juries (L.1995, c.44); Replevin (L.1995, c.263); and Statute of Frauds (L.1995, c.360).

In addition, the Legislature considered four of the Commission's recommendations introduced in bill form. They were: Administrative Procedure; Fee Discrepancies; Uniform Commercial Code Article 9 - Filing System Amendment; and Voting Offenses. It is expected that these Commission recommendations will be reintroduced in the 1996 Legislative Session.

IV. FINAL REPORTS

In 1995, the New Jersey Law Revision Commission published four final reports. A final report contains the decision of the Commission on a subject of law. 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. Natural and Historic Resources

In 1995, the Commission completed the Report and Recommendations Relating to Natural and Historic Resources (attached to the Commission's 1994 Annual Report). This is the first part of a project begun in 1993 when the Commission entered into a working agreement with the Department of Environmental Protection and Energy to revise the State's extensive environmental statutes. The Report recompiles and rationalizes the law

N.J.S.52. 11-61) L. 1985, c.498.

governing state parks and forests, state monuments and historic sites and the preservation of open spaces. Other reports in the area of environmental protection will be filed in 1996.

B. Judgments

In 1995, the Commission completed the Report and Recommendations Relating to Judgments (see Appendix A). This proposal continues the effort begun in 1989 to revise Title 2A provisions concerning the courts and the administration of civil justice. The current 32 sections include many which are outdated, unclear and superseded in practice by newer, more detailed rules. Even taken together, the statutes and rules do not reflect the totality of current practice.

The Report states the processes by which a judgment or order is recorded and the process by which information concerning subsequent events that affect the judgment are added to the record. A copy of the whole text of the judgment or order is kept by the court. That assures that the detail of a judgment or order will always be available. Entry is made in the Case Docket each time a judgment or order is entered. The docket entry serves as notice to all parties of the existence of the judgment or order and makes the decree effective against them. A judgment or order that is for a sum of money or that affects title to real estate is recorded on the Judgment Docket That docket provides notice to all persons and makes a judgment a lien against real property. Documents constituting the subsequent history of a judgment such as executions or assignments, also are indicated on the docket with the judgment

C. Compilation of Criminal Law

In 1995, the Commission completed the Report and Recommendations Relating to Compilation of Criminal Law (see Appendix B). Title 2C of the Code of Criminal justice (hereafter the Criminal Code) codified criminal law and established a statutory framework to regulate crimes. However, the Legislature did not incorporate all penal provisions found in New Jersey Law when it enacted the Criminal Code. Some criminal law remains in Title 2A. Similarly, when the Comprehensive Drug Reform Act compiled drug offenses in the Criminal Code, a few crimes were left in Title 24. Although the Legislature had intended to move these non-Code criminal provisions into Title 2C, it never completed this codification.

The New Jersey Law Revision Commission examined the criminal provisions within Titles 2A and 24 with a view toward completing the task of codifying New Jersey criminal law. The Report 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. The Commission revised the language for some provisions but mainly followed the substantive meaning of the existing statutes. The recommendations contained in this report, if adopted, would help to complete the codification of New Jersey criminal law.

D. Uniform Commercial Code Revised Article 8 - Investment Securities

In 1994, the National Conference of Commissioners on Uniform State Laws and the American Law Institute -the sponsors of the Uniform Commercial Code - approved a revision of Article 8 - Investment Securities, along with related amendments to Article 9 and conforming amendments to other articles. Revised Article 8 has been enacted in 13 states. In 1995, the Commission filed a Report and Recommendations on Article 8 - Investment Securities (see Appendix C).

Revised Article 8 deals with arcane subjects related to the securities holding and transfer system. Existing Article 8, adopted in New Jersey in 1961, is based on a holding and transfer system which assumes that securities are transferred by the physical delivery of certificates. The set of rules contained in existing Article 8 are premised on this practice. Because the majority of securities owners no longer hold physical certificates, existing law does not address the legal consequences of the acquisition, transfer and settlement of securities. In most cases, securities are held and transferred through an "indirect holding" system, that is, the ownership of securities is represented by a book-entry in the records of a depository, clearing house or brokerage firm.'

Revised Article 8 delineates the ownership right a person acquires in a financial asset held in the indirect holding system. This ownership right called a "security entitlement," consists of a package of rights representing a pro-rata share in securities held by a financial institution for beneficial owners. Revised Article 8 provides legal rules for the acquisition and transfer of these investment securities. Therefore, the revision reflects the commercial practices of the marketplace.

' The 13 States are: Arizona, Arkansas, Idaho, Illinois, Indiana, Louisiana, Minnesota, Nebraska, Oklahoma, Oregon, Texas, Washington, and West Virginia.

' For example, a large proportion of publicly traded securities are held in the name of the Depository Trust Corporation (DTC). The clearing and settlement of trades with these securities is made through the National Securities Clearing Corporation. The DTC is the first tier shareholder of record for most IBM shares traded on the New York Stock Exchange. The members of the DTC are the second tier owners. These large banks and brokerage firms hold respective positions in IBM shares by notations on their DTC account records. Similarly, banks and brokerage firms that have accounts with DTC members comprise the third tier of this ownership system. The chain of ownership flows downward to the ultimate owner, for example, a consumer holding through a small brokerage firm.