



STATE OF NEW JERSEY

NEW JERSEY LAW REVISION COMMISSION

Final Report

Relating to

REPEAL OF ANACHRONISTIC AND INVALID STATUTES

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REPEAL OF ANACHRONISTIC AND INVALID STATUTES

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 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.

It has been more than 20 years since the Commission published a report identifying anachronistic or invalid statutes and recommending their repeal. The Legislature acted on that report in part, enacting four statutes of repeal. See L 1991 c. 59, 93, 121 and 148. This report continues to recommend repeal of those statutes which the Legislature did not act on and adds others identified by the Commission, the Office of Legislative Services or interested groups.

The reasons that particular statutes should be repealed vary, but fall into several categories. Some statutes are invalid because they have been found unconstitutional or have been superseded.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unconstitutional in Lane Distributors v. Tilton, 7 N.J. 349 (1951) and N.J.S. 2A:82-8, one of a number of statutes superseded by the New Jersey Evidence Rules as provided by N.J.S. 2A:84A-40 (Official footnote to Evid.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 46:27-1 and 46:27-2 relating to the Surveyors General. 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 they 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. The 2009 Commission Report on the Public Assistance Law recommends the repeal of many anachronistic sections in the context of a comprehensive revision of Title 44 of the Statutes. The recent Report on the Unconstitutional Flag Salute Statute recommends repeal of 18A:36-3. Those recommendations are not repeated in this report. There are also some statutes that have been held unconstitutional but proposal for their repeal engenders political controversy. See 9:17A-1.1 et seq. on Parental Notification for Abortion. This Report also does not discuss situations where only a part of a statutes is invalid.

It appears that perhaps as much as ten percent of the current statutory material is superseded, anachronistic or otherwise invalid. The Commission intends to continue this project and report periodically, identifying sections which should be repealed or amended.

I. ANACHRONISTIC STATUTES

4:5-11. Disposal of dead or slaughtered animals; disposal for food a misdemeanor

This section regulates the disposal of dead animals by the Department of Agriculture.

4:21-4. Right to drive animals over streets and highways

4:21-5. Fee for taking stray or trespassing animals to pound

4:21-6. Poundkeeper's fees

4:21-7. Sale of impounded animals and disposition of proceeds

These sections regulate stray horses, cattle, sheep and swine.

4:21-11. Permitting stallion to run at large; penalty

4:21-12. Permitting bull to run at large; penalty; damages

4:21-13. Rams trespassing or going at large during specified period; remedy

These statutes penalize allowing stallions, bulls or rams to run at large.

6:2-11. Acrobatic stunts; low flying over public gatherings prohibited; penalty

This statute forbids stunt aeronautics that endangers the public.

15:4-1. Pursuers may be appointed by private detective association; constabulary powers

This section allows the State Police to license private law enforcement for the detection, pursuit, apprehension, arrest or prosecution of thieves, tramps, marauders, or other depredators on persons or property, or the recovery of stolen goods.

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.

26:4-42. Occupations forbidden infected persons

26:4-43. Permit to remove from district

26:4-44. Information required for permit

26:4-45. Report of issuance of permit

These sections prevent persons infected with venereal diseases in an infectious stage from engaging in certain occupations or from moving from one district to another without a permit.

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 feeding a prisoner in county jail to \$.50 a day. Inflation has made this provision unenforceable.

2C:40-2. Refusing to yield a party line

This section provides a penalty for refusing to yield a telephone party line for someone who needs to make a telephone call in an emergency. Telephone party lines no longer exist.

26:4-90. Killing of unmuzzled dog running at large

26:4-91. Appointment of dog killer; restrictions on killing dogs

These sections allow the mayor of a city to issue a proclamation authorizing killing of an unmuzzled dog and appointing a dog killer to carry out the order.

30:8-5. Debtors separated from criminals

This section requires that persons imprisoned for debt be housed separately from criminals.

30:8-35. Workhouse master to keep prisoners at labor; punishment of prisoners for misconduct

This section requires all prisoners in a workhouse to work and allows the workhouse master to reduce the food of a prisoner who uses "indecent language or behavior or profane cursing or swearing, or is disobedient, stubborn, rude, refractory or abusive or is negligent or idle or does not perform his task properly."

40A:9-60. Finder's expenses

40A:9-61. Disposition of personal property found on shipwrecked bodies

40A:9-62. Medical examiner's records of shipwrecks

These sections regulate the disposition of bodies washed up on New Jersey shores as the result of shipwrecks.

48:8-14. Steamboats passing nearer than ten yards; penalty

This statute is limited to steamboats and requires them, when passing to stay at least 10 yards apart.

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.

II. 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.

48:12-158. Placing freight car in rear of passenger car; misdemeanor; exceptions where ordered by army or navy officers

This section limits the placement of freight cars in passenger trains.

51:1-30 to 31 - Milk bottles

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.

51:3-1. Pillars showing true meridian; verification of meridian line

51:3-3. Injuring pillars; misdemeanor

These sections require the maintenance of pillars on each courthouse lawn so that surveyors can orient their compasses on true north.

III. 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.

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 bodies 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 in 1708. The Title 46 provisions establish the Surveyors General of East Jersey and West Jersey as public officers. The Board of East Jersey Proprietors has ceased to exist. While the office of the West Jersey Surveyor General continues to exist, it is a private office now of the West Jersey Board of Proprietors, which functions as a private land company.

IV. 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.

30:8-36. Punishment for escape from workhouse

This section provides a penalty for escape from a county workhouse. It has been superseded by 2C:29-5 which makes escape a crime.

V. STATUTES HELD UNCONSTITUTIONAL

51:7-1 to 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.

56:7-1 to 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.