

SENATE, No. 2292

STATE OF NEW JERSEY

INTRODUCED JUNE 14, 1971

By Senators BEADLESTON and HAUSER

(Without Reference)

AN ACT to revise and correct certain statutes.

1 BE IT ENACTED by the Senate and General Assembly of the State
2 of New Jersey:

1 1. Section 1 of P. L. 1962, c. 152 (C. 33:1-12.31) is amended to
2 read as follows:

3 1. On and after the effective date of this act no person, as the
4 same is defined in R. S. 33:1-1, shall, except as hereinafter pro-
5 vided, acquire a beneficial interest in more than a total of two
6 alcoholic beverage retail licenses, but nothing herein shall require
7 any such person who has, on [the effective date of this act] August
8 3, 1962, such an interest in more than two such licenses to sur-
9 render, dispose of, or release his interest in any such license or
10 licenses.

1 2. Section 3 of P. L. 1952, c. 173 (C. 39:6-25) is amended to read
2 as follows:

3 3. (a) If 20 days after the receipt of a report of a motor vehicle
4 accident within this State which has resulted in bodily injury or
5 death, or damage to the property of any one person in excess of
6 \$200.00, the director does not have on file evidence satisfactory
7 to him that the person who would otherwise be required to file
8 security under subsection (b) of this section has been released from
9 liability, or has been finally adjudicated not to be liable, or has
10 executed a duly acknowledged written agreement providing for the
11 payment of an agreed amount in installment with respect to all
12 claims for injuries or damages resulting from the accident, the
13 director shall determine the amount of security which shall be
14 sufficient in his judgment to satisfy any judgment or judgments for
15 damages resulting from such accident as may be recovered against
16 each operator or owner.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.

17 (b) The director shall, within 90 days after the receipt of such
18 report of a motor vehicle accident, suspend the license of each
19 operator and all registrations of each owner of a motor vehicle in
20 any manner involved in such accident, and if such operator is a
21 nonresident the privilege of operating a motor vehicle within this
22 State, and if such owner is a nonresident the privilege of the use
23 within this State of any motor vehicle owned by him, unless such
24 operator or owner or both shall deposit security in the sum so
25 determined by the director; provided, notice of such suspension
26 shall be sent by the director to such operator and owner not less
27 than 10 days prior to the effective date of such suspension and shall
28 state the amount required as security. Where erroneous informa-
29 tion is given the director with respect to the matters set forth in
30 subdivisions 1, 2 or 3 of subsection (c) of this section, he shall take
31 appropriate action as hereinbefore provided, within 90 days after
32 receipt by him of correct information with respect to said matters.

33 (c) This section shall not apply under the conditions stated in
34 section 4 of this act nor:

35 (1) to such operator or owner, if such owner had in effect, at
36 the time of such accident, an automobile liability policy with
37 respect to the motor vehicle involved in such accident;

38 (2) to such operator, if *not* the owner of such motor vehicle,
39 if there was in effect at the time of such accident an automobile
40 liability policy or bond with respect to his operation of motor
41 vehicles not owned by him;

42 (3) to such operator or owner if the liability of such operator
43 or owner for damages resulting from such accident is, in the
44 judgment of the director, covered by any other form of liability
45 insurance policy or bond; nor

46 (4) to any person qualifying as a self-insurer under section
47 30 of this act, or to any person operating a motor vehicle for
48 such self-insurer.

49 No such policy or bond shall be effective under this section unless
50 issued by an insurance company or surety company authorized to
51 do business in this State, except that if such motor vehicle was
52 not registered in this State, or was a motor vehicle which was
53 registered elsewhere than in this State at the effective date of the
54 policy or bond, or the most recent renewal thereof, such policy or
55 bond shall not be effective under this section unless the insurance
56 company or surety company if not authorized to do business in
57 this State shall execute a power of attorney authorizing the direc-
58 tor to accept service on its behalf of notice or process in any action
59 upon such policy or bond arising out of such accident; provided,

60 however, every such policy or bond is subject, if the accident has
61 resulted in bodily injury or death, to a limit, exclusive of interest
62 and costs, of not less than \$10,000.00 because of bodily injury to
63 or death of one person in any one accident and, subject to said limit
64 for one person, to a limit of not less than \$20,000.00 because of
65 bodily injury to or death of two or more persons in any one accident,
66 and, if the accident has resulted in injury to or destruction of
67 property, to a limit of not less than \$5,000.00 because of injury to
68 or destruction of property of others in any one accident.

1 3. R. S. 19:37-2 is amended to read as follows:

2 19:37-2. If a copy of the ordinance or resolution certified by the
3 clerk or secretary of the governing body of any such municipality
4 or county is delivered to the county clerk not less than [40] 60
5 days before any such general election, he shall cause it to be printed
6 on each sample ballot and official ballot to be printed for or used in
7 such municipality or county, as the case may be, at the next ensuing
8 general election.

1 4. Section 10 of P. L. 1968, c. 410 (C. 52:14B-10) is amended to
2 read as follows:

3 10. In contested cases:

4 (a) The parties shall not be bound by rules of evidence whether
5 statutory, common law, or adopted by the Rules of Court. All
6 relevant evidence is admissible, except as otherwise provided herein.
7 The presiding officer may in his discretion exclude any evidence
8 if he finds that its probative value is substantially outweighed by
9 the risk that its admission will either (i) necessitate undue con-
10 sumption of time or (ii) create substantial danger of undue preju-
11 dice or confusion. The presiding officer shall give effect to the rules
12 of privilege recognized by law. Every party shall have the right
13 to present his case or defense by oral and documentary evidence,
14 to submit rebuttal evidence and to conduct such cross-examination
15 as may be required for a full and true disclosure of the facts.

16 (b) Notice may be taken of judicially noticeable facts. In addi-
17 tion, notice may be taken of generally recognized technical or
18 scientific facts within the agency's specialized knowledge. Parties
19 shall be notified either before or during the hearing, or by reference
20 in preliminary reports or otherwise, of the material [notice]
21 noticed, including any staff memoranda or data, and they shall be
22 afforded an opportunity to contest the material so noticed. The
23 agency's experience, technical competence, and specialized knowl-
24 edge may be utilized in the evaluation of the evidence.

25 (c) When a person not empowered to render an administrative
26 adjudication is designated by the head of the agency as the pre-

27 siding officer, his recommended report and decision containing
 28 recommended findings of fact and conclusions of law shall be filed
 29 with the agency and delivered or mailed to the parties of record;
 30 and an opportunity shall be afforded each party of record to file
 31 exceptions, objections and replies thereto, and to present argument
 32 to the head of the agency or a majority thereof, either orally or
 33 in writing, as the agency may order. The head of the agency shall
 34 adopt, reject or modify the recommended report and decision. The
 35 recommended report and decision shall be a part of the record in
 36 the case.

37 (d) A final decision or order adverse to a party in a con-
 38 tested case shall be in writing or stated in the record. A final
 39 decision shall include findings of fact and conclusions of law, sep-
 40 arately stated. Findings of fact, if set forth in statutory language,
 41 shall be accompanied by a concise and explicit statement of the
 42 underlying facts supporting the findings. If, in accordance with
 43 agency rules, a party submitted proposed findings of fact, the deci-
 44 sion shall include a ruling upon each proposed finding. Parties
 45 shall be notified either personally or by mail of any decision or
 46 order. Upon request a copy of the decision or order shall be deliv-
 47 ered or mailed forthwith by registered or certified mail to each
 48 party and to his attorney of record.

49 (e) Except where otherwise provided by law, the administrative
 50 adjudication of the agency shall be effective on the date of delivery
 51 or on the date of mailing, of the final decision to the parties of
 52 record, whichever shall occur first, or shall be effective on any date
 53 after the date of delivery or mailing, as the agency may provide
 54 by general rule or by order in the case. The date of delivery or
 55 mailing shall be stamped on the face of the decision.

1 5. The title of P. L. 1968, c. 323 is amended to read as follows:

2 AN ACT to amend the "Unsatisfied Claim and Judgment Fund
 3 Law," approved May 10, 1952 (P. L. 1952 c. 174), and amending
 4 sections [39:3-4,] 39:3-37 and 39:3-40, and supplementing Title
 5 39, of the Revised Statutes.

1 6. R. S. 41:1-1 is amended to read as follows:

2 41:1-1. Every person who is or shall be required by law to give
 3 assurance of fidelity and attachment to the Government of this
 4 State shall take the following oath of allegiance:

5 "I,, do solemnly
 6 swear (or affirm) that I will support the Constitution of the United
 7 States and the Constitution of the State of New Jersey, and that
 8 I will bear true faith and allegiance to the same and to the Govern-
 9 ments established in the United States and in this State, under the

10 authority of the people; and will defend them against all enemies,
 11 foreign and domestic; that I do not believe in, advocate or advise
 12 the use of force, or violence, or other unlawful or unconstitutional
 13 means, to overthrow or make any change in the Government estab-
 14 lished in the United States or in this State; and that I am not a
 15 member of or affiliated with any organization, association, party,
 16 group or combination of persons, which approves, advocates,
 17 advises or practices the use of force, or violence, or other unlawful
 18 or unconstitutional means, to overthrow or make any change in
 19 either of the Governments so established; and that I am not bound
 20 by any allegiance to any foreign prince, potentate, state or
 21 sovereignty whatever]. So help me God.”

1 7. R. S. 41:1-3 is amended to read as follows:

2 41:1-3. [In addition to any official oath that may be specially
 3 prescribed, every] *Every* person who shall be elected[,] or ap-
 4 pointed [or employed] to[, or in,] any public office[, position or
 5 employment, legislative, executive or judicial, of,] *in this State*
 6 or in[,] any county, municipality or special district other than a
 7 municipality therein, [or of,] or in[,] any department, board,
 8 commission, agency or instrumentality of any thereof, and is re-
 9 quired to take and subscribe an oath of office shall, before he enters
 10 upon the execution of his said office[, position, employment or
 11 duty] take and subscribe the oath of allegiance [and office as
 12 follows] set forth in R. S. 41:1-1 and, in addition, (a) any specially
 13 prescribe official oath, or (b) if no text is specially prescribed for
 13A such oath of office, the following official oath of office:

14 “I, do solemnly swear (or affirm) that I
 15 will [support the Constitution of the United States and the Con-
 16 stitution of the State of New Jersey, and that I will] faithfully
 17 [discharge], *impartially and justly perform all the duties of the*
 18 *office of* according to best of my ability.

19 [I do further solemnly swear (or affirm) that I do not believe in,
 20 advocate or advise the use of force, or violence, or other unlawful
 21 or unconstitutional means, to overthrow or make any change in the
 22 government established in the United States or in this State; and
 23 that I am not a member of or affiliated with any organization, asso-
 24 ciation, party, group or combination of persons, which so approves,
 25 advocates or advises the use of such means.] So help me God.”

1 8. Section 1 of P. L. 1948, c. 335 (C. 41:2A-1) is amended to read
 2 as follows:

3 1. The Chief Justice and each Associate Justice of the new
 4 Supreme Court and each judge of the superior court and of the
 5 county courts, before entering upon the duties of his office, shall

6 take and subscribe the oath of allegiance prescribed by R. S. 41:1-1,
7 [the oath to support the Constitution of this State and of the United
8 States prescribed by R.S. 41:1-3] and the oath of office required
9 to be taken by judicial officers.

1 9. Section 8 of P. L. 1944, c. 255 (C. 43:16A-8) is amended to read
2 as follows:

3 8. (1) Upon the receipt by the retirement system of a written
4 application for a disability retirement allowance, the system shall
5 refer the application to the medical board, which shall designate a
6 physician or physicians to examine the applicant and the report
7 of the medical board shall be considered by the board of trustees
8 in acting upon such application.

9 (2) Any beneficiary under the age of 55 years who has been re-
10 tired on a disability retirement allowance under this act, on his
11 request shall, or upon the request of the retirement system may,
12 be given a medical examination and he shall submit to any examina-
13 tion by a physician or physicians designated by the medical board
14 once a year for at least a period of 5 years following his retirement
15 in order to determine whether or not the disability which existed at
16 the time he was retired has vanished or has materially diminished.
17 If the report of the medical board shall show that such beneficiary
18 is able to perform either his former duty or any other available
19 duty in the department which his employer is willing to assign to
20 him, the beneficiary shall report for duty; such a beneficiary shall
21 not suffer any loss of benefits while he awaits his restoration to
22 active service. If the beneficiary fails to submit to any such medical
23 examination or fails to return to duty within 10 days after being
24 ordered so to do, or within such further time as may be allowed
25 by the board of trustees for valid reason, as the case may be, the
26-27 pension shall be discontinued during such default.

28 (3) [If such beneficiary is engaged in an occupation paying more
29 than the difference between (a) his retirement allowance and (b)
30 the salary now attributable to his former position in the police or
31 fire department plus 25% in excess of such salary, the amount of
32 his pension shall be reduced to an amount which, together with his
33 annuity and the amount of his earnings, shall equal the amount of
34 the salary now attributable to his former position in the police and
35 fire department plus 25% in excess of such salary. Should his
36 earnings be later changed, the amount of his pension shall be
37 further modified; provided, that the new pension shall not exceed
38 the amount of the pension originally granted.] (*Deleted by amend-*
39 *ment.*)

40 If a disability beneficiary is restored to active service, his retire-
 41 ment allowance and the right to any death benefit as a result of his
 42 former membership, shall be canceled until he again retires.

43 Such person shall be reenrolled in the retirement system and
 44 shall contribute thereto at a rate based on his age at the time of
 45 prior enrollment. Such person shall be treated as an active mem-
 46 ber for determining disability or death benefits while in service.

47 Upon subsequent retirement of such member, he shall receive a
 48 retirement allowance based on all his service as a member com-
 49 puted in accordance with applicable provisions of this act, but the
 50 total retirement allowance upon subsequent retirement shall not be
 51 a greater proportion of his average final compensation than the
 52 proportion to which he would have been entitled had he remained
 53 in service during the period of his prior retirement. Any death
 54 benefit to which such member shall be eligible shall be based on his
 55 latest retirement.

1 10. The title of P. L. 1971, c. . . . is amended to read as follows:

2 AN ACT concerning actions for divorce and nullity of marriage,
 3 alimony, maintenance and custody of children, and amending
 4 N. J. S. 2A :34-1 through 2A :34-3, 2A :34-7 and 2A :34-8, 2A :34-10,
 5 2A :34-20 and 2A :34-23 and repealing N. J. S. 2A :34-4, 2A :34-5[,
 6 2A :34-9, 2A :34-10] and 2A :34-22.

1 11. N. J. S. 2A :34-2 is amended to read as follows:

2 2A :34-2. Divorce from the bond of matrimony may be adjudged
 3 for the following causes heretofore or hereafter arising:

4 a. Adultery;

5 b. Willful and continued desertion for the term of 12 or more
 6 months, which may be established by satisfactory proof that the
 7 parties have ceased to cohabit as man and wife;

8 c. Extreme cruelty, which is defined as including any physical
 9 or mental cruelty which endangers the safety or health of the
 10 plaintiff or makes it improper or unreasonable to expect the
 11 plaintiff to continue to cohabit with the defendant; provided that
 12 no complaint for divorce shall be filed until after 3 months from
 13 the date of the last act of cruelty complained of in the complaint,
 14 but this provision shall not be held to apply to any counterclaim;

15 d. Separation, provided that the husband and wife have lived
 16 separate and apart in different habitations for a period of at least
 17 18 or more consecutive months[,] and there is no reasonable
 18 prospect of reconciliation; provided, further that after the 18-
 19 month period there shall be a presumption that there is no reason-
 20 able prospect of reconciliation;

21 e. Voluntarily induced addiction or habituation to any narcotic
 22 drug as defined in the New Jersey Controlled Dangerous Substances
 23 Act, P. L. 1970, c. 226 or habitual drunkenness for a period of 12
 24 or more consecutive months subsequent to marriage and next
 25 preceding the filing of the complaint;

26 f. Institutionalization for mental illness for a period of 24 or
 27 more consecutive months subsequent to marriage and next preced-
 28 ing the filing of the complaint;

29 g. Imprisonment of the defendant for 18 or more consecutive
 30 months after marriage, provided that where the action is not
 31 commenced until after the defendant's release, the parties have not
 32 resumed cohabitation following such imprisonment;

33 h. Deviant sexual conduct voluntarily performed by the de-
 34 fendant without the consent of the plaintiff.

1 12. Sections 1 through 9 shall take effect immediately; sections
 2 10 and 11 shall take effect September 13, 1971.

SPONSOR'S STATEMENT

Section 1. Corrects a printer's error in the omission of the word "an". See *In re Application of Fisher* 80 N. J. Super. 523, aff'd. 43 N. J. 368. The effective date of the act, P. L. 1962, c. 152, August 3, 1962, is inserted.

Section 2. Inserts the word "not" omitted from an amendment of the section by P. L. 1967, c. 188.

Section 3. Amends R. S. 19:37-2 to correspond with the amendment to R. S. 19:37-1 enacted by P. L. 1967, c. 101.

Section 4. Corrects a technical error in the Administrative Procedure Act.

Section 5. Corrects an error in the title of P. L. 1968, c. 323 to delete reference to an amendment of a section which was deleted from the body of the bill by amendment during its consideration.

Sections 6, 7 and 8. Amends provisions relating to official oaths of office to conform to 1967 Attorney General's Formal Opinion No. 3 which held portions of the oath prescribed by R. S. 41:1-3 to be unconstitutional.

Section 9. Clarifies intention to delete subparagraph (3) of P. L. 1944, c. 255 (C. 43:16A-8). P. L. 1971, c. 172 deleted the subparagraph; P. L. 1971, c. 175, both signed June 1, 1971, amended subparagraph (3).

Section 10. Corrects the title to P. L. 1971, c. . . . , to reflect changes made in the body of the bill by conditional veto amendments.

Section 11. Makes technical correction in the amendment enacted by P. L. 1971, c. . . . (A. 1100) which is scheduled to be approved to become effective September 13, 1971.

Enactment of this bill is recommended by the Law Revision and Legislative Services Commission.