June 11, 1971

LEGISLATIVE HISTORY OF N.J.S. 2A:48:1
(Mobs and riots - liability of - municipalities or county)

(1968 amendment)

For general background see:

974.90 N.J. Governor's Select Commission on
C5615 Civil Disorder.
1968 Report for Action. 1968.

L. 1968, Chapter 386 - S940
Introduced November 15 by Rinaldo (and others).
Not amended during passage.
Bill had statement (copy enclosed).
No hearings or reports located.

Similar bills 1965-1971 (All died in Committee)

1968 - A983 - Laskin
No statement.

1968 - S913 - Rinaldo (and 3 others).
Statement enclosed

1969 - S915 - Kay, Hiering.
No statement.

1969 - S432 - Kay, Hiering
No statement.

1970 - S349 - Kay, Hiering, Schoen
No statement.

1970 - S742 - Guarini
No statement.

1971 - S2081 - Guarini
No statement.

Searched New Jersey Municipalities for 1967, 1968 without success.

Governor's Council files for 1968 not yet released by Governor Cahill.

DD/rc

CHAPTER 386 LAWS OF N. J. 1969
APPROVED 1/2/69

SENATE, No. 940

STATE OF NEW JERSEY

INTRODUCED NOVEMBER 15, 1968

By Senators RINALDO, TANZMAN, CRABIEL, KAY and FORSYTHE

(Without Reference)

AN ACT limiting the liability of municipalities and counties for property loss from mob violence and riots and amending section 2A:48-1 of the New Jersey Statutes.

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

1. Section 2A:48-1 of the New Jersey Statutes is amended to read as follows:

2A:48-1. When, by reason of a mob or riot, any property, real or personal, is destroyed or injured, the municipality if it has a paid police force, in which the mob congregates or riot occurs, or, if not in such a municipality, the county in which such property is or was situate, shall be liable to the person whose property was so destroyed or injured for the damages sustained thereby, recoverable in an action by or in behalf of such person, *in an amount not to exceed $10,000.00 for the aggregate of damage done to all such property, both real and personal, at each separate location within a municipality, provided; however, that no person, and no subrogee of such person, having insurance coverage in whole or in part for the said destruction or injury, shall have a cause of action against such municipality or county at common law or pursuant to the provisions of this act. For the purpose of this section, insurance coverage means insurance obtained through any source whatsoever, including insurance purchased through any insurance pool, placement facility, plan of operation, or any other plan established pursuant to Federal or State law.*

2. This act shall take effect immediately.

STATEMENT

This amendment is not intended to indicate a legislative determination as to whether or not subrogation is presently permitted pursuant to N. J. S. 2A:48-1. Insurance companies writing property insurance coverage for damage due to mob or riot have recently been granted a 3½% surcharge for this coverage by the Department of Banking and Insurance. Moreover, since the enactment of Ch. 129, P. L. 1968, individuals will be able to obtain insurance coverage for properties in areas subject to mob or riot damage notwithstanding this environmental hazard. Coverage will be provided at manual or tariff rates so long as the property is otherwise insurable. The insurers writing such coverage are able to participate in a Federal reinsurance program and have, in addition, a state fund to "back-up" any catastrophic loss.

In light of the foregoing, it appears unfair to permit property owners of their insurers, as subrogees, to also have redress against the municipality for loss due to mobs or riots. Therefore, this amendment immunizes the municipality from suit by an insured or his subrogee at common law and also deprives such persons of any statutory cause of action that might have been available under the original statute. The $10,000 limitation seems appropriate under the circumstances and will serve to aid municipalities in obtaining insurance coverage for this statutory liability.

SENATE, No. 913

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 10, 1968

By Senators RINALDO, LACORTE, KAY and FORSYTHE

(Without Reference)

AN ACT limiting the liability of municipalities and counties for property loss from mob violence and riots and amending section 2A:48-1 of the New Jersey Statutes.

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

1. Section 2A:48-1 of the New Jersey Statutes is amended to read as follows:

2A:48-1. When, by reason of a mob or riot, any property, real or personal, is destroyed or injured, the municipality if it has a paid police force, in which the mob congregates or riot occurs, or, if not in such a municipality, the county in which such property is or was situate, shall be liable to the person whose property was so destroyed or injured for the damages sustained thereby, recoverable in an action by or in behalf of such person, *in an amount not to exceed $10,000.00 for the aggregate of damage done to all such property, both real and personal, at each separate location within a municipality, provided; however, that no person, and no subrogee of such person, having insurance coverage in whole or in part for the said destruction or injury, shall have a cause of action against such municipality or county pursuant to the provisions of this act. For the purpose of this section, insurance coverage means insurance obtained through any source whatsoever, including insurance purchased through any insurance pool, placement facility, plan of operation, or any other plan established pursuant to Federal or State law.*

2. This act shall take effect immediately.

STATEMENT

This amendment is not intended to indicate a legislative determination as to whether or not subrogation is presently permitted pursuant to N. J. S. 2A:48-1. Insurance companies writing property insurance coverage for damage due to mob or riot have recently been granted a 3½% surcharge for this coverage by the

Department of Banking and Insurance. Moreover, since the enactment of Chapter 129, P. L. 1968, individuals will be able to obtain insurance coverage for properties in areas subject to mob or riot damage notwithstanding this environmental hazard. Coverage will be provided at manual or tariff rates so long as the property is otherwise insurable. The insurers writing such coverage are able to participate in a Federal reinsurance program and have, in addition, a State fund to "back-up" any catastrophic loss.

In light of the foregoing, it appears unfair to permit property owners or their insurers, as subrogees, to also have redress against the municipality for loss due to mobs or riots. The $10,000.00 limitation seems appropriate under the circumstances and will serve to aid municipalities in obtaining insurance coverage for this statutory liability.

Repealer.

11. That all acts relative to the publication of the chancery and law reports and to the compensation and duties of the law and chancery reporters, and all other acts inconsistent with the provisions of this act, be and the same are hereby repealed.

An act relative to the law reports of New Jersey.

P. L. 1872, p. 70.

Approved April 4, 1872.

Treasurer to purchase copies of law reports that may be reprinted.

12. SEC. 1. That whenever any of the law reports of this state shall be reprinted, it shall be lawful for the state treasurer to purchase two hundred copies of such reports at the same price, and to be distributed in the same manner as the law and chancery reports are now purchased, paid for and distributed.

Proviso.

[*Proviso* repealed by act of March 27, 1874, (P. L. 1874, p. 134)].

Payment for such reports.

13. SEC. 2. That the state treasurer shall pay for such reports, on the delivery thereof, out of any moneys in the treasury of this state not otherwise appropriated, and that this act shall take effect immediately.

An act relative to the equity reports of New Jersey.

P. L. 1873, p. 11.

Approved January 29, 1873.

Treasurer to purchase copies of equity reports that may be reprinted.

14. SEC. 1. That whenever any of the equity reports of this state shall be reprinted, it shall be lawful for the state treasurer to purchase two hundred copies of such reports in the same form, at the same price, and to be distributed in the same manner as the law and equity reports are now purchased, paid for and distributed; *provided*, that such reports shall be published under the direction and supervision of such person as the chancellor may appoint.

Payment for such reports.

15. SEC. 2. That the state treasurer shall pay for such reports on the delivery thereof to him out of any moneys in the treasury of this state not otherwise appropriated, and that this act shall take effect immediately.

Riots.

R. S. 597.

An act to prevent routs, riots and tumultuous assemblies.

P. L. 1864, p. 237.

Revision—Approved March 27, 1874.

Proclamation to be made among rioters, commanding them to disperse.

R. S. 597, § 1.

1. That from and after the publication of this act, if any persons, to the number of twelve or more, being armed with clubs, guns, swords, or other weapons, or if any number of persons, consisting of thirty or more, shall be unlawfully, routously, riotously, or tumultuously assembled, any justice of the peace, sheriff, under-sheriff, or constable of the county, where such assembly shall be, shall, among the rioters, or as near to them as he can safely come, command silence, while proclamation is making, and shall openly and with a loud voice, make, or cause to be made, proclamation in these or the like words:

Form of proclamation.

State of New Jersey. By virtue of an act of this state, entitled "An act to prevent routs, riots and tumultuous assemblies," I am directed to charge and command all persons, being here assembled, immediately to disperse themselves and peaceably to depart to their habitations, or to their lawful business, upon the pains and penalties contained in the said act. God save the state.

Justices, etc., to make proclamation.

And all justices of the peace, sheriffs, under-sheriffs, and constables within the limits of their respective jurisdictions, are hereby authorized

empowered and required, on notice or knowledge of any such unlawful, routous, riotous, or tumultuous assembly, to resort to the place where such unlawful, routous, riotous, or tumultuous assembly shall be, and there to make, or cause to be made, proclamation in manner aforesaid.

Rioters to be apprehended. Ib. § 2.

2. If such persons, so unlawfully, routously, riotously, and tumultuously assembled as aforesaid, shall, after proclamation made, or attempted to be made, in manner aforesaid, continue together and not disperse themselves within one hour, then it shall and may be lawful to and for every justice of the peace, sheriff, under-sheriff, or constable of the county where such assembly shall be, and to and for such other person and persons, as shall be commanded to be assisting unto any such justice, sheriff, under-sheriff, or constable (who are hereby respectively authorized and empowered to command all the citizens of this state, to be assisting to them therein), to seize and apprehend, and they are hereby required to seize and apprehend such persons, so unlawfully, routously, riotously and tumultuously continuing together, after proclamation made, or attempted to be made, as aforesaid, and forthwith to carry the persons so apprehended, before one or more of the justices of the peace of the county, where such persons shall be so apprehended, in order to their being proceeded against, for such their offences, according to law; and if the persons so unlawfully, routously, riotously and tumultuously assembled, or any of them, shall happen to be killed, wounded or hurt, in the dispersing, seizing or apprehending, or endeavoring to disperse, seize or apprehend them, by reason of their resisting the persons so dispersing, seizing or apprehending, or endeavoring to disperse, seize or apprehend them, then every such justice of the peace, sheriff, under-sheriff, or constable, and all and singular person and persons, being aiding or assisting to them, or any of them, shall be held guiltless, and be absolutely indemnified and discharged.

Persons killing rioters held guiltless.

Opposing the making such proclamation, how punished. Ib. § 3.

3. If any person or persons do or shall, with force and arms, wilfully and knowingly, oppose, obstruct, or in any manner, wilfully and knowingly, let, hinder, or hurt any person or persons, that shall begin to proclaim, or go to proclaim, according to the proclamation hereby directed to be made, whereby such proclamation shall not be made, that then every such opposing, obstructing, letting, hindering, or hurting such person or persons, so beginning or going to make such proclamation as aforesaid, shall be adjudged a misdemeanor, and be punished by fine or imprisonment, or both, or by fine or imprisonment at hard labor, or both, the fine not to exceed one hundred dollars, nor the imprisonment, six months.

Punishment for unlawfully continuing together an hour after proclamation made. Ib. § 4.

4. All persons, who, for the space of one hour after proclamation made, or attempted to be made, as aforesaid, shall unlawfully, routously, riotously and tumultuously continue together to the number of twelve or more, if armed, or of thirty or more, if unarmed, as aforesaid; then such persons, so offending, shall be adjudged guilty of a misdemeanor, and on conviction, shall be punished by fine or imprisonment, or both, or by fine or imprisonment at hard labor, or both, the fine not to exceed one thousand dollars, nor the imprisonment three years.

Compensation for damage by riot, etc.

P. L. 1864, p. 237, § 1.

5. Whenever any buildings or other real or personal property shall be destroyed or injured, in consequence of any mob or riot, the city in which the same shall occur, or if not in a city, then the county in which such property was situated, shall be liable to an action, by or in behalf of the party whose property was thus destroyed or injured, for the damages sustained by reason thereof.

How collected. Ib. § 2.

6. Such action or actions may be brought and conducted in the same manner that other actions may be prosecuted by law, and the judgment may be reviewed in the manner now provided for in civil actions; and whenever any final judgment shall be recovered against any such city or county in any such action, such judgment shall be paid and collected as other judgments against such city or county.

When no recovery. Ib. § 3.

7. No person or corporation shall be entitled to recover in any such action if it shall appear upon the trial thereof that such destruction or injury of property was occasioned, or in any manner aided, sanctioned or permitted by the carelessness or negligence of such person or corporation; nor shall any person or corporation be entitled to recover any damages for any destruction or injury of property as aforesaid, unless such party

shall have used all reasonable diligence to prevent such damage, and shall have notified the mayor of such city, or the sheriff of such county, immediately after being apprised of any threat or attempt to destroy or injure his or their property by any mob or riot, of the facts brought to his knowledge; and upon the receipt of such notice it shall be the duty of such officer to take all legal means to protect the property attacked or threatened.

Duty of officer.

Actions against rioters also. Ib. § 4.

8. Nothing in this act shall be construed to prevent any person or corporation whose property has been injured or destroyed by any mob or riot from having or maintaining an action against each and every person engaged or in any manner participating in such riot or mob.

Limitation of actions. Ib. § 5.

9. No action shall be maintained against any city or county, under the provisions of this act, unless the same shall be brought within three months after the loss or injury; *provided*, if the parties bringing suit be in ward, as of unsound mind, or minors, or under coverture, this limitation shall not apply.

City or county may agree with claimant. Ib. § 6.

10. It shall be lawful for any city, by its common council, and for any county, by its board of chosen freeholders, whenever such city or county shall be liable to an action under the provisions of this act, to agree in writing, with the owner of the property destroyed or injured, upon the sum to be paid by such city or county, without action; and the sum agreed upon shall be paid as claims of a general nature against such city or county.

City or county may recover from rioters. Ib. § 7.

11. Any city or county which shall pay any sum under the provisions of this act, whether paid upon judgment or settlement, may recover the full value of the property destroyed or injured, in an action against any or all of the persons in any manner engaged in such destruction or injury; and in such action the judgment recovered against, or the settlement made by such city or county, may be offered and shall be received as *prima facie* evidence of the value of the property destroyed or injured.

Riparian Rights.

An act to ascertain the rights of the state and of the riparian owners in the lands lying under the waters of the bay of New York, and elsewhere in the state.

P. L. 1864, p. 681.

Approved April 11, 1864.

Preamble.

WHEREAS, it is represented to the legislature of the state that grants of rights to occupy land under the waters of the bay of New York and the Hudson river, and elsewhere within the state have been made and are liable to be made, without sufficient information of the rights of the state

Repealer.

11. That all acts relative to the publication of the chancery and law reports and to the compensation and duties of the law and chancery reporters, and all other acts inconsistent with the provisions of this act, be and the same are hereby repealed.

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Justices, etc., to make proclamation.

And all justices of the peace, sheriffs, under-sheriffs, and constables within the limits of their respective jurisdictions, are hereby authorized

...vered and required, on notice or knowledge of any such unlawful, ... riotous, or tumultuous assembly, to resort to the place where ... unlawful, routous, riotous, or tumultuous assembly shall be, and there ...ake, or cause to be made, proclamation in manner aforesaid.

2. If such persons, so unlawfully, routously, riotously, and tumultuously ...mbled as aforesaid, shall, after proclamation made, or attempted to be ...e, in manner aforesaid, continue together and not disperse themselves ...in one hour, then it shall and may be lawful to and for every justice ...the peace, sheriff, under-sheriff, or constable of the county where such ...mbly shall be, and to and for such other person and persons, as shall ...commanded to be assisting unto any such justice, sheriff, under-sheriff, ...constable (who are hereby respectively authorized and empowered to ...mmand all the citizens of this state, to be assisting to them therein), ...eize and apprehend, and they are hereby required to seize and appre-...d such persons, so unlawfully, routously, riotously and tumultuously ...tinuing together, after proclamation made, or attempted to be made, ...aforesaid, and forthwith to carry the persons so apprehended, before ...or more of the justices of the peace of the county, where such persons ...ll be so apprehended, in order to their being proceeded against, for ...h their offences, according to law; and if the persons so unlawfully, ...tously, riotously and tumultuously assembled, or any of them, shall ...ppen to be killed, wounded or hurt, in the dispersing, seizing or appre-...ding, or endeavoring to disperse, seize or apprehend them, by reason ...their resisting the persons so dispersing, seizing or apprehending, or ...deavoring to disperse, seize or apprehend them, then every such justice ...the peace, sheriff, under-sheriff, or constable, and all and singular person ...d persons, being aiding or assisting to them, or any of them, shall be ...d guiltless, and be absolutely indemnified and discharged.

Rioters to be apprehended. Ib. § 2.

Persons killing rioters held guiltless.

3. If any person or persons do or shall, with force and arms, wilfully ...d knowingly, oppose, obstruct, or in any manner, wilfully and knowingly, ...t, hinder, or hurt any person or persons, that shall begin to proclaim, or ...to proclaim, according to the proclamation hereby directed to be made, ...hereby such proclamation shall not be made, that then every such ...pposing, obstructing, letting, hindering, or hurting such person or persons, ...beginning or going to make such proclamation as aforesaid, shall be ...judged a misdemeanor, and be punished by fine or imprisonment, or ...th, or by fine or imprisonment at hard labor, or both, the fine not ...exceed one hundred dollars, nor the imprisonment, six months.

Opposing the making such proclamation, how punished. Ib. § 3.

4. All persons, who, for the space of one hour after proclamation made, ...attempted to be made, as aforesaid, shall unlawfully, routously, riotously ...d tumultuously continue together to the number of twelve or more, if ...rmed, or of thirty or more, if unarmed, as aforesaid; then such persons, ...offending, shall be adjudged guilty of a misdemeanor, and on conviction, ...hall be punished by fine or imprisonment, or both, or by fine or ...mprisonment at hard labor, or both, the fine not to exceed one thousand ...ollars, nor the imprisonment three years.

Punishment for unlawfully continuing together an hour after proclamation made. Ib. § 4.

5. Whenever any buildings or other real or personal property shall be ...destroyed or injured, in consequence of any mob or riot, the city in which ...the same shall occur, or if not in a city, then the county in which such ...property was situated, shall be liable to an action, by or in behalf of the ...party whose property was thus destroyed or injured, for the damages ...stained by reason thereof.

Compensation for damage by riot, etc.

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6. Such action or actions may be brought and conducted in the same ...manner that other actions may be prosecuted by law, and the judgment ...may be reviewed in the manner now provided for in civil actions; and ...whenever any final judgment shall be recovered against any such city or ...ounty in any such action, such judgment shall be paid and collected as ...ther judgments against such city or county.

How collected. Ib. § 2.

7. No person or corporation shall be entitled to recover in any such ...ction if it shall appear upon the trial thereof that such destruction or ...njury of property was occasioned, or in any manner aided, sanctioned or ...permitted by the carelessness or negligence of such person or corporation; ...nor shall any person or corporation be entitled to recover any damages ...for any destruction or injury of property as aforesaid, unless such party

When no recovery. Ib. § 3.

shall have used all reasonable diligence to prevent such damage, and shall have notified the mayor of such city, or the sheriff of such county, immediately after being apprised of any threat or attempt to destroy or injure his or their property by any mob or riot, of the facts brought to his knowledge; and upon the receipt of such notice it shall be the duty of such officer to take all legal means to protect the property attacked or threatened.

Duty of officer.

Actions against rioters also. Ib. § 4.

8. Nothing in this act shall be construed to prevent any person or corporation whose property has been injured or destroyed by any mob or riot from having or maintaining an action against each and every person engaged or in any manner participating in such riot or mob.

Limitation of actions. Ib. § 5.

9. No action shall be maintained against any city or county, under the provisions of this act, unless the same shall be brought within three months after the loss or injury; *provided*, if the parties bringing suit be in ward, as of unsound mind, or minors, or under coverture, this limitation shall not apply.

City or county may agree with claimant. Ib. § 6.

10. It shall be lawful for any city, by its common council, and for any county, by its board of chosen freeholders, whenever such city or county shall be liable to an action under the provisions of this act, to agree in writing, with the owner of the property destroyed or injured, upon the sum to be paid by such city or county, without action; and the sum agreed upon shall be paid as claims of a general nature against such city or county.

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11. Any city or county which shall pay any sum under the provisions of this act, whether paid upon judgment or settlement, may recover the full value of the property destroyed or injured, in an action against any or all of the persons in any manner engaged in such destruction or injury; and in such action the judgment recovered against, or the settlement made by such city or county, may be offered and shall be received as *prima facie* evidence of the value of the property destroyed or injured.

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