

N J L R C

New Jersey Law Revision Commission

FINAL REPORT

RELATING TO EVIDENCE

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INTRODUCTION

On September 15, 1992, the Supreme Court adopted the New Jersey Rules of Evidence to replace the rules established in 1967. The Court agreed to modification of several of the proposed rules, and the legislature by joint resolution forwarded the amendments to be signed by the Governor. On June 30, 1993, the Court ordered adoption of the proposed rules and rule revisions. The procedure used for adopting the rules was the one established by the Evidence Act, 2A:84A-33 through 39. That procedure represents a compromise settlement of the difficult issue of whether the Supreme Court or the Legislature has the power to enact valid rules of evidence. See *Busik v. Levine* 63 N.J. 351, 367-368 (1973). The procedure involves acquiescence by both the Legislature and the Court; by using this procedure any question of which branch has the power to make rules becomes moot. As a result, it is desirable that the New Jersey Rules of Evidence be a comprehensive statement of all of the law of evidence. Moreover, the Rules are intended as a comprehensive presentation of statutory regulation on the subject.

However, a number of statutory sections in various titles make provisions on admissibility of evidence that overlap with or duplicate the rules. In some instances differences in terminology creates the potential for confusion. In all cases the overlap obscures the statutory intention of stating evidence rules comprehensively in one place. To remedy this, the commission recommends repeal of all existing sections governing admissibility of evidence other than those found in the N.J. Rules of Evidence.

The Evidence Act allows the Rules of Evidence to identify certain statutes as inconsistent with the rules, and by doing so to make those statutes “of no further force or effect.” 2A:84A-40. Official Footnotes to the 1967 Rules listed statutory sections as superseded. In 1993, the Official Note to N.J.R.E. 101 observed that they remain superseded; it amended the list to cite appropriate 1993 rules. Although these sections have now been superseded for 28 years, they remain as compiled statutes. As such, they serve no purpose but to confuse. Of the 74 sections recommended for repeal below 46 are from this 1993 list.

Because the Official Note to N.J.R.E. 101 restricted its attention to existing statutes codified specifically as evidence rules, it made no provision for a great number of evidence rules that appear in titles and chapters devoted to other issues. Thus, for example, many acts dealing with public records contain incidental sections allowing them to be admitted into evidence. Where these sections duplicate the Evidence Rules, they are unnecessary. In many cases, these sections differ from the relevant evidence rule. In such cases, they can cause uncertainty. The Commission recommends the deletion of all statutory sections that duplicate or conflict with the Evidence Rules. However, in many instances an evidence provision is part of a statute that deals with other subjects. Elimination of these provisions would require the revision of the sections in which they are embedded. The commission does not recommend amendments to repeal these provisions except when they are in clear conflict with the Rules.

Each of the sections listed below is recommended for repeal. The reason for the recommendation is given in the comment that follows the section.

1:2-4. Printed laws as evidence

All the laws heretofore printed, and all that may hereafter be printed by authority of this state, shall be received in evidence before any court in this state, anything in any law to the contrary notwithstanding.

COMMENT

This section is unnecessary. Law is normally a matter of judicial notice. See N.J.R.E. 201. In addition, printed laws are admissible under the hearsay exception covered by N.J.R.E. 803(c)(8) as well as N.J.R.E. 902(e) which provides for the self-authentication of official publications.

1:2-8. Certified copies of filed bills and resolutions; use as evidence; fee

The secretary of state shall give copies of any law or joint resolution filed in his office pursuant to sections 1:2-5, 1:2-6 and 1:2-7 of this title to any person making application therefor, which copies, when certified by the secretary of state, under his hand and seal, to be true copies, shall be received in evidence in any court of the state, and be as good and effectual as if the originals were then and there produced and proved. The secretary of state, for furnishing copies pursuant to this section, shall receive from the person making application for such copies the fee allowed by section 22:4-1 of the title Fees and Costs.

COMMENT

This section is unnecessary because certified copies of filed bills are admissible under the hearsay exception covered by N.J.R.E. 803(c)(8) as well N.J.R.E. 902(a) and (h) allowing for the self-authentication of documents issued under the authority of a New Jersey official and documents certified or acknowledged. The Secretary of State has authority under N.J.S.A. 22A:4-1 for charging the fee mentioned in this section.

2A:15-24. Records in process book or transcripts thereof as evidence of returns made

The record of a return in a sheriff's process book, or a transcript thereof certified by the sheriff or county clerk, shall be prima facie evidence in any court of the return made to any such process.

COMMENT

This section is unnecessary. Records of return are admissible under the hearsay exception for official records, N.J.R.E. 803(c)(8) and for business records, N.J.R.E. 803(c)(6). Records are self-authenticated under N.J.R.E. 902(a).

2A:16-43. Record and certified copies of assignment as evidence

The record and certified copies of an assignment of a judgment shall have the same effect as evidence as the record and certified transcripts of the record of deeds.

COMMENT

This section is unnecessary. Judgment records are admissible under the hearsay exception for official records, N.J.R.E. 803(c)(8). Records are self-authenticated under N.J.R.E. 902(a).

2A:54A-3. Evidence admissible in action

In an action brought pursuant to section 3 of this amendatory and supplementary act, evidence of the general reputation of the location or an admission or finding of guilt of the person under the criminal laws against prostitution or obscenity is admissible for the purpose of proving the existence of the nuisance.

COMMENT

This section is recommended for repeal. It provides for the admission of evidence of the general reputation of a location for prostitution, and also for admissions of or findings of guilt for prostitution or obscenity in civil actions to abate nuisances. It is unnecessary because N.J.R.E. 401 and 402 define and allow for the admission of all relevant evidence.

2A:81-1. General rule

Except as otherwise provided by statute no person shall be excluded as a witness in any action, proceeding or matter of a civil or criminal nature, for any of the following reasons:

- a. Conviction of crime;
- b. Interest in the result of the action or trial as a party or otherwise;
- c. Incapacity or incompetence of any other party represented in the action; or
- d. Marital relationship.

COMMENT

This section is recommended for repeal. It is listed in the Official Note to N.J.R.E. 101 as specifically superseded under N.J.S.A. 2A:84A-40.

2A:81-8. Privilege of indicted defendant

On the trial of an indictment, the defendant shall be admitted to testify, if he offers himself as a witness.

COMMENT

This section is recommended for repeal. It is listed in the Official Note to N.J.R.E. 101 as specifically superseded under N.J.S.A. 2A:84A-40.

2A:81-12. Interest or conviction of crime as affecting credibility

For the purpose of affecting the credibility of any witness, his interest in the result of the action, proceeding or matter or his conviction of any crime may be shown by examination or otherwise, and his answers may be contradicted by other evidence. Conviction of crime may be proved by the production of the record thereof, but no conviction of an offender shall be received in evidence against him in a civil action to prove the truth of the facts upon which the conviction was based.

COMMENT

This section is recommended for repeal. It is listed in the Official Note to N.J.R.E. 101 as specifically superseded under N.J.S.A. 2A:84A-40.

2A:81-13. Deceased party

Upon a new trial of a civil action wherein the parties have been examined as witnesses, if either party shall have died since the former trial and the action shall have been revived and proceeded with, by or against the legal representative of the deceased party, the surviving party and the legal representative shall be competent witnesses on the new trial, and the testimony of the deceased party on the former trial of the action may also be proved and admitted upon the new trial.

COMMENT

This section is recommended for repeal. It is listed in the Official Note to N.J.R.E. 101 as specifically superseded under N.J.S.A. 2A:84A-40.

2A:81-14. Deceased witness

When a witness, whose testimony at the trial of a civil action has been taken by the official stenographer of the court in which the action was tried, has died, his testimony so taken shall be admissible at a new trial of the action.

COMMENT

This section is recommended for repeal. It is listed in the Official Note to N.J.R.E. 101 as specifically superseded under N.J.S.A. 2A:84A-40.

2A:82-1. Comparison of signature or writing

In all cases where the genuineness of any signature or writing is in dispute, comparison of the disputed signature or writing with any writing proved to the satisfaction of the court to be genuine shall be permitted to be made by the witnesses; and such writings and the testimony of witnesses respecting the same may be submitted to the court or jury as evidence of the genuineness or otherwise of the signature or writing in dispute; provided nevertheless that where the handwriting of any person is sought to be disproved by comparison with other writings made by him, not admissible in evidence in the cause for any other purpose, such writings before they can be compared with the signature or writing in dispute, must, if sought to be used before the court or jury by the party in whose handwriting they are, be proved to have been written before any dispute arose as to the genuineness of the signature or writing in controversy.

COMMENT

This section is unnecessary. Authentication is governed by N.J.R.E. 901. Issues of preliminary genuineness are governed by N.J.R.E. 104(a). N.J.R.E. 401 and 402 allow for the admission of all relevant evidence.

2A:82-2. Authentication of signatures of witnesses to documents or papers; wills excepted

In an action, proceeding or matter in any court of this state, it shall not be essential to the admissibility in evidence of any document or other paper purporting to bear the signature of an attesting or subscribing witness that the authenticity or genuineness thereof or any signature thereto be proved by production of such witness, nor shall it be necessary to account for his absence, if such authenticity and genuineness be satisfactorily proved by other evidence. This section, however, shall not apply to a last will and testament or codicil or a document or paper purporting to be such.

COMMENT

This section is recommended for repeal. It is listed in the Official Note to N.J.R.E. 101 as specifically superseded under N.J.S.A. 2A:84A-40.

2A:82-5. Record used to refresh memory

When a notary public or any other person authorized to protest instruments under the laws of this state is called upon to testify concerning a protest made by him, he may, to refresh his memory, refer to the record thereof kept by him as required by law.

COMMENT

This section is unnecessary. N.J.R.E. 612 governs the use of writings to refresh recollection. See also the hearsay exception for recorded recollection contained in N.J.R.E. 803(c)(5).

2A:82-6. Copies of record of protest as evidence

If it appears that the notary or other officer of this state by whom any bill of exchange or promissory note was protested has died or removed from the state or, after diligent inquiry, his place of residence cannot be discovered, the record deposited in the county clerk's office, as required by section 7:5-5 of the title Bills, Notes and Checks, of the Revised Statutes, or a copy thereof certified by such clerk, shall be received as competent evidence of the matter contained in such record.

When the register or other book of any notary public appointed and qualified under the laws of any state of the United States containing a record of the official acts of such notary public by him done in pursuance of his office is, in pursuance of the law of such state, by reason of the death, removal or other disability of the notary public, deposited in the office of the clerk, prothonotary or recorder of deeds of the city, town or county in which the notary public resided at the time of his acting as notary public, a copy of the record or of any part thereof respecting the protesting of any note or bill of exchange protested by the notary public, and the time when, place where and upon whom demand of acceptance or payment was made, with a copy of the notice of nonacceptance or nonpayment (if a copy of the notice shall appear on said record), how the notice of nonacceptance or nonpayment was served, and the time when, or if sent, in what manner, and the time when, and to whom, duly certified under the hand and seal of such clerk, prothonotary or recorder of deeds, or otherwise proved to be truly taken from said record, shall be held and received in all the courts of this state as competent evidence of the facts therein recited, and also of the official character of the notary public. When it shall appear from such record that the said note or bill of exchange had been protested for want of acceptance or payment thereof, and that the said notary public making such protest had duly notified the drawer or indorsers, by mail, of the demand of payment or acceptance and refusal thereof, without specifying the names or the post office address of such drawer or indorsers, the copy of the record certified or proved as aforesaid, shall be held and received in all courts of this state as competent

evidence that the drawer and indorsers of such note or bill of exchange were duly notified of such demand and refusal.

COMMENT

This section is recommended for repeal. It is unnecessary because the hearsay exception for public records contained in N.J.R.E. 803(c)(8) now governs this issue.

2A:82-7. Certificate of protest as evidence

The certificate of a notary public of this state or of any other state of the United States, under his hand and official seal accompanying any bill of exchange or promissory note which has been protested by such notary for nonacceptance or nonpayment, shall be received in all the courts of this state as competent evidence of the official character of such notary, and also of the facts therein certified as to the presentment and dishonor of such bill or note and of the time and manner of giving or sending notice of dishonor to the parties to such bill or note.

COMMENT

This section is recommended for repeal. It is unnecessary because N.J.R.E. 902(a) allows for the self-authentication of New Jersey public documents and N.J.R.E. 1005 governs authentication of other public records. Public records are admissible as provided by N.J.R.E. 803(c)(8).

2A:82-8. Certified copies of writs, pleadings and court orders as evidence

Transcripts or copies of pleadings in any court of this state, or filed with any clerk thereof, or of judgments, orders, decrees or writs of any kind, or the record thereof made or filed in any such court, or filed with the clerk thereof, when duly certified under the seal of the court to be true transcripts or copies thereof, shall be admitted in any court of this state as evidence of the facts, matters and things therein set forth to the same extent as though the original thereof had been produced and proved.

COMMENT

This section is recommended for repeal. It is listed in the Official Note to N.J.R.E. 101 as specifically superseded under N.J.S.A. 2A:84A-40.

2A:82-9. Transcripts of proved or recorded wills and letters of administration or guardianship as evidence

Transcripts of wills regularly proved or recorded in the office of the clerk of the superior court or in the office of the surrogate of any county of this state; and duly certified by the clerk or surrogate under his official seal, shall be received in evidence in all the courts of this state and be as good and effectual as if the books of record were produced and proved, and shall be competent evidence in any such court in any action or controversy relating to the title to any estate, real or personal, devised or bequeathed by such wills, the same as if the original wills were produced and proved by the attesting witnesses.

COMMENT

This section is recommended for repeal. It is listed in the Official Note to N.J.R.E. 101 as specifically superseded under N.J.S.A. 2A:84A-40.

2A:82-10. Copies of motor vehicle records.

Copies of any act, rule, order or decision made by the director of the Division of Motor Vehicles, and of any paper filed in his office when authenticated under his seal shall be evidence in like manner, and with equal effect as the originals.

All transcripts and abstracts of the records of the Division of Motor Vehicles, the licensing authority of another state, the Commercial Driver License Information System, or the National Driver Register as to the names of owners of motor vehicles and as to the holders of licenses to operate motor vehicles and their operating records, certified by the director of the division, or other appropriate official to be true copies of the record, shall be received in any court as prima facie evidence of the matters and facts therein stated. For the purposes of the division, such transcripts and abstracts shall be copies of the original records made or copies of the record thereof as recorded by the clerk or other officer of the Division of Motor Vehicles.

For purposes of transcripts, abstracts and computer printouts under this section, the seal of the director need not be impressed, but such transcripts, abstracts, and computer printouts shall be deemed to be sealed when there is affixed thereto, or printed or marked thereon, the seal of the division.

COMMENT

This section is recommended for repeal. It is listed in the Official Note to N.J.R.E. 101 as specifically superseded under N.J.S.A. 2A:84A-40.

2A:82-11. Certified copies of certain surveys as evidence

Copies of all surveys and other writings of record in the office of the surveyor general of the western or eastern division of this state, when certified as true copies under the hand and seal of the surveyor general in whose office the same may be of record, or, in case of the death or other disability of such surveyor general, under the hand and seal of the register of the board of proprietors of such division, shall be received in evidence in any court of this state without further proof of authenticity.

COMMENT

This section is recommended for repeal. It is listed in the Official Note to N.J.R.E. 101 as specifically superseded under N.J.S.A. 2A:84A-40.

2A:82-12. Certified copies and records of returns of vital statistics

Any certificate of marriage issued pursuant to R.S. 37:1-17, marriage license and consent to the marriage of minors, or any part thereof, and any copy of the record of any marriage, certified to be a true copy under the hand of the State Registrar of Vital Statistics, any original certificate of birth or death, or any copy thereof, or any copy of the record thereof, certified to be a true copy under the hand of the State Registrar; any transcript of return of death, marriage or birth, made by any person according to law, to any officer or board empowered by law to receive the same or of the record of such return, such transcript being a copy of the return as originally made or a copy of the record thereof as recorded according to law, when such transcript shall be signed by the officer required by law to return or record the same as the case may be and, by him certified to be a true copy of said

return or record, shall be received as prima facie evidence of the facts therein stated in all courts and places.

COMMENT

This section is recommended for repeal. It is listed in the Official Note to N.J.R.E. 101 as specifically superseded under N.J.S.A. 2A:84A-40.

2A:82-14. Copies and books of ordinances as evidence

The book of ordinances kept by the clerk of any municipality, copies of any ordinances of any municipality when certified by the clerk thereof, or an authorized copy of municipal ordinances in book form when certified by the chief law officer of the municipality shall be received in evidence in all courts and places as fully as if the original ordinance were produced and offered in evidence.

COMMENT

This section is recommended for repeal. It is listed in the Official Note to N.J.R.E. 101 as specifically superseded under N.J.S.A. 2A:84A-40.

2A:82-15. Municipal records; copies as evidence; signature authenticated

A copy of any record or part thereof in the office of the collector, or other officer charged by law with collecting municipal liens, when certified by him to be a true copy of the record or part thereof, shall be received in evidence in all courts as if the original record, or part thereof, were produced and proved. The signature to the certificate shall be authenticated as the signature of the person who at its date was the collector or other officer, by a supplemental certificate of the clerk of the municipality under its seal.

COMMENT

This section is recommended for repeal. It is listed in the Official Note to N.J.R.E. 101 as specifically superseded under N.J.S.A. 2A:84A-40.

2A:82-16. Public records of foreign states or territories; United States departments or courts; copies; rates, etc., filed with interstate commerce commission; federal communications commission

Any public record of any foreign State or territory, province, county or city, or of any court therein or any copy thereof, which is admissible in such State, territory, province, county or city, or in any court therein, to prove the facts therein contained, or any duly certified public record of any department of the United States Government or of any Federal court which is admissible in any Federal court or by virtue of any Federal statute to prove the facts therein contained, shall be admitted in evidence in the courts of this State, and shall be evidence of the facts therein contained, to the same extent as though the original paper or papers, of which the record thereof is a copy, had been produced and proved; provided, that whenever a copy of such record, other than a duly certified copy of any public record of any department of the United States Government or of any Federal court, shall be offered in evidence, the same shall not be admitted, unless the same shall have been first exemplified according to the Acts of Congress of the United States. Printed copies of (a) schedules, classifications, tariffs of rates, fares and charges, and supplements thereto filed with the Interstate Commerce Commission, which bear an Interstate Commerce Commission number which may be shown in abbreviated form as I.C.C. No., and an effective date, and (b) tariffs, rates, rules, and supplements

thereto of companies subject to the supervision of the Federal Communications Commission, shall be received in evidence to prove the contents thereof without certification although privately printed, and shall be presumed to be correct copies of the originals unless the contrary be shown.

COMMENT

This section is recommended for repeal. It is listed in the Official Note to N.J.R.E. 101 as specifically superseded under N.J.S.A. 2A:84A-40.

2A:82-17. Certificates of acknowledgment or proof of instruments as evidence of execution thereof

If any instrument heretofore made and executed or hereafter to be made and executed shall have been acknowledged, by any party who shall have executed it, or the execution thereof by such party shall have been proved by one or more of the subscribing witnesses to such instrument, in the manner and before one of the officers provided and required by law for the acknowledgment or proof of instruments in order to entitle them to be recorded, and, when a certificate of such acknowledgment or proof shall be written upon or under, or be annexed to such instrument and signed by such officer in the manner prescribed by law, such certificate of acknowledgment or proof shall be and constitute prima facie evidence of the due execution of such instrument by such party. Such instrument shall be received in evidence in any court or proceeding in this state in the same manner and to the same effect as though the execution of such instrument by such party had been proved by other evidence.

COMMENT

This section is unnecessary. It deals with the sufficiency of acknowledgment as authentication of a document. Acknowledged documents are self-authenticating N.J.R.E. 901, 902(h) and 1005.

2A:82-18. Certification or authentication of instruments not acknowledged or proved; effect as evidence

If any instrument heretofore made and executed or hereafter to be made and executed, although not acknowledged or proved, shall have been certified or authenticated, as to the execution thereof by any party thereto, in any manner which may be prescribed by law in order to entitle such instrument to be recorded in any public office of this state without a certificate of acknowledgment or proof thereof, such certification or authentication shall be and constitute prima facie evidence of the due execution of such instrument by such party. Such instrument shall be received in evidence in any court or proceeding in this state, in the same manner and to the same effect as though the execution of such instrument by such party had been proved by other evidence.

COMMENT

This section is recommended for repeal. It is unnecessary because recorded documents are self-authenticating and admissible under N.J.R.E. 902(h) and 1005.

2A:82-19. Exemplifications and records of certain foreign deeds or writings as evidence

The exemplification of any deeds or writings relating to estates, real or personal, within the state of New Jersey, proved and certified under the city seal of London or Edinburgh, in the kingdom of Great Britain, or under the seal of the city of Dublin, in the kingdom of Ireland, or under the great seal of any British colony in America, prior to July 4th, 1776, and any of the public books of records or registers of the province of New Jersey, or of either of the divisions thereof, prior to that date, shall be received in evidence in any court of record within this state as fully as if the originals were then and there produced and proved.

COMMENT

This section is recommended for repeal. It is unnecessary because the evidence of ancient documents is admissible under N.J.R.E. 803(e)(16) and 1004(a) and (b).

2A:82-20. Records and certified transcripts of instruments as evidence; exceptions

The record of any instrument or of a copy of any instrument recorded in any public office of this state pursuant to law, or a transcript of such record, certified to be a true transcript by the officer in whose office the same is so recorded, under his hand and the seal of his office, if there is such a seal, shall be received in evidence in any court or proceeding in this state and be as good, effectual and available in law as if the original instrument were then and there produced and proved, except that the record or a transcript of the record of any instrument shall not be received in evidence:

a. When the instrument has been recorded in the office of any county clerk or register of deeds and mortgages of any county, either as an ancient deed or after the lapse of ten years from the date of the acknowledgment or proof thereof (the original whereof is required by law to be filed in such office), unless it shall be proved to the satisfaction of the court that the original instrument has been destroyed or lost or has been removed from the office of the clerk or register wherein by law it is required to be kept, and that it cannot be produced; or

b. When the original of such instrument is required to be produced under the provisions of section 2A:82-23 of this title.

COMMENT

This section is recommended for repeal. It is listed in the Official Note to N.J.R.E. 101 as specifically superseded under N.J.S.A. 2A:84A-40.

2A:82-21. Rerecords of instruments and certified transcripts thereof as evidence

The rerecord of any instrument rerecorded in any public office of this state pursuant to law, and a transcript of such rerecord, certified to be a true transcript by the officer in whose office the same is so rerecorded, under his hand and the seal of his office, if there is such a seal, shall be receivable in evidence in any court or proceeding in this state in the same manner and with the same force and effect as the original record of such instrument or a transcript thereof.

COMMENT

This section is recommended for repeal. It is listed in the Official Note to N.J.R.E. 101 as specifically superseded under N.J.S.A. 2A:84A-40.

2A:82-22. Entries or abstracts of mortgages and transcripts thereof as secondary evidence

An entry or abstract of any mortgage and of the certificate of the acknowledgment or proof thereof, heretofore or hereafter made in any book kept for the purpose of registering mortgages, by any county clerk or register of deeds and mortgages, pursuant to law, or a transcript of such entry or abstract, duly certified by the officer in whose office such book is kept, to be a true transcript, in the manner prescribed by section 2A:82-20 of this title, for the certification of transcripts of the records of recorded instruments, shall be received as secondary evidence in any court of this state, in the same manner as records and transcripts of recorded instruments are received and shall be proof of the facts therein stated.

COMMENT

This section is recommended for repeal. It is listed in the Official Note to N.J.R.E. 101 as specifically superseded under N.J.S.A. 2A:84A-40.

2A:82-23. Original instruments produced; notice to adverse party

Any party to any cause pending in any court of this state, or to any proceeding in this state, may give, to any opposite party or his attorney at least 10 days before the time appointed for the trial or hearing of such cause or proceeding, notice in writing that such opposite party will be required to produce, at such trial or hearing, the original instead of the record or transcript of the record of any instrument or of any copy of any instrument recorded or registered in any public office of this state pursuant to law, which he may think proper to offer or introduce in evidence at such trial or hearing. After the giving of such notice, no record or transcript of the record of any such instrument or of any such copy of any instrument shall be received in evidence, until proof shall be made, satisfactory to the court or officer before whom such record or transcript is offered, that the original instrument has been lost or unintentionally destroyed, or that after diligent search and inquiry made, such party has been unable to find the original or that such original is without the control of such party and that the production thereof cannot be compelled by due process.

COMMENT

This section is recommended for repeal. It is listed in the Official Note to N.J.R.E. 101 as specifically superseded under N.J.S.A. 2A:84A-40.

2A:82-25. Printed statute books from foreign jurisdictions as evidence

When the statute law of any state or foreign jurisdiction is pleaded in an action in any court of this state, statute books and printed laws, printed by authority of such state or jurisdiction, shall be received as evidence of the statute law thereof.

When offered in evidence, the court may determine whether such book or printed law was printed under proper authority, by inspection, testimony or its own knowledge. Rejection thereof by the court shall be final, unless, on appeal, it is proved that such book or printed law is received in the courts of said state as a statute book thereof or pamphlet containing its session laws, or in the case of a foreign jurisdiction, that such book or printed law is what it purports to be. Admission thereof shall not be cause for reversal, unless it be shown that on appeal the statute offered in evidence, or some material part thereof, was not in force in such state or jurisdiction at the time of the transaction or matter to which the same is offered as pertinent or material.

COMMENT

This section is recommended for repeal. It is listed in the Official Note to N.J.R.E. 101 as specifically superseded under N.J.S.A. 2A:84A-40.

2A:82-26. Judicial reports judicially noticed

When the common or statute law of any state or foreign jurisdiction is pleaded in an action in any court of this state, the reports of judicial decisions of such state or jurisdiction shall be received as evidence of the common law thereof or, as the case may be, of the judicial construction of the statutes thereof. The usual printed books of such reports shall be plenary evidence of such decisions.

COMMENT

This section is recommended for repeal. It allows the court to take judicial notice of the common or statutory law of other states and foreign jurisdictions and makes the usual printed books evidence of such law. It is unnecessary because N.J.R.E. 201(a) allows for judicial notice of the law of other states and foreign nations. See also, N.J.R.E. 201(f) and 902(e).

2A:82-27. Judicial notice of foreign law; presumption as to common law

Whenever the common or statute law of any other State or country is pleaded, or notice thereof given to the court and each adverse party at or before the pretrial conference, or at least 10 days before trial when there is no pretrial conference, or within such other time as the court may fix by order, in an action in any court of this State, the court shall take judicial notice thereof. In the absence of such pleading or notice, it shall be presumed that the common law of such State is the same as the common law as interpreted by the courts of this State.

COMMENT

This section is recommended for repeal. It is listed in the Official Note to N.J.R.E. 101 as specifically superseded under N.J.S.A. 2A:84A-40. It is obsolete because N.J.R.E. 201(a) now covers judicial notice of the laws of all states and foreign nations.

2A:82-28. Information of the court

The court may inform itself of such laws in such manner as it may deem proper, and the court may call upon counsel to aid it in obtaining such information.

COMMENT

This section is recommended for repeal. It is listed in the Official Note to N.J.R.E. 101 as specifically superseded under N.J.S.A. 2A:84A-40. It is obsolete because N.J.R.E. 201(a) now covers judicial notice of the laws of all states and foreign nations. See also, N.J.R.E. 201(f).

2A:82-29. Ruling reviewable

The determination of such laws shall be made by the court and not by the jury, and shall be reviewable.

COMMENT

This section is recommended for repeal. It is listed in the Official Note to N.J.R.E. 101 as specifically superseded under N.J.S.A. 2A:84A-40. It is obsolete because N.J.R.E. 201(a) now covers judicial notice of the laws of all states and foreign nations.

2A:82-30. Evidence as to laws of other jurisdictions

When the common or statute law of any state is pleaded in an action in any court of this state, any party to such action may introduce any admissible evidence of such law.

COMMENT

This section is recommended for repeal. It is listed in the Official Note to N.J.R.E. 101 as specifically superseded under N.J.S.A. 2A:84A-40. It is obsolete because N.J.R.E. 201(a) now covers judicial notice of the laws of all states and foreign nations.

2A:82-31. Foreign country

The law of a jurisdiction other than those referred to in section 2A:82-27 of this title shall be an issue for the court, but shall not be subject to the foregoing provisions concerning judicial notice.

COMMENT

This section is recommended for repeal. It is listed in the Official Note to N.J.R.E. 101 as specifically superseded under N.J.S.A. 2A:84A-40. It is obsolete because N.J.R.E. 201(a) now covers judicial notice of the laws of all states and foreign nations.

2A:82-32. Interpretation

This article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

COMMENT

This section is recommended for repeal. It is listed in the Official Note to N.J.R.E. 101 as specifically superseded under N.J.S.A. 2A:84A-40. It is obsolete because N.J.R.E. 201(a) now covers judicial notice of the laws of all states and foreign nations.

2A:82-33. Short title

This article may be cited as the uniform judicial notice of foreign law act.

COMMENT

This section is recommended for repeal. It is listed in the Official Note to N.J.R.E. 101 as specifically superseded under N.J.S.A. 2A:84A-40. It is obsolete because N.J.R.E. 201(a) now covers judicial notice of the laws of all states and foreign nations.

2A:82-34. "Business" defined

The term "business" as used in this article shall include every kind of business, profession, occupation, calling or operation of an institution, whether carried on for profit or not.

COMMENT

This section is recommended for repeal. It is listed in the Official Note to N.J.R.E. 101 as specifically superseded under N.J.S.A. 2A:84A-40. It is obsolete because N.J.R.E. 803(c)(6) governs issues formerly treated under the now defunct uniform business records act.

2A:82-35. Business records as evidence

A record of an act, condition or event, shall, insofar as relevant, be competent evidence if the custodian or other qualified witness testifies to its identity and the mode of its preparation, and if it was made in the regular course of business, at or near the time of the act, condition or event, and if, in the opinion of the court, the sources of information, method and time of preparation were such as to justify its admission.

COMMENT

This section is recommended for repeal. It is listed in the Official Note to N.J.R.E. 101 as specifically superseded under N.J.S.A. 2A:84A-40. It is obsolete because N.J.R.E. 803(c)(6) governs issues formerly treated under the now defunct uniform business records act.

2A:82-36. Construction

This article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

COMMENT

This section is recommended for repeal. It is listed in the Official Note to N.J.R.E. 101 as specifically superseded under N.J.S.A. 2A:84A-40. It is obsolete because N.J.R.E. 803(c)(6) governs issues formerly treated under the now defunct uniform business records act.

2A:82-37. Uniform business records as evidence act, citation as

This article may be cited as the uniform business records as evidence act.

COMMENT

This section is recommended for repeal. It is listed in the Official Note to N.J.R.E. 101 as specifically superseded under N.J.S.A. 2A:84A-40. It is obsolete because N.J.R.E. 803(c)(6) governs issues formerly treated under the now defunct uniform business records act.

2A:82-38. Photographic, photostatic, etc., copies as competent evidence

If any business, institution, member of a profession or calling, or any department or agency of government, in the regular course of business or activity has kept or recorded any memorandum, writing, entry, print, representation or combination thereof, of any act, transaction, occurrence or event, and in the regular course of business has caused any or all of the same to be recorded, copied or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, or other process which accurately reproduces or forms a durable medium for so reproducing the original, the original may be destroyed in the regular course of business unless its preservation is required by law. Such reproduction, when satisfactorily identified, is as admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not and an enlargement or facsimile of such reproduction is likewise admissible in evidence if the original reproduction is in existence and available for inspection under direction of court. The introduction of a reproduced record, enlargement or facsimile, does not preclude admission of the original.

COMMENT

This section is unnecessary. Duplicates, defined in N.J.R.E. 1000(d), are admissible under N.J.R.E. 1003.

2A:82-39. Interpretation and construction

This article shall be so interpreted and construed as to effectuate its general purpose of making uniform the law of the states which enact it.

COMMENT

This section is recommended for repeal. It is unnecessary as part of an obsolete uniform law that governed the admissibility of duplicates now defined in N.J.R.E. 1000(d), and made admissible under N.J.R.E. 1003.

2A:82-40. Short title

This article may be cited as the uniform photographic copies of business and public records as evidence act.

COMMENT

This section is recommended for repeal. It is unnecessary as part of an obsolete uniform law that governed the admissibility of duplicates now defined in N.J.R.E. 1000(d), and made admissible under N.J.R.E. 1003.

2A:84A-1. Definitions

Rule 1. As used in the rules set forth in this act or in the rules adopted pursuant thereto, the terms defined in this article shall have the meaning specified unless the context indicates a contrary intention.

COMMENT

This section is recommended for repeal. It is listed in the Official Note to N.J.R.E. 101 as specifically superseded by N.J.R.E. 101(b) and of no legal effect under N.J.S.A. 2A:84A-40.

2A:84A-2. "Evidence"

Rule 1. (1) "Evidence" is the means from which inferences may be drawn as a basis of proof in duly constituted judicial or fact-finding tribunals, and includes testimony in the form of opinion, and hearsay.

COMMENT

This section is recommended for repeal. It is listed in the Official Note to N.J.R.E. 101 as specifically superseded by N.J.R.E. 101(b) and of no legal effect under N.J.S.A. 2A:84A-40.

2A:84A-3. "Relevant evidence"

Rule 1. (2) "Relevant evidence" means evidence having any tendency in reason to prove any material fact.

COMMENT

This section is recommended for repeal. It is listed in the Official Note to N.J.R.E. 101 as specifically superseded by N.J.R.E. 101(b) and of no legal effect under N.J.S.A. 2A:84A-40.

2A:84A-4. "Proof"

Rule 1. (3) "Proof" is all of the evidence before the trier of the fact relevant to a fact in issue which tends to prove the existence or nonexistence of such fact.

COMMENT

This section is recommended for repeal. It is listed in the Official Note to N.J.R.E. 101 as specifically superseded by N.J.R.E. 101(b) and of no legal effect under N.J.S.A. 2A:84A-40.

2A:84A-5. "Burden of proof"

Rule 1. (4) "Burden of proof" means the obligation of a party to meet the requirements of a rule of law that the fact be proved either by a preponderance of the evidence or by clear and convincing evidence or beyond a reasonable doubt, as the case may be. Burden of proof is synonymous with "burden of persuasion."

COMMENT

This section is recommended for repeal. It is listed in the Official Note to N.J.R.E. 101 as specifically superseded by N.J.R.E. 101(b) and of no legal effect under N.J.S.A. 2A:84A-40.

2A:84A-6. "Burden of producing evidence"

Rule 1. (5) "Burden of producing evidence" means the obligation of a party to introduce evidence when necessary to avoid the risk of a judgment or peremptory finding against him on a material issue of fact.

COMMENT

This section is recommended for repeal. It is listed in the Official Note to N.J.R.E. 101 as specifically superseded by N.J.R.E. 101(b) and of no legal effect under N.J.S.A. 2A:84A-40.

2A:84A-7. "Conduct"

Rule 1. (6) "Conduct" includes all active and passive behavior, both verbal and nonverbal.

COMMENT

This section is recommended for repeal. It is listed in the Official Note to N.J.R.E. 101 as specifically superseded by N.J.R.E. 101(b) and of no legal effect under N.J.S.A. 2A:84A-40.

2A:84A-8. "The hearing"

Rule 1. (7) "The hearing," unless some other is indicated by the context of the rule where the term is used, means the hearing at which the question under a rule is raised, and not some earlier or later hearing.

COMMENT

This section is recommended for repeal. It is listed in the Official Note to N.J.R.E. 101 as specifically superseded by N.J.R.E. 101(b) and of no legal effect under N.J.S.A. 2A:84A-40.

2A:84A-9. "Finding of fact"

Rule 1. (8) "Finding of fact" means the determination from proof or judicial notice of the existence of a fact. A ruling implies a supporting finding of fact; no separate or formal finding is required unless required by a statute or rule of court of this State.

COMMENT

This section is recommended for repeal. It is listed in the Official Note to N.J.R.E. 101 as specifically superseded by N.J.R.E. 101(b) and of no legal effect under N.J.S.A. 2A:84A-40.

2A:84A-10. “Guardian”

Rule 1. (9) “Guardian” means the person, committee, or other representative authorized by law to protect the person or estate or both of an incompetent or a sui juris person having a guardian and to act for him in matters affecting his person or property or both. An incompetent is a person under disability imposed by law.

COMMENT

This section is recommended for repeal. It is listed in the Official Note to N.J.R.E. 101 as specifically superseded by N.J.R.E. 101(b) and of no legal effect under N.J.S.A. 2A:84A-40.

2A:84A-11. "Judge"

Rule 1. (10) "Judge" means member or members or representative or representatives of a court or other tribunal conducting a trial or hearing at which evidence is introduced.

COMMENT

This section is recommended for repeal. It is listed in the Official Note to N.J.R.E. 101 as specifically superseded by N.J.R.E. 101(b) and of no legal effect under N.J.S.A. 2A:84A-40.

2A:84A-12. "Trier of fact"

Rule 1. (11) "Trier of fact" includes a jury and a judge when he is trying an issue of fact other than one relating to the admissibility of evidence.

COMMENT

This section is recommended for repeal. It is listed in the Official Note to N.J.R.E. 101 as specifically superseded by N.J.R.E. 101(b) and of no legal effect under N.J.S.A. 2A:84A-40.

2A:84A-13. “Verbal”

Rule 1. (12) “Verbal” includes both oral and written words.

COMMENT

This section is recommended for repeal. It is listed in the Official Note to N.J.R.E. 101 as specifically superseded by N.J.R.E. 101(b) and of no legal effect under N.J.S.A. 2A:84A-40.

2A:84A-14. “Writing”

Rule 1. (13) “Writing” means handwriting, typewriting, printing, photostating, photography and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds or symbols, or combinations thereof, provided that such recording is (a) reasonably permanent and (b) readable by sight.

COMMENT

This section is recommended for repeal. It is listed in the Official Note to N.J.R.E. 101 as specifically superseded by N.J.R.E. 101(b) and 801, and it is of no legal effect under N.J.S.A. 2A:84A-40.

2A:84A-15. “Perceive”

Rule 1. (14) “Perceive” means acquire knowledge through one’s own senses.

COMMENT

This section is recommended for repeal. It is listed in the Official Note to N.J.R.E. 101 as specifically superseded by N.J.R.E. 101(b) and of no legal effect under N.J.S.A. 2A:84A-40.

2A:84A-16. Scope of the rules

Rule 2.

(1) The provisions of article II, Privileges, shall apply in all cases and to all proceedings, places and inquiries, whether formal, informal, public or private, as well as to all branches of the government and by whomsoever the same may be conducted, and none of said provisions shall be subject to being relaxed.

(2) All other rules contained in this act, or adopted pursuant to hereto, shall apply in every proceeding, criminal or civil, conducted by or under the supervision of a court, in which evidence is produced. However, in cases within the jurisdiction of the division of small claims of the county district court, except as otherwise provided in paragraph (1) of this rule, all rules may be relaxed to admit relevant and trustworthy evidence in the interest of justice.

(3) Except to the extent to which the rules of evidence may be relaxed by or pursuant to statute applicable to the particular tribunal and except as provided in paragraph (1) of this rule, the rules set forth in this act or adopted pursuant hereto shall apply to formal hearings before administrative agencies and tribunals.

(4) The enactment of the rules set forth in this act or the adoption of rules pursuant hereto shall not operate to repeal any statute by implication.

COMMENT

This section is recommended for repeal. It is listed in the Official Note to N.J.R.E. 101 as specifically superseded by N.J.R.E. 101 and of no legal effect under N.J.S.A. 2A:84A-40.

2A:84A-46. Numbering of rules; reference to “rule”

The numbering of rules of evidence within various sections in this act is intended to keep the designation thereof compatible with the numbering arrangement of the proposed Uniform Rules of Evidence, to the extent feasible. Reference within a section or sections of this act to a “Rule” shall be deemed to be equivalent to a reference to that section of this act containing the designated rule. Rule numbers not used are reserved for rules hereafter adopted.

COMMENT

This section is recommended for repeal. It was part of the Evidence Act of 1960, made obsolete by the adoption of the 1967 N.J. Evidence Rules and subsequently by the 1993 N.J. Rules of Evidence.

2A:84A-47. Effect of repeals

No repeal effected by this act shall operate to revive any statute heretofore repealed nor to impair the obligation of contracts made before the effective date hereof, nor to deprive a party of any remedy for enforcing a contract which existed when the contract was made.

COMMENT

This section is recommended for repeal. It was part of the Evidence Act of 1960, made obsolete by the adoption of the 1967 N.J. Evidence Rules and subsequently by the 1993 N.J. Rules of Evidence.

2A:84A-49. Effective Date

This act shall take effect July 1, 1960, except that article III shall take effect immediately.

COMMENT

This section is recommended for repeal. It was part of the Evidence Act of 1960, made obsolete by the adoption of the 1967 N.J. Evidence Rules and subsequently by the 1993 N.J. Rules of Evidence.

4:20-20. Copy of record as evidence; fee

A copy of the record mentioned in section 4:20-19 of this title, certified by the clerk of the township, shall be admitted as evidence in any court of this state. For a certified copy of the record the clerk shall be entitled to receive twenty-five cents.

COMMENT

This section is recommended for repeal. It is listed in the Official Note to N.J.R.E. 101 as specifically superseded and of no legal effect under N.J.S.A. 2A:84A-40. Its subject matter is covered by N.J.R.E. 803(c)(14) and (15).

17:9A-123. Certificate as evidence

The certificate of amendment and the amended certificate or a copy thereof duly certified by the commissioner, shall be evidence in all courts and places.

COMMENT

This section is recommended for repeal. It is unnecessary because N.J.R.E. 902(b) and (d) and N.J.R.E. 803(c)(8) make certified public documents and certified copies of the same self-authenticating and admissible.

17:14A-43. Merger agreement or consolidation plan as evidence

A copy of the merger agreement or consolidation plan, certified by the commissioner, shall be evidence in all courts and places.

COMMENT

This section is recommended for repeal. It is unnecessary because N.J.R.E. 902(d) and N.J.R.E. 803(c)(8) makes certified copies of public documents self-authenticating and admissible.

27:23-35. Copies of regulations as evidence

In any prosecution for violating a regulation of the Authority adopted pursuant to the provisions of this act copies of any such regulation when authenticated under the seal of the Authority by its secretary or assistant secretary shall be evidence in like manner and equal effect as the original.

COMMENT

This section is recommended for repeal. It is unnecessary because N.J.R.E. 902(d) makes certified copies of public documents self-authenticating and thus admissible.

39:4-138.2. Copies of regulations as evidence

In proceedings for parking in violation of this act, copies of any regulations of the State Highway Commissioner, when authenticated under his seal, shall be evidenced in like manner and with equal effect as the originals.

COMMENT

This section is recommended for repeal. It is unnecessary because N.J.R.E. 902(d) makes certified copies of public documents self-authenticating and thus admissible.

39:4-201.2. Copies of regulations as evidence

In proceedings for violations of this act, copies of any regulations of the State Highway Commissioner, when authenticated under his seal, shall be evidence in like manner and with equal effect as the originals.

COMMENT

This section is recommended for repeal. It is unnecessary because N.J.R.E. 902(d) makes certified copies of public documents self-authenticating and thus admissible.

45:9-20. Certificates of records of board as to issuance of licenses

The secretary of the board whenever requested so to do, shall certify over the seal of the board whether the records kept by the board show or fail to show the issuance of a license to practice medicine and surgery or any branch thereof, osteopathy, midwifery, chiropody or any other profession or business, the practice of which may be licensed by the board, or the issuance of any annual certificate of registration for such practice. The fee for such certificate shall be one dollar. Any such certificate, made on such request or made by such secretary for use in proceedings to which the board may be a party, shall be prima facie evidence of the facts therein stated.

COMMENT

This section is recommended for repeal. It is unnecessary because N.J.R.E. 902(d) makes certified copies of public documents self-authenticating and thus admissible.

48:12-3. Certified copies of certificates, surveys and documents as evidence

A certified copy of a certificate, survey or other document filed or recorded in the office of the secretary of state pursuant to this chapter shall be evidence in all courts and places of the certificate, survey or document and of the filing and recording thereof.

COMMENT

This section is recommended for repeal. It is unnecessary because N.J.R.E. 902(d) makes certified copies of public documents self-authenticating and thus admissible. This section is also inconsistent with N.J.S.A. 45:9-2, which gives rule making authority, including fees, to the board and its officers.

56:3-18. Certified copies of descriptions as evidence of filing and matters therein stated

A copy of the description mentioned in section 56:3-16 of this title, duly certified by the clerk of the county where the same has been filed, and a copy of the description filed with the secretary of state as provided by said section 56:3-16, duly certified by the secretary of state, shall be received as evidence of such filing and also of the matters therein stated in all courts and places.

COMMENT

This section is recommended for repeal. It is unnecessary because N.J.R.E. 902(d) makes certified copies of public documents self-authenticating and thus admissible.

The section listed below is recommended for amendment. The reason for the recommendation is given in the comment that follows the section.

2A:62A-11. Specimen taken in medically acceptable manner; affidavit

Any person taking a specimen pursuant to section 1 of this act shall, upon request, furnish to any law enforcement agency a certificate stating that the specimen was taken pursuant to section 1 of this act and in a medically acceptable manner. The certificate shall be signed under oath before a notary public or other person empowered to take oaths [and shall be admissible in any proceeding as evidence of the statements contained therein].

COMMENT

This section is recommended for amendment as indicated above. The amendment deletes the provision on admissibility of the certificate. Admissibility is governed by N.J.R.E. 803(c)(6) and 808. Under these rules, most certificates would be admissible but the few that are not prepared in the usual course of business or which contain opinions on difficult medical issues would not be admissible.