State of New Jersey

New Jersey Law Revision Commission

ANNUAL REPORT

2007

Report to the Legislature of the State of New Jersey
As provided by 1:12A-9.

(LRC 87-2007)

TABLE OF CONTENTS

I. MEMBERS AND STAFF 2

II. HISTORY AND PURPOSE 3

III. LEGISLATIVE SUMMARY 5

IV. FINAL REPORTS AND RECOMMENDATIONS

A. Common Interest Ownership 6
B. Criminal Code Causation 7
C. Land Use Law 8
D. Married Women's Property Acts 8
E. Residential Mortgage Satisfaction Act 9

V. TENTATIVE REPORTS

A. Title 39 10
B. Uniform Prudent Management of Institutional Funds Act 12
C. Adverse Possession 13
D. Unconstitutional Statute 14

VI. WORK IN PROGRESS

A. Title 44 – Poor Law 14
B. Construction Lien Law 15
C. Title 22A – Costs and Fees 17

VII. FINAL REPORTS PUBLISHED IN 2007

Common Interest Ownership ..... **Appendix A**
Criminal Code Causation ..... **Appendix B**
Land Use Law ..... **Appendix C**
Married Women's Property Acts ..... **Appendix D**
Residential Mortgage Satisfaction Act ..... **Appendix E**

VIII. TENTATIVE REPORTS PUBLISHED IN 2007

Uniform Prudent Management of Institutional Funds Act ..... **Appendix F**
Adverse Possession ..... **Appendix G**
Unconstitutional Statute ..... **Appendix H**
Title 39 ..... **Appendix I**

I. MEMBERS AND STAFF OF THE COMMISSION IN 2007

The members of the Commission are:

Vito A. Gagliardi, Jr., Chairman, Attorney-at-Law

Albert Burstein, Attorney-at-Law

Andrew O. Bunn, Attorney-at-Law

Hon. Sylvia Pressler, P.J.A.D., Retired

John Adler, Chairman, Senate Judiciary Committee, Ex officio

Linda R. Greenstein, Chairman, Assembly Judiciary Committee, Ex officio

Patrick Hobbs, Dean, Seton Hall Law School, Ex officio
Represented by **William Garland**, Professor of Law

Stuart Deutsch, Dean, Rutgers Law School – Newark, Ex officio
Represented by Associate Dean **Bernard Bell**

Rayman Solomon, Dean, Rutgers Law School - Camden, Ex officio,
Represented by **Grace Bertone**, Attorney-at-Law

The staff of the Commission is:

John M. Cannel, Executive Director

John J. A. Burke, Assistant Executive Director

Laura C. Tharney, Counsel

Marna L. Brown, Counsel

Judith Ungar, Counsel*

Jenene J. Hatchard, Administrative Assistant

Ksenia Takhistova, Law Student Intern

The New Jersey Uniform Law Commissioners are:

Barry Evenchick, Esq.

Joseph Donegan, Esq.

Daniel O'Hern, New Jersey Supreme Court, Retired

*Retired July 2007

II. HISTORY AND PURPOSE OF THE COMMISSION

New Jersey has a tradition of law revision. The first Law Revision Commission was established in 1925 and produced the Revised Statutes of 1937. The Legislature intended that the work of revision and codification continue after the enactment of the Revised Statutes, so the Law Revision Commission continued in operation until 1939. After that time, the functions of the Commission were transferred to a number of successor agencies, including the Legislative Counsel.[1]

In 1985, the Legislature enacted section 1:12A-1 *et seq*., the effective date of which was January 21, 1986. The new sections of the statute transferred the functions of statutory revision and codification to a newly created New Jersey Law Revision Commission.[2] The Commission began work in 1987 and, since that time, has filed 68 Reports with the Legislature, 35 of which have been enacted into law.

The statutory mandate of the Commission is to simplify, clarify and modernize New Jersey statutes. Pursuant to its obligations, the Commission conducts an ongoing review of the statutes to identify areas of the law that require revision. The scope of the revision performed by the Commission varies by project, and includes both modest changes such as the correction or removal of inconsistent, obsolete or redundant language, and more comprehensive modifications to select areas of the law.

---

[1] N.J.S. 52:11-61.

[2] The Law Revision Commission was created by L.1985, c.498, and charged with the duty to:

a. Conduct a continuous examination of the general and permanent statutory law of this State and the judicial decisions construing it for the purpose of discovering defects and anachronisms therein, and to prepare and submit to the Legislature, from time to time, legislative bills designed to

(1) Remedy the defects,

(2) Reconcile conflicting provisions found in the law, and

(3) Clarify confusing and excise redundant provisions found in the law.

b. Carry on a continuous revision of the general and permanent statute law of the State, in a manner so as to maintain the general and permanent statute law in revised, consolidated and simplified form under the general plan and classification of the Revised Statutes and the New Jersey Statutes;

c. Receive and consider suggestions and recommendations from the American Law Institute, the National Conference of Commissioners on Uniform State Laws, and other learned bodies and from judges, public officials, bar associations, members of the bar and from the public generally, for the improvement and modification of the general and permanent statutory law of the State, and to bring the law of this State, civil and criminal, and the administration thereof, into harmony with modern conceptions and conditions; and

d. Act in cooperation with the Legislative Counsel in the Office of Legislative Services, to effect improvements and modifications in the general and permanent statutory law pursuant to its duties set forth in this section, and submit to the Legislative Counsel and the Division for their examination such drafts of legislative bills as the commission shall deem necessary to effectuate the purposes of this section.

Before choosing an area of the law for revision, the Commission considers recommendations from the American Law Institute, the National Conference of Commissioners on Uniform State Laws, and other learned bodies and public officers. Once a project begins, the Commission extensively examines local law and practice, and the law of other jurisdictions. The Commission also consults, throughout the drafting process, with experts in the field, and seeks input from individuals and organizations familiar with the practical operation of the law and the impact of the existing statutes.

When the preliminary research and drafting is finished, the Commission issues a Tentative Report and makes it available to the public for comments. The Commission then reviews all the comments received, and incorporates them into the Tentative Report as necessary. When a revision is completed, a Final Report is prepared and submitted to the New Jersey Legislature for consideration.

The Commission's work has been published in law journals, cited by the New Jersey Courts, and used by law revision commissions in other jurisdictions.

The meetings of the Commission are open to the public and the Commission actively solicits public comment on its Tentative Reports, which are widely distributed to interested persons and groups. Since 1996, the Commission has maintained a website for the purpose of making its projects and Reports readily available to the public, now at *http://www.njlrc.org.*

III. LEGISLATIVE SUMMARY

Since it began work in 1987, the New Jersey Legislature has enacted 36 bills based upon the Final Reports and Recommendations of the New Jersey Law Revision Commission:

- Anatomical Gift Act (L.2001, c.87)
- Cemeteries (L.2003, c.261)
- Civil Actions – Service of Process (L.1999, c.319)
- Civil Penalty Enforcement Act (L.1999, c.274)
- Court Names (L.1991, c.119)
- Court Organization (L.1991, c.119)
- Criminal Law, Titles 2A and 24 (L.1999, c.90)
- Evidence (L.1999 c.319)
- Intestate Succession (L.2001, c.109)
- Juries (L.1995 c.44)
- Lost or Abandoned Property (L.1999, c.331)
- Material Witness (L.1994, c.126)
- Municipal Courts (L.1993, c.293)
- Parentage Act (L.1991, c.22)
- Recordation of Title Documents (L.1991, c.308)
- Repealers (L.1991, c.59, 93, 121, 148)
- Replevin (L.1995, c.263)
- School Background Checks (L.2007, c.82)
- Service of Process (L.1999 c.319)
- Statute of Frauds (L.1995, c.36)
- Surrogates (L.1999, c.70)
- Tax Court (L.1993, c.403)
- Title 45 –Professions (L.1999, c.403)
- Uniform Child Custody Jurisdiction and Enforcement Act (L.2004 c.147)
- Uniform Commercial Code 2A –Leases (L.1994, c.114)
- Uniform Commercial Code 3 – Negotiable Instruments (L.1995, c.28)
- Uniform Commercial Code 4 – Bank Deposits (L.1995, c.28)
- Uniform Commercial Code 4A – Funds Transfers (L.1994, c.114)
- Uniform Commercial Code 5 – Letters of Credit (L.1997, c.114)
- Uniform Commercial Code 8 – Investment Securities (L.1997, c.252)
- Uniform Commercial Code 9 – Secured Transactions (L.2001, c.117)
- Uniform Electronic Transactions Act (L.2001, c.116)
- Uniform Mediation Act (L.2004 c.157)

IV. FINAL REPORTS AND RECOMMENDATIONS

A Final Report contains the decision of the Commission on a particular area of the law. The Report contains an analysis of the subject, proposed statutory language and commentary. A Final Report is approved and adopted after the public has had an opportunity to comment on tentative drafts of the Report, and is then filed with the Legislature. After filing, the Commission and its staff work with the Legislature to draft the Report in bill form and to facilitate its enactment.

In 2007, the New Jersey Law Revision Commission published five Final Reports and Recommendations to the Legislature.

A. Common Interest Ownership

Four years ago, the Commission released a Report recommending a comprehensive revision of the law concerning condominiums and cooperatives. Neither that Report nor any other comprehensive proposal has been enacted. Revision of the law on common interest ownership communities, however, remains an important priority. A significant percentage of New Jersey residents now live in these communities and the law pertaining to them is insufficient to deal with problems that arise. The Commission decided, however, that 2007 was not the time to begin again to draft a comprehensive statute. First, the National Conference of Commissioners on Uniform State Laws (NCCUSL) was rewriting its Uniform Common Interest Ownership Act during that time, which draft should be reviewed before New Jersey either enacts the old uniform law or writes its own act. In addition, there has been controversy on many aspects of common interest ownership law, especially between representatives of the governing boards of communities and individual unit owners. In the absence of any real consensus on the substance of the law, it is more difficult for the Commission to make a meaningful contribution.

The Commission did, however, decide that certain critical issues required legislation and should not wait until a comprehensive law can be enacted. The Report released by the Commission addressed three issues related to common interest ownership communities that urgently require resolution. The first Commission proposal concerns

the right to transfer ownership of a unit. It is important both to unit owners and to the preservation of a free market for units that restrictions be limited to those that are important to the interests of the common interest community. The second Commission proposal protects the right of a unit owner to live in the owned unit. New Jersey has taken the lead in protecting tenants from eviction. There is no basis on which to afford a unit owner less protection. The Commission also proposed a limitation on the power of the community to regulate a unit owner's conduct in the owner's unit. A community has a legitimate interest in controlling behavior that takes place on common property or affects others in the community. However, the community should not be involved in controlling private behavior within a unit.

B. Criminal Code Causation

This project began in response to a call from a trial judge in Mercer County concerning section 2C:2-3, which addresses the causal relationship between an actor's conduct and the result of that conduct. The judge's concern was that subsections (c) and (e) of the current statute use the phrase "probable result" and that when either of these subsections is read to a jury, the jury is apt to conclude that only results that are *probable* are encompassed by the provision, meaning that any consequence that has a less than 50-50 chance of occurring is not a result for which the defendant can be held responsible.

In fact, the phrase "probable result" in the statutes does not have that meaning. A probable consequence is not a consequence that is more probable than not; it is one which is not too remote, accidental in its occurrence or too dependent on another's volitional act to have a just bearing on the defendant's culpability. Cases are consistent in supporting that interpretation. The clear judicial interpretation, however, does not obviate the problem. Instead, misinterpretation can be avoided by using ordinary words in accord with their ordinary meanings whenever possible. The courts have supplied a definition that uses relatively common English: not too remote, accidental in its occurrence or too dependent on another's volitional act to have a just bearing on the defendant's culpability. There is no reason not to use that phrase in place of the ambiguous, "probable result."

The Commission recommended an amendment to accomplish that result.

C. Land Use Law

The Commission's intent in this Report was not to change the law defining when a land use variance may be granted, but to clarify it. The grounds for a variance are explained in court decisions interpreting section 40:55D-70. Although the cases are clear, the statute is not. The Commission's proposal clarifies the language of the statute so that its meaning can be understood more easily. While clarity in statutory language is always a benefit, in the land use area it has an added importance because land use statutes are enforced by local officials, most of whom are not lawyers. Frequently, applicants for variances are not represented by counsel and it is unreasonable to expect them to search for and read case law in order to interpret the relevant statutes. The language of land use provisions must be straightforward enough to allow a landowner to know whether he or she has a claim for a variance and to allow a zoning official to enforce the law correctly and fairly. The Commission hopes that its Recommendation is a step in that direction.

D. Married Women's Property Acts

The Married Women's Property Acts comprise the bulk of chapter 2 of Title 37. These statutes were enacted between the mid-19th century and the early 20th century to alter the old common law rules that limited a married woman's legal capacity and power to own and control property. When enacted, the Married Women's Property Acts served a purpose. Under common law rules in the early 19th century, married women, as opposed to married men and unmarried women, had restricted legal and property rights. The Married Women's Property Acts changed those rules.

No longer a useful addition to the statute, the Married Women's Property Acts are now a demeaning relic that serves no current purpose. No one would now suggest that by marrying, a woman loses her rights to own, control and dispose of property. Whatever the accepted common law principles may have been 150 years ago, they are different

today. Moreover, Article 1, Paragraph 1 of the New Jersey Constitution guarantees all citizens liberty and equal protection, and civil rights statutes reinforce those guarantees. Those protections are inconsistent with the legal disabilities that law in the 19th century imposed on married women.

The repeal of the Married Women's Property Acts will have no substantive effect. The law treating married women as having the same capacity to control property as do others will be unchanged. The Commission recommends that the Legislature remove these statutes.

E. Residential Mortgage Satisfaction Act

The Commission began this project by considering the Uniform Residential Mortgage Satisfaction Act, which was promulgated by NCCUSL in 2004. While the Commission was working with the Uniform Law, the New Jersey Land Title Association presented an idea for improvement of the law based on an approach taken by the states of Minnesota and Illinois. The proposed approach is uniquely well designed for situations in which a piece of property is being sold or refinanced and the current mortgage must be satisfied. Under the proposal, the landowner requests a payoff statement and complies with its terms. The lawyer or title officer for the landowner then files an affidavit certifying that the mortgage has been paid. This "one touch" system allows a satisfaction agent to file an affidavit of satisfaction when the agent knows that the mortgage has been satisfied as required by the payoff statement. The agent can pay the mortgage at closing and immediately satisfy it of record, simplifying and expediting the settling of the matter.

The Commission proposal also allows affidavits to be filed as provided in the Uniform Act. These affidavits may be required where no payoff statement is provided, as when a mortgage was paid some time in the past but no record of satisfaction was filed.

The Commission made a number of changes to NCCUSL's Uniform Act. Provisions were added to apply the Act where a mortgage covers more than one parcel of property and partial payment will satisfy the mortgage as to one of the parcels. The Act was changed to allow not only the landowner or the landowner's agent, but *anyone* with a

mortgage or lien on the property to request a payoff statement. The draft provides a penalty for situations in which an unauthorized person requests one. The Commission also added a reference to cancellation of a mortgage by endorsement on the original. That method is simple and convenient, though unique to New Jersey. The proposal also substitutes the more common terms, "mortgage holder" and "mortgage" for the terms "secured creditor" and "security instrument" used in the Uniform Act. In addition, the Commission simplified and clarified provisions of the Uniform Act.

V. TENTATIVE REPORTS

A Tentative Report represents the first settled attempt of the Commission to revise an area of law. It is the product of lengthy deliberations, but it is not final. A Tentative Report is distributed to the general public for comment. The Commission considers these comments and amends its Report.

In 2007, the Commission published four Tentative Reports.

A. Title 39 - Motor Vehicles and Traffic Regulation

This substantial project that the Commission worked on for several years was released as a Tentative Report at the end of 2007. After initially considering sections of Title 39 in response to requests, the Commission determined that the more than 500 pages of statute that comprise Title 39 was an appropriate candidate for a comprehensive revision.

The basic statutory provisions concerning motor vehicles were drafted in the 1920's and there are statutory sections currently in effect that were enacted in every decade beginning in the 1920's. Periodic modifications and accretions over time have resulted in a collection of layered statutes containing overlapping, contradictory and obsolete provisions.

The scope of Title 39 is very broad. It includes registration and licensing requirements, motor vehicle equipment requirements, and numerous provisions regarding the regulation of traffic, including requirements pertaining to bicycles, roller skates,

horses and horse-drawn vehicles, snowmobiles, all terrain vehicles, machinery and equipment of unusual size or weight, pedestrians, the law of the road and right-of-way, traffic signals, accidents and reports, parking, highway and traffic signs, and the powers of municipal, county and state officials. Title 39 also includes provisions regarding automobile insurance, vehicle inspections, the purchase, sale and transfer of vehicles, abandoned and unclaimed vehicles, junk yards, driving schools and auto body repair facilities.

As a result of its scope, Title 39 has a significant impact on a large number of residents of the State of New Jersey, and on those who drive on the many roadways in this State. The Commission focused its efforts on improving the language, the structure and the accessibility of Title 39 so that those who are impacted by various provisions of the law can more readily locate and understand the requirements, responsibilities and restrictions imposed upon them.

The general goal of this revision was not to modify the substance of the law significantly, but to consolidate and, where appropriate, restructure the law, so that it is consistent, organized and accessible. There were, however, sections of the law where the substance was revised, including outdated and inconsistent penalty provisions. The modifications to the substance in that area, and in some others, were the result of input from the Motor Vehicle Commission, municipal court judges, attorneys who regularly practice in municipal court, police officers, and others whose work with Title 39 has afforded them the opportunity to identify the instances in which the current law does not adequately address the problems posed by its day-to-day application.

The project was released at the end of 2007 with a lengthy public comment period. The Commission was fortunate to receive informal comments during the pendency of the project and is hopeful that widely distributing the project in early 2008 will result in considerable public comment now that the entire draft is available on the Commission's website.

B. Uniform Prudent Management of Institutional Funds Act

In 2007, the Commission released its Tentative Report relating to Uniform Prudent Management of Institutional Funds Act. NCCUSL promulgated the "Uniform Prudent Management of Institutional Funds Act" (UPMIFA) in 2006 and recommended the Act for adoption in all states. UPMIFA replaces and updates the 1972 Uniform Management of Institutional Funds Act (UMIFA) that was adopted in 47 states, including the State of New Jersey, effective 1975, and codified at section 15:18 *et seq.*

At the time of the release of the Commission's Tentative Report, 13 states had adopted UPMIFA and bills were pending in eight additional legislatures.[3] The Commission reviewed and considered the Act and recommends that the Legislature enact the official text of the Act, without adopting the optional provision contained in section 4, subsection (d).[4]

Adoption of UPMIFA does not produce an adverse effect on New Jersey law. Case law in this area is sparse and the available cases reveal that adoption of the Act would provide greater clarity for the judiciary in this area of the law. New Jersey courts have considered three decisions related to UMIFA: *Midatlantic Nat. Bank v. Frank G. Thompson Foundation*, 170 N.J. Super. 128 (Ch. Div. 1979), *Johnson v. Johnson*, 212 N.J. Super. 368 (Ch. Div. 1986), and *In re Dickerson*, 193 N.J. Super. 353 (Ch. Div. 1983). These cases do not contradict, nor are they inconsistent with, any principle contained in UPMIFA. Consequently, adoption of the UPMIFA in New Jersey would not unsettle established law.

The New Jersey Law Revision Commission therefore recommends that the New Jersey Legislature repeal the Uniform Management of Institutional Funds Act and adopt the Official Text of the Uniform Prudent Management of Institutional Funds Act, without adopting the optional subsection (d) provision of section 4 and with select language amendments set forth in the draft submission.

---

[3] See NCCUSL at http://www.nccusl.org/Update/uniformact_factsheets/uniformacts-fs-upmifa.asp.

[4] Appendix I of the Tentative report contains the Official Text of the UPMIFA, with the deleted subsection (d) of section 4 marked by a strikethrough. Appendix II contains a NCCUSL developed comparison table of the two Acts.

C. Adverse Possession

This Report recommends a new statute to clarify the law concerning adverse possession and promote the stability of land titles in light of the New Jersey Supreme Court's decision in *J & M Land Co. v. First Union Bank*, 166 N.J. 493 (2001). That case held that under the current statutes governing adverse possession (2A:14-30 and 2A:14-31) a possessor is vested with title to real estate after 30 years' actual possession of the real estate, or, if the property consists of woodlands or uncultivated tracts, 60 years' possession. Two other statutes seem to conflict with sections 2A:14-30 and 2A:14-31. Section 2A:14-6 provides that every person with any right or title of entry into real estate must make such entry within 20 years after the right or title accrues. Under 2A:14-7, every action for real estate must be commenced within 20 years after the cause of action accrues. The Supreme Court in *J & M Land Co.* noted that the Legislature might choose to clarify the matter by enacting appropriate legislation.

The Commission addressed the issues by recommending the repeal of sections 2A:14-30, 2A:14-31, 2A:14-6, 2A:14-7 and 2A:14-8 and the enactment of a statute that provides that title to land may be acquired by an adverse possessor after 20 years in most cases. Under the proposed statute, once the applicable time period has expired, the record owner is not merely barred from attempting to recover possession; title then vests in the adverse possessor. Adoption of this provision would bring New Jersey's statutory scheme in line with that of most other states, in which the relevant time period for adverse possession is 20 years or less.

The Commission proposal also addressed the use of adverse possession against governmental entities. First, the statute codifies the holding of *Devins v. Borough of Bogota*, 124 N.J. 570 (1991) which held that municipal property not dedicated to a public purpose was subject to adverse possession.

In general, the Commission proposal also follows the common law rule exempting State property from the effect of adverse possession. However, one exception is made for riparian lands. That proposed provision allows persons who meet the requirements for adverse possession for 40 years and, in addition, have record title to

their property and have paid taxes on that property to establish good title. These requirements are more onerous than those ordinarily imposed for adverse possession, but they allow property owners who acquired property relying on a chain of title and who have paid taxes in the same way as other owners to establish ownership free of the State's tidelands claims.

D. Unconstitutional Statute

Section 18A:36-3 of the New Jersey Statutes requires public schools to display the American flag and for students to stand and recite the flag salute. The statute allows students with conscientious scruples against the pledge or salute to decline to participate, but it requires them to stand at attention during the ceremony. The requirement that a student stand was held unconstitutional by the United States Court of Appeals for the Third Circuit in *Lipp v. Morris,* 579 F.2d 834 (3rd Cir. 1978).

Although the provision has been unenforceable for approximately 30 years, it has never been removed from the statute. School officials who consult the statute may be led to believe that it is still the law and attempt to enforce it. That causes needless controversy. The Commission recommended that the unconstitutional provision be excised and drafted an amendment to 18A:36-3 to accomplish that result.

VI. WORK IN PROGRESS

A. Title 44 – Poor Law

Two main laws with confusingly similar names govern assistance to the needy in New Jersey.

One, the "Work First New Jersey" Act, 44:10-55 *et seq.*, resulted from the federal "Personal Responsibility and Work Opportunity Reconciliation Act of 1996," 42 U.S.C. section 601 *et seq.*, which established a federal block grant for temporary assistance for needy families and enabled the states to design their own welfare programs. This Act replaced earlier programs including: aid to families with dependent children, general

public assistance (GA), emergency assistance for recipients, and the Family Development Initiative. The two main relief programs established by this Act are Temporary Aid for Needy Families (TANF) and General Assistance (GA). TANF is the successor to the federally funded categorical programs; GA is the continuation of municipal general public assistance for those people who do not fit within the categorical programs.

The Work First New Jersey General Public Assistance Act, 44:8-107 *et seq.,* the second main law, replaced the State's General Public Assistance Law of 1947. The existing statutory language obfuscates the relationship between the two "Work First" laws. The Work First New Jersey General Public Assistance Act seems to establish a general assistance program to "needy, single adults and couples without dependent children." In fact, the Act serves only to provide for municipal governance of the General Assistance program established by the other "Work First" Act. A municipality may choose either to run the program itself or to cede authority to the county. In current practice, administration of the program is equally divided between municipal and county governance. The TANF program is administered by the county.

Much of the difficulty with the current statutory scheme results from the fact that many of the statutes in the earlier chapters of the Title were enacted in the 19th century. Others date from the 1920's and before. Archaic in substance and in style, they do not reflect current reality and practice. It appears that as times and welfare programs changed, very little of the old law was repealed.

Commission staff has spent many days in consultation with welfare professionals to produce a draft of a modern, comprehensive, clear welfare law. The Commission drafted provisions that clearly establish the programs operating in New Jersey and remove the ambiguities and anachronisms of the current statutes, and it is anticipated that work on this project will be completed early in 2008.

B. Construction Lien Law

This project was begun in response to concerns from construction industry attorneys that the Construction Lien Law, sections 2A:44-1 to 38, was ambiguous and

had led to inconsistent appellate decisions. The Commission learned that contractors and subcontractors attempting to invoke the law, as well as judges and arbitrators responsible for implementing it, found the law confusing and unclear.

The Construction Lien Law became effective in 1994, replacing the old Mechanic's Lien Law, which, up until that time, had applied to non-public construction projects. The purpose of the statute is twofold: to enable private project contractors, subcontractors and suppliers to secure payment for their labor and materials by a straightforward lien filing process, and to prevent the double payment by property owners for the same work or supplies. Application of the law has been problematic, however, because key terms in the current law are not precisely defined and some provisions are difficult to understand.

One prominent example concerns the definition of "residential construction contract." With the advent of multi-use construction projects as well as multi-unit dwelling construction projects, the current definition of "residential construction contract" is ambiguous. Since certain provisions of the lien law only pertain to residential construction contracts, the definition must be made more precise and should reflect recent case law. The need for statutory revision is also apparent upon review of court decisions that struggle with application of the law's lien fund provisions. The current law's formula for calculation of the lien fund is difficult to apply, especially where the contractor has ceased working on the construction project, having gone out of business or filed for bankruptcy, prior to contract completion.

The Commission made progress on the Construction Lien Law project in late 2007, and it is anticipated that the project will be completed and released to the public as a Tentative Report in the spring of 2008.

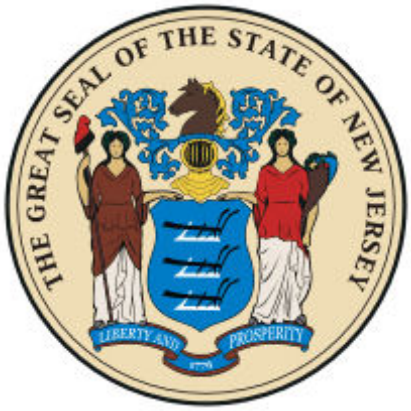
C. Title 22A - Costs and Fees

Title 22A contains, in sections 22A:1 and 22A:2, the general fees pertaining to civil actions and probate actions, in sections 22A:3, the general fees pertaining to criminal actions, and, in 22A:4 other provisions regarding various fees and the disposition of fees.

The updating of this Title has been inconsistent. Certain sections of the Title, the filing fees for the Courts and the County Clerks, for example, have remained relatively current. Other sections, including those pertaining to the service of subpoenas and the costs awarded in various courts, have not been updated and may be appropriate candidates for removal from the statute. One example is the mileage reimbursement rate, which, in New Jersey, is still $0.04/mile. If the sections that have not been updated since 1953 are to remain a part of the statute, then it is appropriate to update them to include rational fees and current terminology.

Some of the sections included in the present statute have been proposed for removal as anachronistic, others have been reorganized in an effort to develop a flow from the inception of an action through its conclusion.

A Tentative Report is expected on this project in mid-2008.



STATE OF NEW JERSEY

NEW JERSEY LAW REVISION COMMISSION

FINAL REPORT

Relating to

ISSUES CONCERNING COMMON INTEREST OWNERSHIP COMMUNITIES

October, 2007

John M. Cannel, Esq., Executive Director
NEW JERSEY LAW REVISION COMMISSION
153 Halsey Street, 7th Fl., Box 47016
Newark, New Jersey 07101
973-648-4575
(Fax) 973-648-3123
Email: njlrc@njlrc.org

ISSUES CONCERNING COMMON INTEREST OWNERSHIP COMMUNITIES

Four years ago, the Law Revision Commission released a report recommending a comprehensive revision of the law relating to condominiums and cooperatives. The Legislature considered that report, the Uniform Common Interest Ownership Act (on which the Commission recommendation was based) and other proposals on several occasions during the last few years. None of the comprehensive proposals has been enacted. Revision of the law on common interest ownership communities remains an important priority; a significant percentage of New Jersey residents now live in these communities and the law regulating them is insufficient to deal with problems that arise.

However, the Commission has decided that this is not the time to begin again writing a comprehensive statute. First, the National Conference of Commissioners on Uniform State Laws (NCCUSL) has just begun a project to rewrite its Uniform Common Interest Ownership Act. The NCCUSL product should be reviewed before New Jersey either enacts the old uniform law or writes its own act. In addition, there has been controversy on many aspects of common interest ownership law, especially between representatives of the governing boards of communities and individual unit owners. In the absence of a developed consensus on the substance of the law it is harder for the Commission to make a meaningful contribution.

The Commission decided that there were a few critical issues that require legislation that should not wait until a comprehensive law can be enacted. This Report addresses three issues related to common interest ownership communities. The first is the right to transfer ownership of a unit. Common law has always favored free alienability of real property and disfavored restrictions on transfer. It is important both to unit owners and to the preservation of a free market in units that restrictions be limited to those that are important to the interests of the common interest community.

The second Commission proposal protects the right of a unit owner to live in his unit. New Jersey has taken the lead in protecting tenants from eviction. There is no basis to afford a unit owner less protection. If a landlord should be limited in the bases for eviction of a tenant, a community should be limited similarly in removing a unit owner. A unit owner has all of the interests of a tenant and an additional one, ownership of the unit.

The Commission also recommends a provision limiting the power of the community to regulate a unit owner's conduct in his own unit. A community has a legitimate interest in controlling behavior that takes place on common property or affects others in the community. However, the community should not be involved in controlling private behavior within a unit. In a sense, a common interest community functions like a new kind of governmental unit. Just as there are limits as to what a municipality may

regulate, there must be limits on the power of common interest communities. The limits must be based on a balance between the needs of the community as a whole and the legitimate expectations of unit owners.

Restrictions on transfers of ownership and use of units

A common interest property may not restrict the transfer of ownership or lease of a unit except that the master deed or bylaws may:

a. In a cooperative, restrict transfer of ownership of units to satisfy objective, generally applicable criteria to assure that owners are able to meet financial responsibility related to ownership;

b. Restrict leasing to meet requirements that a certain percentage of units be owner occupied if that is necessary to satisfy the requirements of institutions that regularly lend money secured by first mortgages on units in common interest properties or regularly purchase those mortgages;

c. Require certification of a handicap to comply with the purposes of a common interest property established by the master deed as primarily for handicapped persons;

d. Establish a minimum age limit to comply with the purposes of a common interest property established by the master deed as primarily for persons and family members meeting the age requirements of the Federal Fair Housing Act; and

e. Limit transfers to the extent required by State or Federal law.

COMMENT

This section was part of the Commission's 2001 report. It has exceptions to allow cooperatives' ability to enforce financial standards, and to meet the requirements of various federal programs.

Removal of a unit owner

a. A unit owner shall not be removed from a unit in a common interest property except by an ejectment action brought in Superior Court. The Court shall not order the removal of a unit owner from a unit used for residential purposes in an action brought by the management of a common interest property unless the master deed or bylaws provides for removal and one of the following grounds as good cause is established:

(1) The unit owner has failed to pay a judgment for delinquent maintenance fees and assessments due under the master deed or bylaws of the common interest property within 30 days after receiving notice of the entry of the judgment.

(2) The unit owner has willfully or by reason of gross negligence caused or allowed destruction or substantial damage or injury to common elements or other units.

(3) Subject to subsection (c), after written notice to cease, the unit owner, or another person residing in the unit, has continued to substantially impair the peace and quiet of other occupants of the common interest property.

(4) Subject to subsection (c), after written notice to cease, the unit owner, or another person occupying the unit, has continued to substantially violate any of the common interest property's rules and regulations governing the premises, provided the rules and regulations:

A) are reasonable,

B) were in effect before the unit owner acquired the unit or the unit owner was notified of them in writing,

C) have been enforced consistently.

(5) The common interest property is being terminated in accordance with law.

b. A court order that finds good cause to remove a unit owner:

(1) shall order removal of the unit owner only when other relief would be inadequate to protect the rights of other unit owners;

(2) shall protect the rights of co-owners of the unit from which a unit owner is to be removed,

(3) shall allow reasonable opportunity for the unit owner removed to sell or lease the unit, and

c. if actions of a resident of the unit other than a unit owner are the basis for the ground for removal, instead of ordering removal of the unit owner, shall require the unit owner to pursue all reasonable means to remove the resident.

COMMENT

Subsection (a) is based on relevant portions of 2A:18-61.1 which governs the eviction of tenants from leased premises. Unlike 2A:18-61.1, there is no explicit provision making particular crimes a basis for removal. The commission of crimes in the common interest property or affecting it or other residents would be included in other grounds for removal and any list of specific crimes would fail to include some that should be grounds for removal.

Subsection (b) is new. It is intended to provide extra protections necessary for the ownership rights of the person removed and that person's co-owners.

Regulation of behavior in, or occupancy of, units.

a. The master deed or bylaws of a common interest property may regulate only such behavior in or occupancy of units as may impair the use and enjoyment of other units or the common elements by other unit owners. A copy of regulations on behavior in or occupancy of units shall be provided to any person who enters into a contract to buy a unit.

b. A common interest property may not impose a regulation by amendment to the master deed, bylaws or rules, without reasonable accommodation for practices and uses by unit owners that were permitted at the time the unit owners acquired their units.

c. Any rule or regulation governing behavior in or occupancy of units shall be included in the master deed or bylaws.

COMMENT

This section was part of the 2001 Commission Report. It allows an association to regulate use and behavior in units but restricts the subject of regulations and requires that new regulations affecting established uses accommodate those uses.

Common interest property defined.

A common interest property shall include a condominium and a cooperative.

STATE OF NEW JERSEY

N J L R C

NEW JERSEY LAW REVISION COMMISSION

FINAL REPORT

relating to

CRIMINAL CODE CAUSATION

November 2007

John M. Cannel, Esq., Executive Director
NEW JERSEY LAW REVISION COMMISSION
153 Halsey Street, 7th Fl., Box 47016
Newark, New Jersey 07101
973-648-4575
(Fax) 973-648-3123
Email: njlrc@njlrc.org

CRIMINAL CODE CAUSATION

Introduction

This project was begun in response to a call from a trial judge in Mercer County concerning 2C:2-3. Causal Relationship Between Conduct and Result; Divergence Between Result Designed, Contemplated or Risked and Actual Results. The judge's concern was that subsections (c) and (e) use the phrase, "probable result." When either of these subsections is read to a jury, the jury is apt to conclude that only results that are probable are encompassed by the provision and that any consequence that has a less than 50-50 chance of occurring is not a result for which the defendant can be held responsible.

In fact, the words "probable result" in the statutes do not have that meaning. A probable consequence is not a consequence that is more probable than not; it is one which is not too remote, accidental in its occurrence or too dependent on another's volitional act to have a just bearing on the defendant's culpability. Cannel, Criminal Code Annotated (Gann Law Books 2006), p 123. Cases are consistent in supporting that interpretation. *See e.g. State v. Martin*, 119 *N.J.* 2, 33 (1990); *State v. Green*, 318 *N.J. Super*. 361, 374 (App. Div. 1999) *aff'd o.b.* 163 *N.J.* 140 (2000). *State v. McClain*, 263 *N.J. Super*. 488 (App. Div.) *certif. den*. 134 *N.J.* 477 (1993); *State v. Smith*, 210 *N.J. Super*. 43 (App. Div.) *certif. den*. 105 *N.J.* 582 (1986).

The clear judicial interpretation does not obviate the problem. The common definition of "probable" is more limited than the judicial definition. The usual synonym for the word is "likely." *Webster's Third International Dictionary*, Merriam-Webster Inc. 1986. Jury members, when they hear "probable result", may use the usual English language definition of the phrase and apply the wrong standard. The problem of misinterpretation can be avoided by using ordinary words in accord with their ordinary meanings whenever possible. The courts have supplied a definition that is in relatively common English: not too remote, accidental in its occurrence or too dependent on another's volitional act to have a just bearing on the defendant's culpability. *State v. Martin*, 119 *N.J.* 2, 33 (1990). There is no reason not to use that phrase in place of the ambiguous, "probable result." The following amendment will accomplish that result.

2C:2-3. Causal Relationship Between Conduct and Result; Divergence Between Result Designed, Contemplated or Risked and Actual Results.

a. Conduct is the cause of a result when:

(1) It is an antecedent but for which the result in question would not have occurred; and

(2) The relationship between the conduct and result satisfies any additional causal requirements imposed by the code or by the law defining the offense.

b. When the offense requires that the defendant purposely or knowingly cause a particular result, the actual result must be within the design or contemplation, as the case may be, of the actor, or, if not, the actual result must involve the same kind of injury or harm as that designed or contemplated and not be too remote, accidental in its occurrence, or dependent on another's volitional act to have a just bearing on the actor's liability or on the gravity of his offense.

c. (1) When the offense requires that the defendant recklessly cause a particular result, the actual result must be within the risk of which the actor is aware or, if not, the actual result must involve the same kind of injury or harm as the result within the risk of which the actor is aware and must be reasonably foreseeable and not be too remote, accidental in its occurrence, or dependent on another's volitional act to have a just bearing on the actor's liability or on the gravity of his offense.

(2) When the offense requires that the defendant criminally negligently cause a particular result, the actual result must be within the risk of which the actor should be aware, or, if not, the actual result must involve the same kind of injury or harm as the result within the risk of which the actor should be aware and must be reasonably foreseeable and not be too remote, accidental in its occurrence, or dependent on another's volitional act to have a just bearing on the actor's liability or on the gravity of his offense.

d. A defendant shall not be relieved of responsibility for causing a result if the only difference between what actually occurred and what was designed contemplated or risked is that a different person or property was injured or affected or that a less serious or less extensive injury or harm occurred.

e. When causing a particular result is a material element of an offense for which absolute liability is imposed by law, the element is not established unless the actual result is reasonably foreseeable and not too remote, accidental in its occurrence or too dependent on another's volitional act to have a just bearing on the defendant's culpability.

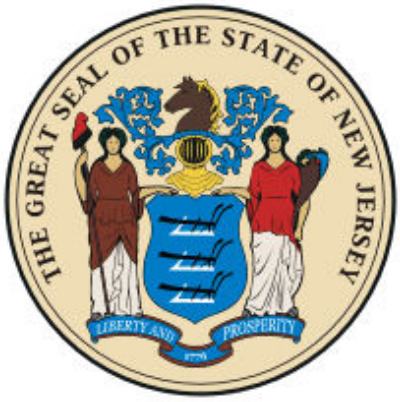
COMMENT

The amendment to subsection (c) removes the ambiguous phrase, "probable result." The judicially accepted definition is already in the subsection and does not need to be added. The phrase "reasonably foreseeable" has been added to strengthen the definition. As the Supreme Court explained in *State v. Martin*, 119 *N.J.* 2, 30-31 (1990), a probable result is one that is "reasonably foreseeable."

For simplicity and clarity, subsection (c) has been divided into two parts. Currently, the subsection concerns both charges based on recklessness and charges based on criminal negligence. Since the actual result must be judged against the risk that forms the basis of the defendant's culpability (see 2C:2-2(b) (3) and (4)) it is important to distinguish between the kinds of risks that support charges involving recklessness and those that support charges involving negligence. Even though it requires repeating much of the language, it is easier to make this distinction without confusion by dividing the subsection to clarify that the actual result must be judged against the risk that forms the basis of the defendant's culpability.

The amendment to subsection (e) substitutes the judicially approved definition of "probable result" for the phrase itself. The phrase "reasonably foreseeable" has been

added to this subsection as well to strengthen the definition. Again see *State v. Martin*, 119 *N.J.* at 30-31.



STATE OF NEW JERSEY

NEW JERSEY LAW REVISION COMMISSION

FINAL REPORT

Relating to

LAND USE LAW

October, 2007

John M. Cannel, Esq., Executive Director
NEW JERSEY LAW REVISION COMMISSION
153 Halsey Street, 7th Fl., Box 47016
Newark, New Jersey 07101
973-648-4575
(Fax) 973-648-3123
Email: njlrc@njlrc.org

Land Use Variances

Introduction

The Commission's intent in this report is not to change the law defining when a land use variance may be granted but to clarify it. The grounds for a variance are explained in court decisions interpreting 40:55D-70. While the cases are clear, the statute is not. This proposal clarifies the language of the statute so that its meaning can be understood more easily. Clarity in statutory language is always a benefit. However, here clarity has an added importance. Land use statutes are enforced by local officials most of who are not lawyers. Frequently, counsel does not represent the applicants for variances. It is unreasonable to expect these people to read court cases to interpret the law. The language of these provisions must be straightforward enough to allow a landowner to know whether he has a claim for a variance and to allow a zoning official to enforce the law correctly and fairly. The Commission hopes that this recommendation is a step in that direction.

40:55D-70. Powers

The board of adjustment shall have the power to:

a. Hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision or refusal made by an administrative officer based on or made in the enforcement of the zoning ordinance;

b. Hear and decide requests for interpretation of the zoning map or ordinance or for decisions upon other special questions upon which such board is authorized to pass by any zoning or official map ordinance, in accordance with this act;

c. Grant a variance from the strict application of a zoning regulation that prescribes the size or configuration of a lot, the size of improvements, other bulk requirements, or the placement of improvements on the lot, Provided relief can be granted without substantial impairment of the zone plan and zoning ordinance, except as otherwise provided by subsection d, and only in the following circumstances:

(1) if strict application would result in exceptional practical difficulties or undue burden for the applicant by reason of the exceptional narrowness, shallowness or shape of a specific piece of property; topographic conditions or physical features uniquely affecting a specific piece of property; or circumstances uniquely affecting a specific piece of property or the structures lawfully on it; or

(2) if the grant of the variance would promote any of the purposes of zoning as enumerated by N.J.S. 40:55-2, and the benefits of the variance would substantially outweigh any detriment to the purposes of the zoning regulation.

A variance under subsection (c) shall not be granted if the proposed development requires approval by the planning board of a development in conjunction with which the planning board has the power to review a request for a variance pursuant to N.J.S. 40:55D-47a.

An application for multiple variances, none of which is subject to subsection d, may be granted under this subsection.

(d). grant a variance provided it can be granted without substantial impairment of the zone plan and zoning ordinance, and the benefits of the variance would substantially outweigh any detriment to the purposes of the zoning regulation, and either the proposed use is inherently beneficial or would promote any of the purposes of zoning as enumerated by N.J.S. 40:55D-2, for the purpose of permitting:

(1) a use or principal structure in a district restricted against that use or principal structure;

(2) expansion of a nonconforming use;

(3) deviation from a standard prescribed for a conditional use;

(4) an increase in permitted floor area ratio as defined by N.J.S. 40:55D-4;

(5) an increase in permitted density as defined by N.J.S. 40:55D-4, except that a variance pursuant to subsection c may be granted to permit a detached one- or two-dwelling on either an isolated undersized lot or an undersized lot resulting from a minor subdivision; or

(6) the height of a principal structure which exceeds by ten feet or ten percent of the maximum height permitted in the district for a principal structure.

A variance under subsection (d) shall be granted only upon the affirmative vote of at least five members of a municipal board or two-thirds of the full authorized membership of a regional board.

e. In respect to any airport safety zones delineated under the "Air Safety and Zoning Act of 1983," 6:1-80 et seq., no variance or other relief may be granted under the terms of this section, permitting the creation or establishment of a nonconforming use which would be prohibited under standards promulgated pursuant to that act, except upon issuance of a permit by the Commissioner of Transportation. An application under this section may be referred to any appropriate person or agency for its report; provided that such reference shall not extend the period of time within which the zoning board of adjustment shall act.

COMMENT

Subsections (c) and (d) have been completely rewritten. While the wording of these subsections is not identical to their sources, the changes are intended to clarify the meanings of the subsections not to change them. Proposed subsections (e) and (f) are new only in form; they are substantially identical to the material currently at the end of the section after the definitions of the grounds for variances.

STATE OF NEW JERSEY

N J L R C

NEW JERSEY LAW REVISION COMMISSION

FINAL REPORT

Relating to

MARRIED WOMAN'S PROPERTY ACTS

June, 2007

John M. Cannel, Esq., Executive Director
NEW JERSEY LAW REVISION COMMISSION
153 Halsey Street, 7th Fl., Box 47016
Newark, New Jersey 07101
973-648-4575
(Fax)973-648-3123
email: njlrc@njlrc.org
web site: http://www.lawrev.state.nj.us

MARRIED WOMEN'S PROPERTY ACTS

Introduction

The married women's property acts comprise the bulk of Chapter 2 of Title 37. We recommend their repeal.

These statutes were enacted between the mid 19th century and the early 20th century to alter the old common law rules that limited a married woman's legal capacity and power to own and control property. When enacted, the married women's property acts served a purpose. Under common law rules in the early 19th century, married women, as opposed to married men and unmarried women had restricted legal and property rights. The married women's property acts changed those rules.

The married women's property acts now seem to be a demeaning relic. These statutes serve no current purpose; no one would now suggest that by marrying, a woman loses her rights to own, control and dispose of property. Whatever the accepted common law principles may have been 150 years ago, they are different today. The common law has been affected by changes in society and practice. No court would find that the common law requires the kind of discrimination that was accepted in the 19th century.

Moreover, Article 1, Paragraph 1 of the New Jersey Constitution guarantees all citizens liberty and equal protection. *See e.g,. Lewis v. Harris* 188 *N.J.* 415 (2006). Civil rights statutes reinforce those guarantees. *See e.g., N.J.S.* 10:1-1, 10:1-2 and 10:5-4. Those protections are inconsistent with the legal disabilities that law in the 19th century imposed on married women. The Constitution would prevent any court from holding that those disabilities were revived by the repeal of the Married Women's Property Acts.

The repeal of the married women's property acts will have no substantive effect. The law treating married women as having the same capacity to control property as others will be unchanged. The repeal will just remove a part of the New Jersey Statutes that is useless and demeaning.

The sections recommended for repeal are:

37:2-1. Married woman as executrix, administratrix, guardian or trustee; sales and conveyances of real estate as such

A married woman may be an executrix, administratrix, guardian or trustee, as if she were a feme sole. If a woman shall marry after her appointment as executrix, administratrix, guardian or trustee, her authority as such fiduciary shall not be extinguished or affected by such marriage, but shall continue as if she were a feme sole.

Any married woman, having power to sell, or having title to real estate as executrix, administratrix, trustee or guardian, either alone or in conjunction with any other person or persons, under any will or other instrument or appointment whatsoever, or acquiring title to real estate as such executrix, administratrix, trustee or guardian under authority of law, may sign, seal, execute, acknowledge and deliver all deeds and

conveyances of such real estate, without any order of court and without joining her husband therein, in the same manner as if she were a feme sole, and such deeds and conveyances shall vest in the purchaser of such real estate as good and valid a title thereto as if such executrix, administratrix, trustee or guardian were a feme sole.

The proceeds of any sale by a married woman as executrix or administratrix, guardian or trustee pursuant to the authority conferred by this section shall, by her, be accounted for and paid over as other moneys belonging to the estate in her hands.

37:2-2. Married woman may make will

Any will or testament, made in due form of law by a married woman above the age of twenty-one years, disposing of any real or personal property, shall be as valid and effectual in law as if she were, at the time of the making thereof, and at the time of her death, an unmarried woman. Nothing herein contained shall be so construed as to authorize any married woman to dispose, by will or testament, of any interest or estate in real property to which her husband would be, at her death, entitled by law, but such interest or estate shall remain and vest in the husband in the same manner as if such will had not been made.

37:2-3. Domicile of married woman

The domicile of a married woman shall be established by the same facts and rules of law as that of any other person for the purposes of voting, office holding, testacy, intestacy, jury service and taxation.

37:2-4. Antenuptial contracts

All contracts made between persons in contemplation of marriage shall remain in full force after such marriage takes place.

37:2-5. Right of husband and wife to contract with or sue each other

Nothing in this chapter contained shall enable a husband or wife to contract with or to sue each other, except as heretofore, and except as authorized by this chapter.

37:2-6. Actions or suits by or against married woman without joining husband

A married woman may sue or be sued without joining her husband, in any case whatsoever in which he would not be a necessary party if he were not her husband.

37:2-7. Marriage of female party not to abate action

If a female party to an action in any court of this state marries after action brought, the action shall not abate by reason thereof, but shall proceed to final judgment in the name of the female as plaintiff or as defendant, as the case may be, notwithstanding such marriage.

37:2-8. Married woman solely responsible for her torts

For all torts committed by a married woman, damages may be recovered from her alone, and her husband shall not be responsible therefore, except in cases where he would be jointly responsible with her if the marriage did not exist.

37:2-9. Action by married woman for torts without joining husband

Any married woman may maintain an action in her own name, without joining her husband therein, for all torts committed against her, or her separate property, in the same manner as she lawfully might if a feme sole and the nonjoinder of the husband shall not be pleaded in any such action. In any such action the husband may join his claim for any damages he may have sustained in connection with or growing out of the injury for which his wife brings her action; but his failure to join shall not prevent him from maintaining a separate action for such damages.

This section shall not be so construed as to interfere with or take away any right of action provided by law for the torts mentioned herein.

Amended by L.1953, c. 34, p. 602, s. 4, eff. March 19, 1953.

37:2-10. Married woman's liability for debts contracted before or after marriage

A husband shall not be liable for the debts of his wife contracted before their marriage, or contracted by her, in her own name, after their marriage, but she shall be liable to be sued separately therefore in her own name, and any property belonging to her shall be liable to satisfy such debts, in the same manner as if she were a feme sole.

37:2-11. Judgments against married women; effect

Any judgment obtained against a married woman by virtue of this chapter shall be valid and effectual, and all property, real or personal, sold under an execution issued thereon, executed according to law, shall become vested in the purchaser as fully and effectually as if the judgment and execution were against an unmarried person; but no judgment against a married woman shall affect any estate, interest or right of her husband in her real property.

Amended by L.1953, c. 34, p. 602, s. 5, eff. March 19, 1953.

37:2-12. Property owned at time of marriage and property acquired thereafter

The real and personal property of a woman which she owns at the time of her marriage, and the real and personal property, and the rents, issues and profits thereof, of a married woman, which she receives or obtains in any manner whatever after her marriage, shall be her separate property as if she were a feme sole.

37:2-13. Wages and earnings

The wages and earnings of a married woman acquired or gained by her in any employment, occupation or trade since July fourth, one thousand eight hundred and fifty-

two, or acquired or gained by her prior thereto in any employment, occupation or trade carried on separately from her husband, and all investments of such wages, earnings, money or property shall be her separate property as if she were a feme sole. All work and labor performed by a married woman, from and after April third, one thousand nine hundred and twenty-eight, for third persons shall, unless there is an agreement on her part to the contrary, be deemed to be performed on her separate account.

37:2-14. Paraphernalia

The paraphernalia of a married woman, being the suitable ornaments and wearing apparel of a married woman, which have come to her through her husband during coverture, shall be her separate property as if she were a feme sole.

37:2-15. Separate property not subject to disposal of husband or liable for his debts

All property, things in action, or other rights or interests, which are by this chapter declared to be the separate property of a married woman, shall not be subject to the disposal of her husband nor liable for his debts.

37:2-16. Contracts of married woman without joinder or consent of husband

Any married woman shall have the right to bind herself by contract in the same manner and to the same extent as though she were unmarried, which contract shall be legal and obligatory, and may be enforced by and against such married woman in her own name and apart from her husband. Any contract relating to or affecting her estate, interest or right in her real property or that of her husband shall be valid without the joinder therein or consent thereto of her husband, but shall not affect any estate, interest or right of her husband in such real estate.

Amended by L.1953, c. 34, p. 602, s. 6, eff. March 19, 1953.

37:2-16.1. Partnership contracts with husband

Any married woman may contract with her husband alone or with her husband and any other person or persons for the formation of a partnership, a limited partnership or a partnership association, between or among them and may engage in, and carry on, business, as a general, or as a limited or special, partner, of any general or limited partnership or as a member of any partnership association, so formed, in the same manner and to the same extent as though she were unmarried, and may enter into contracts as such partner and shall be bound by contracts entered into by the other members of such partnership, limited partnership or partnership association, in the same manner and to the same extent as though she were unmarried. Any such contracts shall be legal and obligatory and may be enforced by and against such married woman, as though she were unmarried.

L.1945, c. 130, s. 1. Amended by L.1953, c. 34, p. 603, s. 7, eff. March 19, 1953.

37:2-16.2. Prior partnership contracts validated

Any contract heretofore made by, or on behalf of, any married woman as a partner with her husband alone or with her husband and any other person or persons shall be legal and obligatory and may be enforced by or against such married woman as though she were unmarried.

L.1945, c. 130, s. 2. Amended by L.1953, c. 34, s. 8, eff. March 19, 1953.

37:2-17. Execution by married woman of instruments affecting real property of self or husband without joinder or consent of husband

Any married woman may execute and deliver any instrument relating to or affecting her estate, interest or right in her real property or in that of her husband, with the same effect as if she were unmarried, and any such instrument shall be valid without the joinder therein or consent thereto of her husband; but no conveyance, deed, contract or act of such married woman shall affect any estate, interest or right of her husband in such property.

37:2-17.1. Covenants by married woman; effect

In any deed made after March twentieth, one thousand eight hundred and fifty-seven, by any married woman of full age, who joins with her husband in executing said deed, of any lands or of any estate therein, it shall be lawful for her to enter into any covenant as to the title of the lands thereby conveyed, or against encumbrances thereon, or warranting the same; provided, that such covenants, except so far as relates to land, or some interest therein owned by her in her own right, shall have no greater or other effect than to stop her and all persons claiming as her heirs, or by or through her in the same manner as if she were a single woman.

37:2-18. Conveyance of real estate between husband and wife; tenants by entirety

A married man may convey real estate or any interest therein directly to his wife, and a married woman may convey real estate or any interest therein directly to her husband. Every such conveyance of real estate or any interest therein, located in this State, heretofore or hereafter made, shall be valid and effective to convey the grantor's title and interest therein and thereto, whether both the grantor and grantee or either, respectively, shall have resided at the time of such conveyance within or without this State, and notwithstanding the wife or the husband, respectively, did not or does not join therein and acknowledge of the same as prescribed by law. Any such conveyance heretofore or hereafter made shall convey the entire estate and interest of a married man or married woman in lands held by such husband and wife as tenants by the entirety, including the right of survivorship; and any conveyance heretofore or hereafter made by a married man or married woman to himself or herself and spouse of any real estate held in fee in severalty by such married man or married woman shall be construed to vest an estate by the entirety in such husband and wife, in fee. Any such conveyance shall also release the inchoate or possible future estate by the curtsey or in dower of the husband or

wife, as the case may be, in the lands conveyed to the grantee, if so provided in such conveyance.

Amended by L.1947, c. 408, s. 1; L.1950, c. 221, s. 1; L.1953, c. 34, s. 9, eff. March 19, 1953.

37:2-18.1. Release of rights of curtsey or dower

A married man may relinquish or release to his wife his right of curtsey in any real estate whereof his wife is seized of an estate of inheritance, and a married woman may relinquish or release to her husband her right of dower in any real estate whereof her husband is seized of an estate of inheritance, by deed duly executed and acknowledged, in the manner provided by law for deeds to be recorded, or by deed conveying such estate of inheritance in said real estate by said husband to said wife or by said wife to said husband wherein said husband's right of curtsey or said wife's right of dower is specifically relinquished or released and thereafter said real estate may be conveyed, encumbered, devised, or otherwise disposed of, and shall descend, free and clear of any such right or estate of curtsey or dower, but said real estate may descend to said husband or widow, as the case may be, in case of the death of the wife or husband intestate, in accordance with law, notwithstanding such relinquishment or release.

L.1953, c. 352, s. 1. Amended by L.1954, c. 21, s. 1, eff. May 3, 1954.

37:2-19. Conveyances by married woman of record for five or more years

When any deed or conveyance of real estate in this state, heretofore or hereafter made, and which purports to convey any estate or interest of any married woman, shall, for a period of five years or more, have stood on record in any of the lawful and appropriate books of record in this state, such deed or conveyance shall, after the lapse of such period, and if otherwise good and valid in all other respects, be good, valid and effectual in law to convey the married woman's estate in such real estate, notwithstanding the absence of, or any informality, imperfection, uncertainty or defect in the acknowledgment or proof of such deed or conveyance, or of the certificate thereof, or any informality, imperfection, uncertainty or defect in or omission to attach a certificate of authority that the officer before whom such acknowledgment or proof was made, was, at the time of the taking of such acknowledgment or proof, authorized by the laws of the state, territory or district of which he was such officer to take acknowledgments or proofs of deeds.

37:2-20. Presumption of conveyance by widow of entire fee in real estate in certain cases

When the records disclose that the title to any real estate is vested partly in the husband, and partly in the husband and wife as tenants by the entirety, and the records further disclose a conveyance by the widow of the entire fee of the land, made after the death of the husband, there being no record of any grant or devise by the husband, or of his heirs, of his or their interest, if any, in such real estate, and such conveyance by the widow has been followed by possession by her grantee and successor in title, although

not adverse in character, it shall be conclusively presumed that such widow, at the time of such conveyance, was seized of an entire estate in fee, and such conveyance shall be and is hereby validated and confirmed as effectual in law.

This section shall apply only to cases where the conveyance by the widow shall have been recorded at least sixty years before any action begun by anyone claiming under the husband.

37:2-21. Payment to married woman living separate from husband of proceeds of real estate sold by order of court, free from claims of husband; procedure

Any married woman, whose interest in real estate acquired by descent, gift or devise, has been or may be sold by order or judgment of the Superior Court in any partition or other proceedings, and the proceeds of such sale have been or shall be placed in the custody of any court of this State, or of any officer thereof, and who shall be living in a state of separation from her husband, continued for three or more years, may apply to the Superior Court for an order directing the clerk of the court, or the person having the custody of such proceeds, to pay the same to her free and discharged of any right of curtsey or of any right, title or interest of her husband therein. The court, upon receiving satisfactory proof that such real estate was acquired as aforesaid, and that the applicant has been living separate and apart from her husband for three or more years next preceding such application, and notice of such application first having been given to the husband, as in the case of absent defendants or such other notice as the court may, by order, direct, may direct the clerk of the court or the person having the custody of such proceeds to pay the same, together with any accumulated interest thereon, directly to the applicant, free and discharged of any right, title or interest of her husband.

Amended by L.1953, c. 34, p. 604, s. 10, eff. March 19, 1953.

37:2-22. Order or judgment of court binding interest of married woman in property or authorizing assignment or conveyance thereof

Notwithstanding that a married woman is restrained from anticipation, the Superior Court may, if it thinks fit and it appears to the court to be for her benefit, by order or judgment and with her consent, bind her interest in any property or authorize her or her trustees to assign or convey the same.

Amended by L.1953, c. 34, p. 605, s. 11, eff. March 19, 1953.

37:2-23. Married woman legally separated from husband; power to convey, mortgage, lease or devise real property

Any married woman who is living in a state of separation from her husband, under and by virtue of the final judgment of any court, when such judgment is founded upon her application for such separation, may, at any time during the continuance of such separation, convey, mortgage and lease or devise any interest, estate or right that she may have in any real property, except such as came to her by gift, through or from her said husband, in the same manner and with the like effect as if she were sole and unmarried.

Amended by L.1953, c. 34, p. 605, s. 12, eff. March 19, 1953.

37:2-24. Husband legally separated from wife; power to convey, mortgage, lease or devise real property

Any married man who is living in a state of separation from his wife under and by virtue of the final judgment of any court, when such judgment is founded upon his application for such separation, may, at any time during the continuance of such separation, convey, mortgage, and lease, or devise any interest, estate or right that he may have in any real property, except such as came to him by gift through or from his said wife, in the same manner, and with like effect as if he were sole and unmarried.

Amended by L.1953, c. 34, p. 605, s. 13, eff. March 19, 1953.

37:2-25. Mental incompetency of husband; conveyance of real estate by wife under order of court; bar to rights of husband

In case any married woman owning lands situate within this State, shall desire to convey the same, but shall not be able to do so by reason of the lunacy or other mental incapacity of her husband to join with her in the execution of proper deeds of conveyance therefore, it shall be lawful for the Superior Court, in an action brought for that purpose, to direct that such married woman may convey the said lands by deed or deeds executed by herself, without the concurrence of her husband, which deed or deeds of conveyance shall convey the said lands free from any claim, estate or right of the husband of such married woman, and shall be an absolute bar to any right of curtsey therein, in case he shall survive her. The court may proceed in the action in a summary manner or otherwise.

Amended by L.1953, c. 34, p. 606, s. 14, eff. March 19, 1953.

37:2-26. Procedure on petition of wife for order authorizing conveyance; disposition of proceeds representing interest of husband

If in such an action, the court shall direct that such married woman may convey her lands as aforesaid, it shall ascertain the actual money value of the estate or interest of the husband in such lands, if any, by a calculation based upon the actual cash value of said lands, and upon the expectancy of life of the said husband and wife, in the manner and according to the rules now or hereafter in use in said court. The court shall direct that the value thereof shall be paid out of the purchase-money of the said lands by the purchaser to the committee or guardian of said lunatic or incapacitated husband, duly appointed by any competent court of this State or elsewhere, to be held by him as part of the estate of such husband, or if there be no such guardian or committee, then such payment shall be made to the clerk of the court. The court shall specifically direct how much money shall be so paid and to whom such payment shall be made by said purchaser.

Amended by L.1953, c. 34, p. 606, s. 15, eff. March 19, 1953.

37:2-27. "Convey" in sections 37:2-25 and 37:2-26 includes right to mortgage; decree

The word "convey" in sections 37:2-25 and 37:2-26 of this Title shall be so construed as to include the right to mortgage, and any decree, judgment or order of the Court of Chancery or of the Superior Court made after April eighth, one thousand nine hundred and three, pursuant to the provisions of said sections 37:2-25 and 37:2-26, and directing that a married woman may convey her land without the concurrence of her husband because of his lunacy or other mental incapacity, shall be so construed as to include the right to mortgage said premises.

Amended by L.1953, c. 34, p. 607, s. 16, eff. March 19, 1953.

37:2-28. Mental incompetency of husband; sale for reinvestment or exchange of real estate by wife; procedure in Superior Court; bar to rights of husband

In case any married woman owning lands situate within this State has sold or shall be desirous of selling the same, or any part thereof, for the purpose of investing the proceeds thereof in other lands in this State, or has exchanged or shall be desirous of exchanging the same, or any part thereof, for other lands of equal value in this State, but shall not be able to convey her said lands so sold or exchanged, or intended so to be, by reason of the inability of her husband, through lunacy or other mental incapacity, to join with her in the execution of proper deeds of conveyance therefore, it shall and may be lawful for the Superior Court in an action brought for that purpose to confirm or authorize such sale or exchange, and direct that such married woman may convey her lands so sold or exchanged by deed or deeds executed by herself, without the concurrence of her husband, which deed or deeds of conveyance shall convey her said lands free from any claim, estate or right of the husband of such married woman, and shall be an absolute bar to any right of curtsey therein in case he shall survive her. The court may proceed in the action in a summary manner or otherwise.

Amended by L.1953, c. 34, p. 607, s. 17, eff. March 19, 1953.

STATE OF NEW JERSEY

N J L R C

NEW JERSEY LAW REVISION COMMISSION

FINAL REPORT

Relating to

RESIDENTIAL MORTGAGE SATISFACTION ACT

January, 2007

John M. Cannel, Esq., Executive Director
NEW JERSEY LAW REVISION COMMISSION
153 Halsey Street, 7th Fl., Box 47016
Newark, New Jersey 07101
973-648-4575
(Fax) 973-648-3123
Email: njlrc@njlrc.org
Web site: http://www.njlrc.org

RESIDENTIAL MORTGAGE SATISFACTION ACT

Introduction

The Law Revision Commission began this project with consideration of the Uniform Residential Mortgage Satisfaction Act, which was promulgated by the National Conference of Commissioners on Uniform State Laws in 2004. That Act requires mortgage holders to provide payoff statements, to file a satisfaction of mortgage when the mortgage is paid, and provides a mechanism to clear title when a mortgage holder fails to file the satisfaction of mortgage. The Commission compared the Uniform Law to current New Jersey statutes and found certain advantages to the Uniform Law. While it is not identical to the Uniform Residential Mortgage Satisfaction Act, this report is based on that Act.

While the Commission was working with the Uniform Law, the New Jersey Land Title Association presented an idea for improvement of law based on an approach taken by the states of Minnesota and Illinois. This approach is uniquely well designed for situations where a piece of property is being sold or remortgaged and the current mortgage must be satisfied. The landowner requests a payoff statement and complies with its terms. The lawyer or title officer for the landowner then files an affidavit certifying that the mortgage has been paid. This "one touch" system allows a satisfaction agent to file an affidavit of satisfaction when he knows that the mortgage has been satisfied as required by the payoff statement. The agent can pay the mortgage at closing and immediately satisfy it of record, simplifying and expediting the settling of the matter.

The Commission proposal also allows affidavits to be filed as provided in the Uniform Act. Those affidavits may be required where no payoff statement is provided. Such situations include where the mortgage was paid sometime in the past but no record of satisfaction was filed.

The Commission made a number of other changes to the Uniform Act. Provisions were added to apply the act where a mortgage covers more than one parcel of property and partial payment will satisfy the mortgage as to a particular parcel. See Sections 2(11), 12(5) and 15. The act has been changed to allow, in addition to the landowner or his agent, anyone with a mortgage or lien on the property to request a payoff statement, but to provide a penalty where an unauthorized person requests one. See Sections 2(5), 4(a)(1) and 4(k).

The Commission also added a reference in Section 7(b) to cancellation of a mortgage by endorsement on the original. That method is simple and convenient, though unique to New Jersey. The proposal substitutes the more common terms, "mortgage holder" and "mortgage" for the terms "secured creditor" and "security instrument" used in the Uniform Law. The Commission also simplified and clarified provisions of the Uniform Law. While the resulting proposal is based on the Uniform Residential Mortgage Satisfaction Act, it is significantly different, and improved.

SECTION 1. SHORT TITLE.

This act may be cited as the Residential Mortgage Satisfaction Act.

COMMENT

This section is identical to Section 101 of the Uniform Act.

SECTION 2. DEFINITIONS.

In this act:

(1) "Address for giving notice" means the most recent address provided in a document by the intended recipient of notice to the person giving notice, unless the person giving notice knows of a more accurate address, in which case the term means that address.

(2) "Day" means calendar day, except that in computing a period of time of less than seven days, Saturday, Sunday and legal holidays shall be excluded.

(3) "Document" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(4) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(5) "Entitled person" means a person liable for payment or performance of the obligation secured by the real property described in a mortgage, the landowner, or any person with a recorded interest in the property.

(6) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(7) "Landowner" means a person that, before foreclosure, has the right of redemption in the real property described in a mortgage. The term does not include a person that holds only a lien on the real property.

(8) "Mortgage holder" means a person that holds or is the beneficiary of a mortgage or that is authorized to receive payments on behalf of a person that holds a mortgage. The term does not include a trustee under a security instrument.

(9) "Mortgage" means an agreement, however denominated, that creates or provides for an interest in residential real property to secure payment or performance of an obligation, whether or not it also creates or provides for a lien on personal property.

(10) "Notice" means a document containing information required under this act and signed by the person required to provide the information.

(11) "Payoff amount" means the sum necessary to satisfy a mortgage, or, if the payoff statement so provides, the amount necessary to release a portion of the property from the mortgage.

(12) "Payoff statement" means a document containing the information specified in Section 4(d).

(13) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(14) "Recording data" means book and page number or other document number that indicates where a document is recorded in the office of the county clerk or register of deeds.

(15) "Residential real property" means real property located in this state that is used primarily for personal, family, or household purposes and is improved by one to four dwelling units.

(16) "Sign" means, with present intent to authenticate or adopt a document:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the document an electronic sound, symbol, or process.

(17) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or possession subject to the jurisdiction of the United States.

(18) "Submit for recording" means to deliver, with required fees, a document sufficient to be recorded, to the appropriate county recording office.

COMMENT

Most of this section is substantively identical to Section 102 of the Uniform Act. Definition (17) ("Security interest") of the Uniform Law has been deleted because all uses of the phrase have been deleted. Definition (5) has been changed slightly to allow the holder of another mortgage on the property or an interest in it to protect his interests by obtaining a payoff statement. Definition (11) has been expanded to provide for situations where a mortgage is secured by several parcels and payment of a portion of the mortgage releases less than all parcels and allows them to be transferred free of the mortgage.

SECTION 3. NOTICE: MANNER OF GIVING AND EFFECTIVE DATE.

a. A person gives notice by:

(1) depositing it with the United States Postal Service with first-class postage paid or with a commercially reasonable delivery service with cost of delivery provided, properly addressed to the recipient's address for giving notice;

(2) sending it by facsimile transmission, electronic mail, or other electronic transmission to the recipient's address for giving notice, but only if the recipient agreed to receive notice in that manner; or

(3) causing it to be received at the address for giving notice within the time that it would have been received if given pursuant to paragraph (1).

b. Notice is effective:

(1) the day after it is deposited with a commercially reasonable delivery service for overnight delivery;

(2) three days after it is deposited with the United States Postal Service, first-class mail with postage prepaid, or with a commercially reasonable delivery service for delivery other than by overnight delivery;

(3) the day after it is given, if given pursuant to subsection (a)(2); or

(4) the day it is received, if given by a method other than as provided in subsection (a)(1) or (2).

c. A person need not use a method of giving notice that provides proof of receipt unless the provision directing giving notice specifically so provides.

COMMENT

Subsection (c) of Section 103 the Uniform Act as been deleted as recommended by the legislative note to the Uniform Act. Subsection (c) as it appears here is new; it is a clarification of the Uniform Act.

SECTION 4. PAYOFF STATEMENT: REQUEST AND CONTENT.

a. An entitled person, or an agent authorized by an entitled person to request a payoff statement, may give to the mortgage holder notice requesting a payoff statement for a specified payoff date not more than 30 days after the notice is given. The notice must contain:

(1) the entitled person's name, and if the person is not the landowner, the basis of the person's entitlement;

(2) if given by a person other than an entitled person, the name of the person giving notice and a statement that the person is an authorized agent of the entitled person;

(3) a direction whether the statement is to be sent to the entitled person or that person's authorized agent;

(4) the address to which the mortgage holder must send the statement; and

(5) sufficient information to enable the mortgage holder to identify the mortgage and the real property encumbered by it.

b. If notice under subsection (a) directs the mortgage holder to send the payoff statement to a person identified as an authorized agent of the entitled person, the mortgage holder must send the statement to the agent, unless the mortgage holder knows that the entitled person has not authorized the request.

c. (1) Within 10 days after the effective date of notice that complies with subsection (a), the mortgage holder shall issue a payoff statement and send it as directed by Section 3 for giving notice. A mortgage holder who sends a payoff statement to the entitled person or the authorized agent may not claim that the notice did not satisfy subsection (a).

(2) If the person to whom the notice is given once held an interest in the mortgage but has since transferred that interest, the person need not send a payoff statement but, within ten days, shall give notice of the transfer to the person to whom the payoff statement otherwise would have been sent, providing the name and address of the transferee.

d. A payoff statement must contain:

(1) the date on which it was prepared and the payoff amount as of that date, including the amount by type of each fee, charge, or other sum included within the payoff amount;

(2) the information reasonably necessary to calculate the payoff amount as of the requested payoff date, including the per diem interest amount; and

(3) the payment cutoff time, if any, the address or place where payment must be made, and any limitation as to the authorized method of payment.

e. A payoff statement may contain the amount of any fees authorized under this section not included in the payoff amount.

f. A mortgage holder may not qualify a payoff amount or state that it is subject to change before the payoff date unless the payoff statement provides information sufficient to permit the entitled person or the person's authorized agent to request an updated payoff amount in writing at no charge and to obtain that updated payoff amount during normal business hours on the payoff date or the immediately preceding business day.

g. A mortgage holder must provide upon request one payoff statement without charge during any six-month period. A mortgage holder may charge a fee of $25 for each additional payoff statement requested during that six-month period. However, a mortgage holder may not charge a fee for providing an updated payoff amount under subsection (f) or a corrected payoff statement.

h. Unless the mortgage provides otherwise, a mortgage holder is not required to send a payoff statement by means other than first-class mail. If the mortgage holder agrees to send a statement by another means, it may charge a reasonable fee for complying with the requested manner of delivery.

i. Except as otherwise provided in Section 8, if a mortgage holder to whom notice has been given pursuant to subsection (a) does not send a timely payoff statement that substantially complies with subsection (d) and the entitled person prevails in an action to enforce this act, the mortgage holder is liable to the entitled person for any actual damages caused by the failure or a penalty of $500, whichever is greater, but additional punitive damages shall not be allowed.

j. A request for a payoff statement may be combined with a notice of intent to submit for recording an affidavit of satisfaction of a mortgage.

k. If persons who know they are not entitled to request a payoff statement, request one and receive it, they are liable to the landowner for any actual damages caused ~~plus~~ or a penalty of $500, whichever is greater, but additional punitive damages shall not be allowed.

COMMENT

The section is substantially identical to Section 201 of the Uniform Law. The language added in subsection (a)(1) reflects the broadening of the class of those persons entitled to a payoff statement. See the definition of "entitled person." The addition of the word "additional" in subsection (i) is intended as a clarification. The last sentence of subsection (h) has been deleted as it duplicates the last sentence of subsection (g). New subsection (j) reflects Official Comment 4 to Section 302. New subsection (k) is intended to enforce the restriction on those persons entitled to a payoff statement.

SECTION 5. UNDERSTATED PAYOFF STATEMENT: CORRECTION; EFFECT.

a. If a mortgage holder determines that the payoff amount it provided in a payoff statement was understated, the mortgage holder may send a corrected payoff statement in the same manner as the original payoff statement was sent. If the entitled person or the person's authorized agent receives and has a reasonable opportunity to act upon a corrected payoff statement before making payment, the corrected statement supersedes an earlier statement.

b. A mortgage holder that sends a payoff statement containing an understated payoff amount may not deny the accuracy of the payoff amount as against any person that reasonably and detrimentally relies upon the understated payoff amount.

c. Except as provided by subsection (b), this act does not:

(1) affect the right of a mortgage holder to recover any sum that it did not include in a payoff amount from any person liable for payment of the mortgage; or

(2) limit any claim or defense under law.

COMMENT

The section is substantially identical to Section 202 of the Uniform Law.

SECTION 6. MORTGAGE HOLDER TO SUBMIT SATISFACTION FOR RECORDING; LIABILITY FOR FAILURE.

a. Except as provided in subsection (b), a mortgage holder shall submit for recording a satisfaction of a mortgage within 30 days after the mortgage holder receives full payment or performance of the mortgage. If a mortgage secures a line of credit or future advances, the mortgage is fully performed only if, in addition to full payment, the landowner has given notice requesting the mortgage holder to terminate the line of credit or containing a statement sufficient to terminate the effectiveness of the provision for future advances in the mortgage.

b. A mortgage holder is not required to submit a satisfaction of a mortgage when the person making payment has given notice as provided by section 4(j) that an affidavit of satisfaction of mortgage will be filed.

c. Except as otherwise provided in Section 8, a mortgage holder that is required to submit a satisfaction of a mortgage for recording and does not do so by the end of the

period specified in subsection (a) is liable to the landowner for any actual damages caused by the failure, but not punitive damages.

d. Except as otherwise provided in subsection (e) and in Section 8, a mortgage holder that is required to submit a satisfaction of a mortgage for recording and does not do so by the end of the period specified in subsection (a) is also liable to the landowner for any additional court costs and damages incurred or a penalty of $500, whichever is greater, if, after the expiration of the period specified in subsection (a):

(1) the landowner gives the mortgage holder notice, by any method that provides proof of receipt, demanding that the mortgage holder submit a satisfaction for recording; and

(2) the mortgage holder does not submit a satisfaction for recording within 30 days after receipt of the notice.

e. Subsection (d) does not apply if the mortgage holder received full payment or performance of the mortgage before the effective date of this act.

COMMENT

This section is substantively identical to Section 203 of the Uniform Law except for the addition of the final sentence of subsection (a). That additional language is necessary to implement the "one touch" system in which the satisfaction agent files an affidavit of satisfaction after paying the mortgage in compliance with the payoff statement.

SECTION 7. FORM AND EFFECT OF SATISFACTION.

A satisfaction of a mortgage shall be either:

a. a document that:

(1) identifies the parties to the mortgage, the property mortgaged and the recording data for the mortgage;

(2) states that the person signing the satisfaction is the mortgage holder;

(3) contains language terminating the effectiveness of the mortgage; and

(4) is signed and acknowledged by the mortgage holder; or

b. an endorsement:

(1) authorizing cancellation of the mortgage signed by the mortgage holder; and

(2) made on the original mortgage that bears on it the receipt given by the county recording officer at the time it was recorded.

COMMENT

Subsection (a) is derived from Section 204 of the Uniform Law. Subsection (b) allows the cancellation of mortgages by re-recording the original mortgage with an endorsement authorizing cancellation. That is derived from current statute, 46:18-5.1(a). Subsection (b) of the Uniform Law section required the recording officer to record satisfactions of mortgage. That subject is governed by other law and has been deleted.

SECTION 8. LIMITATION OF MORTGAGE HOLDER'S LIABILITY.

A mortgage holder is not liable under this act if the mortgage holder:

a. established a reasonable procedure to achieve compliance with its obligations under this act;

b. complied with that procedure in good faith; and

c. was unable to comply with its obligations because of circumstances beyond its control.

COMMENT

This section is substantively identical to Section 205 of the Uniform Law.

SATISFACTION BY AFFIDAVIT

SECTION 9. DEFINITION; ELIGIBILITY TO SERVE AS SATISFACTION AGENT; REGULATION OF SATISFACTION AGENTS.

a. "Title insurance company" means an organization authorized to conduct the business of insuring titles to real property in this state.

b. The following may serve as a satisfaction agent under this act:

(1) a title insurance company, acting directly or through an insurance producer licensed in the line of title insurance authorized to sign and submit for recording an affidavit of satisfaction; or

(2) an attorney at law licensed to practice law in this state.

COMMENT

In accordance with the legislative note appended to Section 301 of the Uniform Law, subsection (c) which allowed specification of others who could serve as satisfaction agents has been deleted. As a result, only title insurance agents and lawyers may file affidavits to clear title. That is current law.

SECTION 10. AFFIDAVIT OF SATISFACTION: NOTICE TO MORTGAGE HOLDER.

a. If a mortgage holder has not submitted for recording a satisfaction of a mortgage a satisfaction agent acting for, and with authority from, the landowner may give the mortgage holder notice that the satisfaction agent intends to submit for recording an affidavit of satisfaction of the mortgage. The notice shall include:

(1) the identity and mailing address of the satisfaction agent;

(2) identification of the mortgage for which a recorded satisfaction is sought, including the names of the original parties to, and the recording data for, the mortgage;

(3) a statement that the satisfaction agent has reasonable grounds to believe that:

(A) the real property described in the mortgage is residential real property;

(B) the person to whom notice is being given is the mortgage holder; and

(C) the mortgage holder has received satisfaction of all obligations secured by the mortgage;

(4) a statement that the satisfaction agent, acting with the authorization of the owner of the real property described in the mortgage, intends to sign and submit for recording an affidavit of satisfaction of the mortgage unless, within 30 days after the effective date of the notice:

(A) the mortgage holder submits a satisfaction of the mortgage for recording;

(B) the satisfaction agent receives from the mortgage holder a notice stating that the mortgage remains unsatisfied; or

(C) the satisfaction agent receives notice from the mortgage holder stating that the mortgage holder has assigned the mortgage and identifying the name and address of the assignee.

b. A notice under subsection (a) shall be sent by a method:

(1) authorized by Section 6, and

(2) that provides proof of receipt at the mortgage holder's address as defined in Section 2.

c. This act does not require a person to agree to serve as a satisfaction agent.

COMMENT

This section is substantively identical to Section 302 the Uniform Law. The change in subsection (a)(3)(C) is merely a clarification. The change in subsection (b)(1) is also a clarification; the definition ii Section 2, for most purposes, is the last known address.

SECTION 11. AFFIDAVIT OF SATISFACTION: AUTHORIZATION TO SUBMIT FOR RECORDING.

a. A satisfaction agent may sign and submit for recording an affidavit of satisfaction of a mortgage if:

(1) the agent knows that the mortgage has been paid in compliance with a written payoff statement provided by the mortgage holder;

(2) the mortgage holder has not, to the knowledge of the satisfaction agent, submitted for recording a satisfaction of a mortgage within 30 days after the effective date of a notice; or

(3) the mortgage holder authorizes the satisfaction agent to do so.

(b) A satisfaction agent may not sign and submit for recording an affidavit of satisfaction of a mortgage by authority of subsection (a)(2) if the agent has received notice stating that the mortgage remains unsatisfied.

(c) If a satisfaction agent receives notice that the mortgage has been assigned, the satisfaction agent may not submit for recording an affidavit of satisfaction of the mortgage by authority of subsection (a)(2) without:

(1) giving a notice of intent to submit for recording an affidavit of satisfaction to the identified assignee at the identified address; and

(2) complying with Section 10 with respect to the identified assignee.

COMMENT

Except for subsection (a)(1), this section is substantively similar to Section 303 of the Uniform Law. Subsection (a)(1) is new and implements the "one touch" approach. As a result of that addition, the restrictions of subsections (b) and (c) have been limited. They apply only to situations where the satisfaction agent is acting because the mortgage holder had not replied, not where the mortgage holder has provided a payoff statement or given authority for an affidavit of satisfaction.

SECTION 12. AFFIDAVIT OF SATISFACTION: FORM.

An affidavit of satisfaction shall be substantially in the following form:

(Date of Affidavit)

AFFIDAVIT OF SATISFACTION

I state as follows:

1. I am: [check appropriate box]

□ an officer or agent of [Name of title insurance company] (the "Company"), which is licensed as an insurance producer licensed in the line of title insurance in this state, and I have been authorized by the Company to sign and submit for recording an affidavit of satisfaction.

□ an attorney licensed to practice law in this state.

2. I am signing this Affidavit of Satisfaction to evidence full payment or performance of the obligations secured by real property encumbered by the following mortgage (the "mortgage") currently held by _____ (the "mortgage holder"):

Original parties to mortgage:

County and state of recording:

Recording data for mortgage:

3. I have reasonable grounds to believe that:

a. the mortgage holder has received full payment or performance of the balance of the obligations secured by the mortgage; and

b. the real property described in the mortgage constitutes residential real property.

4. [check appropriate box]

□ The mortgage holder has provided a written payoff statement for the mortgage and I know that the mortgage has been paid as specified in the statement; or

□ With the authorization of the owner of the real property described in the mortgage, I gave notice to the mortgage holder that I would sign and record an affidavit of satisfaction of the mortgage unless, within 30 days after the effective date of the notice, the mortgage holder gave notice that the mortgage remains unsatisfied. The 30-day period has elapsed, and I have not received notice that the mortgage remains unsatisfied; or

□ The mortgage holder authorized me to execute and record this affidavit of satisfaction.

5. [check box and complete if appropriate] □ This affidavit of satisfaction affects only the following portion of the property mortgaged: (state property description).

_____

(Signature of Satisfaction Agent)

(Notarization)

COMMENT

This section is derived from Section 305 of the Uniform Law. There is no section equivalent to Section 304 of the Uniform Law. In the Uniform Law, Section 304 sets out the requirements for an affidavit of satisfaction and Section 305 establishes a form meeting those requirements. That duplication was obviated by the approach of this section, requiring an affidavit be "substantially in the following form" and providing a form that meets the substantive requirements.

Paragraph (4) of the form differs from that of the Uniform Law as the result of the "one-touch" system. That paragraph now includes three options: an affidavit after making payment in response to a payoff statement, an affidavit when the mortgage holder has been given notice that the mortgage has been paid and does not respond, and an affidavit authorized by the mortgage holder. In the ordinary case of a current mortgage paid as directed in a payoff statement, the first option would be used. When the mortgage was paid sometime in the past but no satisfaction was filed, the second or third option may be appropriate depending on whether the mortgage holder fails to respond or responds authorizing the affidavit.

Paragraph (5) of the form is new. It allows the affidavit of satisfaction procedure to be used where the mortgage is secured by several parcels of property and the payoff statement allows particular parcels to be released from the mortgage after partial payment.

SECTION 13. AFFIDAVIT OF SATISFACTION: EFFECT.

a. Upon recording, an affidavit constitutes a satisfaction of the mortgage described in the affidavit provided it substantially complies with Section 12.

b. The recording of an affidavit of satisfaction of a mortgage does not by itself extinguish any liability of a person for payment or performance of any obligation secured by the mortgage.

COMMENT

Subsections (a) and (b) are substantively identical to Section 306 of the Uniform Law. Subsection (c) of the Uniform Law section required the recording officer to record affidavits. That subject is governed by other law and has been deleted.

SECTION 14. LIABILITY OF SATISFACTION AGENT.

a. Except as otherwise provided in subsection (b), a satisfaction agent who records an affidavit of satisfaction of a mortgage erroneously or with knowledge that the statements contained in the affidavit are false is liable to the mortgage holder for any actual damages caused by the recording and costs.

b. A satisfaction agent who records an affidavit of satisfaction of a mortgage erroneously is not liable if the agent properly complied with this act.

c. If a satisfaction agent records an affidavit of satisfaction of a mortgage with knowledge that the statements contained in the affidavit are false, this section does not preclude:

(1) a court from awarding punitive damages on account of the conduct;

(2) the mortgage holder from proceeding against the satisfaction agent under law of this state other than this act; or

(3) the enforcement of any criminal statute prohibiting the conduct.

COMMENT

This section is substantively identical with Section 307 of the Uniform Law.

SECTION 15. SATISFACTION OF MORTGAGES AFFECTING MORE THAN ONE PARCEL OF PROPERTY.

When a mortgage is secured by more than one parcel of property, and the payoff statement provides that it may be satisfied in respect to particular parcels by making a payment in compliance with the payoff statement satisfying particular conditions, the provisions of this act may be applied to those parcels.

COMMENT

This section is not found the Uniform Law. It applies the act to partial satisfactions

SECTION 16. DOCUMENT OF RESCISSION: EFFECT; LIABILITY FOR WRONGFUL RECORDING.

a. In this section, "document of rescission" means a document stating that an identified satisfaction or affidavit of satisfaction of a mortgage was erroneous, and the mortgage remains unsatisfied, and in force.

b. A person who has recorded a satisfaction or affidavit of satisfaction of a mortgage in error may execute and record a document of rescission. Upon recording, the document rescinds an erroneous satisfaction or affidavit.

c. A recorded document of rescission has no effect on the rights of a person that:

(1) acquired an interest in the real property described in a mortgage after the recording of the satisfaction or affidavit of satisfaction of the mortgage and before the recording of the document of rescission; and

(2) would otherwise have priority over or take free of the lien created by the mortgage.

d. A person who erroneously records a document of rescission is liable to any person injured thereby for the actual damages caused by the recording and costs.

COMMENT

This section is substantially identical to Section 104 of the Uniform Act. Subsection (b) has been reworded to remove an ambiguity. The subsection now states what was intended by the Uniform Law: only the person who filed the erroneous document may rescind it.

The deletion in subsection (c)(2) reflects the fact that whether or not an interest has priority over a mortgage is not just a question under the recording statute. Subsections (a) and (b) have been reworded slightly to clarify the fact that it is the prior satisfaction itself that was erroneous, not that there was an error in the way it was recorded.

MISCELLANEOUS PROVISIONS

SECTION 17. AWARD OF ATTORNEYS' FEES

In any action brought under this act, the land owner may be awarded a reasonable attorney's fee as part of the cost, provided however, that no attorney's fee shall be awarded to a defendant unless there is a determination that the action was brought in bad faith.

COMMENT

This section is new. It generalizes sections 104(d), 201(i) and 203(c), all of which provide for award of attorneys' fees. In form, the section is based on a provision of the Law Against Discrimination, 10:5-27.1.

SECTION 18. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.

As permitted by the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001 *et seq.*), this act modifies, limits, and supersedes that act but does not modify, limit, or supersede section 101(c) of that act (15 U.S.C. § 7001(c)) or authorize electronic delivery of any of the notices described in section 103(b) of that act (15 U.S.C. § 7003(b)).

COMMENT

This section is substantially identical to Section 401 of the Uniform Act.

STATE OF NEW JERSEY

NEW JERSEY LAW REVISION COMMISSION

TENTATIVE REPORT

Relating to

Uniform Prudent Management of Institutional Funds Act

November 2007

This tentative report is distributed to advise interested persons of the Commission's tentative recommendations and to notify them of the opportunity to submit comments. The Commission will consider these comments before making its final recommendations to the Legislature. The Commission often substantially revises tentative recommendations as a result of the comments it receives. If you approve of the tentative report, please inform the Commission so that your approval can be considered along with other comments.

COMMENTS MUST BE RECEIVED BY THE COMMISSION NOT LATER THAN DECEMBER 19, 2007.

Please send comments concerning this tentative report or direct any related inquiries, to:

John M. Cannel, Esq., Executive Director
NEW JERSEY LAW REVISION COMMISSION
153 Halsey Street, 7th Fl., Box 47016
Newark, New Jersey 07101
973-648-4575
(Fax)973-648-3123
email: njlrc@njlrc.org
web site: http://www.lawrev.state.nj.us

Uniform Prudent Management of Institutional Funds Act

INTRODUCTION

The National Conference of Commissioners on Uniform State Laws (NCCUSL) promulgated the "Uniform Prudent Management of Institutional Funds Act" (UPMIFA) in 2006 recommending the Act for adoption in all states. The UPMIFA replaces and updates the 1972 Uniform Management of Institutional Funds Act (UMIFA) adopted in 47 states, including the State of New Jersey, effective 1975, and codified at *N.J.S.A.* 15:18 *et seq*. Seventeen States have adopted the UPMIFA and bills are presently pending in additional legislatures.[5] Pursuant to its statutory obligation, the NJLRC considers recommendations of NCCUSL.[6] Hence, the examination of the 2006 "Uniform Prudent Management of Institutional Funds Act" is within the purview of the functions of the Commission in reporting its recommendations to the Legislature. The Commission has reviewed and considered the Act and recommends that the Legislature enact the Official text of the Act, without adopting the optional provision contained in Section 4, subsection (d).[7]

Current New Jersey Law

The State of New Jersey adopted in 1975 the "Uniform Management of Institutional Funds Act" promulgated by NCCUSL in 1972. The case law reported under this statute is consistent with the principles of the UPMIFA. Consequently, if New Jersey were to adopt the 2006 Act, that adoption would not alter any case law. The adoption would change the language of the existing statute, but not to any detriment, and would improve the regulatory environment in which managers of charitable trusts operate to achieve the objectives of the funds. The UPMIFA incorporates prudential standards of money management consistent with modern portfolio theory of efficient markets and establishes a framework for money managers to obtain the highest returns for the funds subject to the overriding mandate of donor intent and to statutorily-defined prudent investment standards.

The Uniform Prudent Management of Institutional Funds Act

The first question that arises is: why has NCCUSL decided to revise the earlier Act. The answer to that question requires a deviation into the historical development of law governing management of charities and endowments. In short, the law has not kept pace with market

[5] See NCCUSL at http://www.nccusl.org/Update/uniformact_factsheets/uniformacts-fs-upmifa.asp.

[6] N.J.S.A. 1:12A-8(c) provides that the NJLRC shall: "Receive and consider suggestions and recommendations from the American Law Institute, the National Conference of Commissioners on Uniform State Laws, and other learned bodies and from judges, public officials, bar associations, members of the bar and from the public generally, for the improvement and modification of the general and permanent statutory law of the State, and to bring the law of this State, civil and criminal, and the administration thereof, into harmony with modern conceptions and conditions…." □

[7] Appendix I of the Tentative report contains the Official Text of the UPMIFA, with the deleted subsection (d) of section 4 marked by a strikethrough. Appendix II contains a NCCUSL developed comparison table of the two Acts.

developments.

Brief History

"American charities manage substantial funds in conjunction with carrying out their charitable purposes, holding some funds for operating needs and others as endowments".[8] American universities, for example, manage endowment funds exceeding 100 billion. Given the sheer magnitude of assets under management, legal rules have developed gradually to provide a system of guidance for institutional money managers and Boards of Directors of charities.

Without repeating the historical backdrop of charities[9], certain factors are salient to an understanding of the emergence of the UMIFA and its successor, the UPMIFA. Prior to the American Revolution, most charities were established as trusts under English law and trust law applied to them. Shortly thereafter, most charities were organized as non-profit corporations, though some charities continued to be organized as charitable trusts. This development produced an ambiguity as to which law applied to charities: trust law or corporate law. Courts often used a combination of these disciplines to resolve questions, although the dominant trend was to organize a charity as a non-profit corporation.

The problem of applying trust law to charities was its inherent conservatism. The "prudent man rule" required a trustee to invest trust property as the trustee would invest his own property. Consequently, to avoid an accusation of imprudence, trustees adopted conservative investment strategies, essentially investing in bonds and high dividend yielding stocks, and avoiding growth equities, regardless of whether that strategy best served the interests of the charity. In addition, accounting definitions of "income" and "principle" derived from trust law exacerbated matters. Expendable income covered only interest and dividends, and explicitly excluded capital gains. Conservative accounting principles hence began to dictate investment decisions ignoring the effects on conservation of the principal of the charitable corpus. As the value of charities increased, this situation became untenable and led to the "Cary and Bright Study".

That study delineated the defects of applying trust law to charitable corporations and laid the foundations for the development of the UMIFA. In short, the Cary and Bright Study found trust law inconsistent with modern portfolio management based on the theory of efficient markets.[10] For example, trust law forbid delegation, restricted risk analysis on an asset-by-asset basis, thereby forbidding total-return investing, and established a standard of prudential performance inconsistent with the responsible management of charitable corporations and

---

[8] Susan N. Gary, Charities, *Endowments, and Donor Intent: The Uniform Prudent Management of Institutional Funds Act*, 41 Ga. L. Rev. 1277 (2007). Note that Professor Gary was the reporter for the UPMIFA. See also for empirical data about the growth of charitable funds under management, Garry W. Jenkins, *Incorporation Choice, Uniformity, and the Reform of NonProfit State Law*, 41 Ga. L. Rev. 1113 (2007)(substantiating the declarations made by Professor Gary, summarising uniform law developments in the area, and demonstrating that, unlike for-profit entities, the nonprofit sector does not forum shop for state of incorporation. Nonprofits virtually are all incorporated in the State where their activities are centered).

[9] *Id*. at 1-4.

[10] The "efficient market" thesis states no more than that securities prices reflect all information and that their prices reflect their fair value.

trusts.[11] Hence, the UMIFA was developed, permitting investment on a total-return basis, expanding the range of portfolio management, revising the standard of care, and achieving state uniformity as attested by its adoption in 47 States and the District of Columbia.

Since 1972, legal developments in Trust Law, as demonstrated by the Uniform Prudent Investor Act[12], and the 1987 Revised Model Non-profit Corporation Act (RMNCA), have caught up with, and surpassed, the concepts captured by the UMIFA. The UPIA modernised the standards guiding fiduciary investment decisions and implicitly applied to charities organised as non-profit corporations. In addition, the RMNCA articulated the duties a manager must follow in the management of a non-profit corporation. While these legal developments did not produce inconsistencies in the law between the UMIFA and the Prudent Investor Act, NCCUSL decided it was appropriate to update and modernize the provisions of the UMIFA.

Key Points of the UPMIFA

1. ***Sphere of application***. The UPMIFA applies to most charitable trusts, except those managed by corporate trustees and individuals. Thus all trusts managed by bank trustees are excluded from the scope of the UPMIFA. The Act applies to institutions organized and operated exclusively for charitable purposes, broadly defined, and the term "institutions" includes charitable organizations created as non-profit corporations, unincorporated associations, governmental subdivisions and agencies, and "any other form of entity" organized and operated exclusively for charitable purposes. *Result*: no change in coverage; however, it should be noted that the Drafting Committee considered expanding the scope to include funds held by all charities, a proposition ultimately rejected due to opposition by the American Bankers Association.[13]

2. ***Standard of care***. Section 3 delineates the prudential standards applicable to managing and investing an intuitional fund. The Act gives primacy to the intent of the donor as expressed in the gift instrument. Subject to this intent, the institution is given broad discretion to appropriate and accumulate funds to carry out the purposes of the charity, provided the institution acts in "good faith" and "with the care that an ordinarily prudent person in a like position would exercise under similar circumstances". Subsection (a) of Section (4) also sets forth a list of factors the institution is obligated to consider if relevant and thereby provides certain explicit guidelines for institutional management that the UMIFA did not contain. Portfolio managers are given freedom to invest in a broad range of assets consistent with modern

[11] The phrase "risk analysis on an asset-by-asset basis" reflects textbook theory on the relationship between risk and return. Risk is a measure of volatility or uncertainty of returns, while returns are the expected receipts or cash flows expected from any investment. *E.g.*, A.A. Gropelli, *Finance*, 76 (5th ed. 2006). Hence, the term "total return investing".

[12] New Jersey enacted the Prudent Investor Act in 1997 codified at *N.J.S.A.* 3B:20-11.1 et seq.

[13] The bankers feared that, if a state did not adopt the Uniform Prudent Investment Act, the Uniform Principal and Income Act, and the Uniform Trust Code, a trustee might confront conflicting rules. The bankers also maintained that the retroactive application of UPMIFA had the potential to cause problems with trusts created under the UMIFA that did not apply to trusts with corporate trustees. Professor Gary at page 6 persuasively picks apart these arguments and suggests a state may wish to provide blanket coverage to all charitable trusts. New Jersey has adopted the Uniformed Principal and Income Act of 2001 codified at *N.J.S.A.* 3B:19A-35; and has adopted the Uniform Prudent Investor Act confided at *N.J.S.A* 3B:20-11.1 to 11.12. New Jersey has not adopted the Uniform Trust Code.

portfolio theory. The standard is borrowed from the RMNCA. *Result*: clearer standards, more investment freedom.

3. ***Endowment Spending and the Historic Dollar Value Rule***. Section 2 of the UMIFA distinguishes between an "endowment fund" and an "institutional fund". The distinction is extremely nuanced. An "endowment fund" is an institutional fund that under the terms of the gift instrument is not wholly expendable on current basis". In practical terms, it is a restricted fund meaning that the trustees may not spend the principal of the endowment, but only expend its appreciation, investing the principal to produce income and maintain the fund in perpetuity. Special rules for endowment funds are set forth in Section 4. The UMIFA permitted expenditures from the endowment fund provided the appreciation exceeded the historic dollar value of the fund at the time of contribution. If the current value of the fund fell below the HDV, investment managers were prohibited from spending any of the funds assets. The UPMIFA abolishes the historic dollar value rule for cogent reasons. Under UPMIFA, managers can spend an amount deemed prudent after consideration of donor intent that the fund continues indefinitely, the purposes of the fund, and relevant economic circumstances. The Official Comment to Section 4 provides, "The Drafting Committee concluded that eliminating historic dollar value and providing institutions with more discretion would not lead to depletion of endowment funds." Instead, the new policy enables institutional managers "to be responsive to short-term fluctuations in the value of the fund." Under this rule, with obligatory requirements still applicable, managers will make expenditure or accumulation decisions based on business cycles and pertinent economic data. *Result*: reasonable improvement away from statutorily fixed standard, but clear departure from existing law. The concern is to maintain purchasing power while allowing for making a distribution representing a reasonable spending rate.[14]

4. ***Optional 7% rule of imprudence***. To rebut concerns that the abolition of the HDV rule would run contrary to donor intent in certain cases and lead to an acceleration of expenditure, the UPMIFA contains an optional rule in subsection (d) of section (4) establishing a presumption of imprudence if the fund spends more than 7% of its value in one year as the fund's value is measured over a three year rolling average period. The presumption is reputable. However, once triggered, the institution carries the burden of going forward to demonstrate that its decision was prudent as measured by the standard set fort in Section 4. The optional rule does not create a "safe harbour" rule for institutions. Even if the institution spends less than 7% of its value, as computed under the 3-year rolling average formula, the institution may be found to have acted imprudently. For example, the 7% figure includes management and administrative expenses that may be deemed too high, or the institution may be found to have violated the standards of Section 4 despite expenditures beneath the 7% ceiling. *Result*: State must choose; there are pros and cons to statutorily fixed limits.[15] However, in the opinion of the Commission, the New

[14] *Note*: Legal and accounting rules often do not coincide. This is the case with the abolition of the HDV rule. Because no part of an endowment fund may be considered permanently restricted under accounting rules, the Financial Accounting Standard Board may wish to consider how it classifies gains. This question was beyond the scope of the NCCUSL project.

[15] Professor Gary notes, "a prudence standard coupled with more detailed guidance … [provides] the best rule to govern endowment spending". In addition, donor intent provisions, investment policies, and the rules of prudence set forth in the Act taken together are sufficient restraints on money managers.

Jersey State Legislature should avoid adoption of the mechanical rule of subsection (d) of Section 4. It is an anachronism deriving from the tradition of identifying "legally approved lists" of investments and spending limits applicable to charities and endowments, the very tradition the UPMIFA has rejected.

5. ***Delegation***. Section 5 provides that the institution may delegate to an "external agent" management and investment of the fund subject to donor restriction and to the standards of prudential management. The delegation provision incorporates the delegation rule found in Section 9 of the UPIA. Section 5 imposes duties of care and responsibility upon the agent, and permits cascading delegation, that is, a re-delegation is permitted for managers with special expertise in certain areas. *Result*: reasonable rule, given developments under UPIA and RMNCA.

6. ***Cy pres and deviation***.[16] The UMIFA provided for the release and modifications of restrictions on the fund. Section 6 of the UPMIFA follows this principle, but clarifies the application of cy pres. First, the donor may always release or modify a restriction contained in the gift instrument provided the decision is memorialized in a "record," a defined UPMIFA term. In addition, the institution, upon application to a court, may request modification of a restriction, if the restriction: (1) "has become impracticable or wasteful [a UTC term], (2) impairs the management and investment of the fund, or (3) due to circumstances not anticipated by the donor, the modification shall promote the purposes of the fund. The Attorney General is notified of any action and has the right to be heard. Subsection (c) parallels subsection (b) but covers "a particular charitable purpose" as well as restriction. These rules conform to, and derive from, the Uniform Trust Act. However, under the UPMIFA, "modification due to unanticipated circumstances applies to administrative provisions, termed restrictions on management or investment, and not to restrictions on use", that may be modified only by cy pres. Hence, the law creates three categories: (1) release, (2) deviation, and (3) cy pres.

An exception for a court action is permitted for a small and old fund defined as an institutional fund valued at less than $25,000, more tan 20 years old, the institution uses the fund's property consistent with its intended purposes. Under the exception, the institution need only notify the Attorney General. The reasoning for the exception is that, given the size of the fund, it is impractical and wasteful to require a court proceeding. In any event, the Attorney General has supervisory powers. *Result*: clarification, with reasonable exception.

7. ***Retroactivity***. The UPMIFA applies retroactively as well as prospectively.

Impact on New Jersey Law

Adoption of the UPMIFA does not produce an adverse effect on New Jersey Law. Reported litigation is sparse and that which is reported reveals that New Jersey law would be improved by adoption of the Act as providing improved clarity for the judiciary. New Jersey courts have considered three decisions related to the UMIFA: *Midlantic Nat. Bank v. Frank G. Thompson Foundation*, 170 N.J. Super. 128 (CH. 1979), *Johnson v. Johnson*, 212 N.J. Super. 368 (Ch. 1986), and the *Matter of Estate of Dickerson*, 193 N.J. Super. 353 (Ch. 1983). Nothing stated or held in these cases contradicts, or is inconsistent with, any principle contained in the

[16] The two terms often are interchangeable and difficult to distinguish.

UPMIFA. In the *Matter of Estate of Dickerson*, Rutgers University, the administrator of two privately funded trusts, challenged the legality of restrictions limiting scholarships to students intending to study for the Protestant Ministry. Joined by the Attorney General, Rutgers based its claims upon violations of the Establishment Clause, the New Jersey Constitution [Article 1, par. 5], and the Law Against Discrimination, *N.J.S.A.* 10:5-1 *et seq*. The court found that the restrictions did not violate the law. Since the UPMIFA does not preclude a release, cy pres or deviation action, the *Matter of Estate of Dickerson* is consistent with the approach of the revised UPMIFA. The court in *Midlantic* confirmed the right of delegation, that is, the non-profit corporation was not precluded from entering into a contract with the executor-bank for custodial and investment advice. It also confirmed the right of investment managers to recover reasonable compensation for their services, and distinguished between the standard of performance between charitable corporations and a trust for a charitable purpose. Consistent with the existing law of the UMIA, the court found that the appropriate standard was expressed in *N.J.S.A.* 15:18-20 [a standard of ordinary business care and prudence], and was not expressed by any heightened standard of performance applicable to trustees under trust law. The case of *Johnson* involved a determination of whether the managers of a trust committed negligence in their administration of the endowment; the court found that the theory of portfolio management adopted by the administrators did not amount to a violation of their duty of care, though the fund underperformed benchmark indexes in certain years. Section 4 of the UPMIFA sets out clearly the standard by which to evaluate the conduct of the institution managing the trust, and therefore provides better guidance for the court should a court be faced with an argument similar to the one posed in *Johnson*. Consequently, adoption of the UPMIFA in New Jersey would not unsettle established law.

Conclusion

The New Jersey Law Revision Commission therefore recommends that the New Jersey Legislature adopt the Official Text of the Uniform Prudent Management of Institutional Funds Act, without adopting the optional subsection (d) provision of Section 4, and recommends repeal of the Uniform Management of Institutional Funds Act.

Appendix I

Uniform Prudent Management of Institutional Funds Act (UPMIFA)

Drafted by:
National Conference of Commissioners on Uniform State Laws (NCCUSL)
211 E. Ontario Street, Suite 1300, Chicago, IL 60611
312-915-0195, www.nccusl.org

Brief description of act:

The Uniform Prudent Management of Institutional Funds Act (UPMIFA) is an update of the Uniform Management of Institutional Funds Act (UMIFA) which dates back to 1972. UPMIFA applies to funds held for charitable purposes by nonprofit, charitable institutions. The three principal issues addressed are scope of coverage, investment obligations and expenditure of funds. The earlier UMIFA did not include charitable trusts or necessarily nonprofit corporations. UPMIFA applies its rules to charitable institutions no matter how organized. That is its scope. Investment obligations are governed by prudent investment rules derived from the Uniform Prudent Investor Act. They sharply refine the investment obligations in the 1972 UMIFA. An express rule for prudent expenditure of appreciation as well as income replaces the older rule in the 1972 Act. Abolished is the concept of historic dollar value as a floor beneath which an endowment cannot be spent. The new rule allows a prudent use of total return expenditure. An optional provision allows a state to flag a total return expenditure of more than 7% of total return measured by a three year average as presumed imprudent. UPMIFA also provides a better, modern rule for exercise of cy pres that is changing an obsolete charitable purpose. Changing a charitable purpose will require notice to the appropriate regulator in a state.

Questions about UPMIFA?

For further information contact the following persons:
John McCabe, NCCUSL Legislative Director: 312-915-0195, john.mccabe@nccusl.org
Barry Hawkins, Chair of the UPMIFA drafting committee: bhawkins@goodwin.com

Notes about NCCUSL Acts:
For information on the specific drafting rules used by NCCUSL, the Conference *Procedural and Drafting Manual* is available online at www.nccusl.org.

Because these are uniform acts, it is important to keep the numbering sequence intact while drafting.

In general, the use of bracketed language in NCCUSL acts indicates that a choice must be made between alternate bracketed language, or that specific language must be inserted into the empty brackets. For example: "An athlete agent who violates Section 14 is guilty of a [misdemeanor] [felony] and, upon conviction, is punishable by [ ].

A word, number, or phrase, or even an entire section, may be placed in brackets to indicate that the bracketed language is suggested but may be changed to conform to state usage or requirements, or to indicate that the entire section is optional. For example: "An applicant for registration shall submit an application for registration to the [Secretary of State] in a form prescribed by the [Secretary of State]. [An application filed under this section is a public record.] The application must be in the name of an individual, and, except as otherwise provided in subsection (b), signed or otherwise authenticated by the applicant under penalty of perjury."

The sponsor may need to be consulted when dealing with bracketed language.

UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT

SECTION 1. SHORT TITLE. This [act] may be cited as the Uniform Prudent Management of Institutional Funds Act.

SECTION 2. DEFINITIONS. In this [act]:

(1) "Charitable purpose" means the relief of poverty, the advancement of education or religion, the promotion of health, the promotion of a governmental purpose, or any other purpose the achievement of which is beneficial to the community.

(2) "Endowment fund" means an institutional fund or part thereof that, under the terms of a gift instrument, is not wholly expendable by the institution on a current basis. The term does not include assets that an institution designates as an endowment fund for its own use.

(3) "Gift instrument" means a record or records, including an institutional solicitation, under which property is granted to, transferred to, or held by an institution as an institutional fund.

(4) "Institution" means:

(A) a person, other than an individual, organized and operated exclusively for charitable purposes;

(B) a government or governmental subdivision, agency, or instrumentality, to the extent that it holds funds exclusively for a charitable purpose; and

(C) a trust that had both charitable and noncharitable interests, after all noncharitable interests have terminated.

(5) "Institutional fund" means a fund held by an institution exclusively for charitable purposes. The term does not include:

(A) program-related assets;

(B) a fund held for an institution by a trustee that is not an institution; or

(C) a fund in which a beneficiary that is not an institution has an interest, other than an interest that could arise upon violation or failure of the purposes of the fund.

(6) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(7) "Program-related asset" means an asset held by an institution primarily to

accomplish a charitable purpose of the institution and not primarily for investment.

(8) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

SECTION 3. STANDARD OF CONDUCT IN MANAGING AND INVESTING INSTITUTIONAL FUND.

(a) Subject to the intent of a donor expressed in a gift instrument, an institution, in managing and investing an institutional fund, shall consider the charitable purposes of the institution and the purposes of the institutional fund.

(b) In addition to complying with the duty of loyalty imposed by law other than this [act], each person responsible for managing and investing an institutional fund shall manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

(c) In managing and investing an institutional fund, an institution:

(1) may incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the institution, and the skills available to the institution; and

(2) shall make a reasonable effort to verify facts relevant to the management and investment of the fund.

(d) An institution may pool two or more institutional funds for purposes of management and investment.

(e) Except as otherwise provided by a gift instrument, the following rules apply:

(1) In managing and investing an institutional fund, the following factors, if relevant, must be considered:

(A) general economic conditions;

(B) the possible effect of inflation or deflation;

(C) the expected tax consequences, if any, of investment decisions or strategies;

(D) the role that each investment or course of action plays within the overall investment portfolio of the fund;

(E) the expected total return from income and the appreciation of investments;

(F) other resources of the institution;

(G) the needs of the institution and the fund to make distributions and to preserve capital; and

(H) an asset's special relationship or special value, if any, to the charitable purposes of the institution.

(2) Management and investment decisions about an individual asset must be made not in isolation but rather in the context of the institutional fund's portfolio of investments as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the fund and to the institution.

(3) Except as otherwise provided by law other than this [act], an institution may invest in any kind of property or type of investment consistent with this section.

(4) An institution shall diversify the investments of an institutional fund unless the institution reasonably determines that, because of special circumstances, the purposes of the fund are better served without diversification.

(5) Within a reasonable time after receiving property, an institution shall

make and carry out decisions concerning the retention or disposition of the property or to rebalance a portfolio, in order to bring the institutional fund into compliance with the purposes, terms, and distribution requirements of the institution as necessary to meet other circumstances of the institution and the requirements of this [act].

(6) A person that has special skills or expertise, or is selected in reliance upon the person's representation that the person has special skills or expertise, has a duty to use those skills or that expertise in managing and investing institutional funds.

SECTION 4. APPROPRIATION FOR EXPENDITURE OR ACCUMULATION OF ENDOWMENT FUND; RULES OF CONSTRUCTION.

(a) Subject to the intent of a donor expressed in the gift instrument [and to subsection (d)], an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes, and duration for which the endowment fund is established. Unless stated otherwise in the gift instrument, the assets in an endowment fund are donor-restricted assets until appropriated for expenditure by the institution. In making a determination to appropriate or accumulate, the institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall consider, if relevant, the following factors:

(1) the duration and preservation of the endowment fund;

(2) the purposes of the institution and the endowment fund;

(3) general economic conditions;

(4) the possible effect of inflation or deflation;

(5) the expected total return from income and the appreciation of investments;

(6) other resources of the institution; and

(7) the investment policy of the institution.

(b) To limit the authority to appropriate for expenditure or accumulate under subsection (a), a gift instrument must specifically state the limitation.

(c) Terms in a gift instrument designating a gift as an endowment, or a direction or authorization in the gift instrument to use only "income", "interest", "dividends", or "rents, issues, or profits", or "to preserve the principal intact", or words of similar import:

(1) create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purpose of the fund; and

(2) do not otherwise limit the authority to appropriate for expenditure or accumulate under subsection (a).

[SECTION 5. DELEGATION OF MANAGEMENT AND INVESTMENT FUNCTIONS.

(a) Subject to any specific limitation set forth in a gift instrument or in law other than this [act], an institution may delegate to an external agent the management and investment of an institutional fund to the extent that an institution could prudently delegate under the circumstances. An institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, in:

(1) selecting an agent;

(2) establishing the scope and terms of the delegation, consistent with the

purposes of the institution and the institutional fund; and

(3) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the scope and terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the institution to exercise reasonable care to comply with the scope and terms of the delegation.

(c) An institution that complies with subsection (a) is not liable for the decisions or actions of an agent to which the function was delegated.

(d) By accepting delegation of a management or investment function from an institution that is subject to the laws of this state, an agent submits to the jurisdiction of the courts of this state in all proceedings arising from or related to the delegation or the performance of the delegated function.

(e) An institution may delegate management and investment functions to its committees, officers, or employees as authorized by law of this state other than this [act].]

SECTION 6. RELEASE OR MODIFICATION OF RESTRICTIONS ON MANAGEMENT, INVESTMENT, OR PURPOSE.

(a) If the donor consents in a record, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund. A release or modification may not allow a fund to be used for a purpose other than a charitable purpose of the institution.

(b) The court, upon application of an institution, may modify a restriction contained in a gift instrument regarding the management or investment of an institutional fund if the restriction has become impracticable or wasteful, if it impairs the management or investment of the fund, or if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund. The institution shall notify the [Attorney General] of the application, and the [Attorney General] must be given an opportunity to be heard. To the extent practicable, any modification must be made in accordance with the donor's probable intention.

(c) If a particular charitable purpose or a restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impracticable, impossible to achieve, or wasteful, the court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift instrument. The institution shall notify the [Attorney General] of the application, and the [Attorney General] must be given an opportunity to be heard.

(d) If an institution determines that a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund is unlawful, impracticable, impossible to achieve, or wasteful, the institution, [60 days] after notification to the [Attorney General], may release or modify the restriction, in whole or part, if:

(1) the institutional fund subject to the restriction has a total value of less than [$25,000];

(2) more than [20] years have elapsed since the fund was established; and

(3) the institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument.

SECTION 7. REVIEWING COMPLIANCE. Compliance with this [act] is

determined in light of the facts and circumstances existing at the time a decision is made or action is taken, and not by hindsight.

SECTION 8. APPLICATION TO EXISTING INSTITUTIONAL FUNDS. This [act] applies to institutional funds existing on or established after [the effective date of this act]. As applied to institutional funds existing on [the effective date of this act] this [act] governs only decisions made or actions taken on or after that date.

SECTION 9. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101 of that act, 15 U.S.C. Section 7001(a), or authorize electronic delivery of any of the notices described in Section 103 of that act, 15 U.S.C. Section 7003(b).

SECTION 10. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 11. EFFECTIVE DATE. This [act] takes effect . . . .

SECTION 12. REPEAL. The following acts and parts of acts are repealed:

(a) [The Uniform Management of Institutional Funds Act]

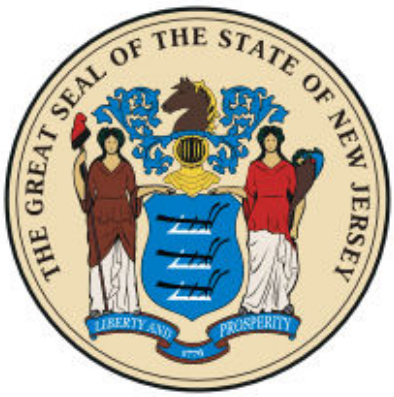
Appendix II

NCCUSL has prepared a table summarizing a comparison of the existing and recommended Acts and it is incorporated below.

QUICK COMPARISON

UPMIFA	UMIFA
Scope: • All charitable institutions holding "institutional funds" including trusts without non-charitable beneficiaries	**Scope:** • Charitable organizations except for trusts
Investment Conduct: • Express duty of loyalty • Express cost management obligation • Whole portfolio management standard of performance • Express diversification requirement • Portfolio balancing required • Special skills standard of performance	**Investment Conduct:** • General obligation to invest prudently using ordinary business care
Expenditure of Funds: • Express prudent total return standard, 7 factors: o Fund duration o Fund/institution purposes o General economic conditions o Effects, inflation/deflation o Expected total return	**Expenditure of Funds:** • Net appreciation may be spent for purposes of endowment • Historic dollar value limitation

o Other resources o Institutional investment policy • Optional, over 7% of total return presumed imprudent	
Delegation of Management/Investment: • Prudent delegation in good faith, care standard of prudent person: o To select agent o Establish scope and terms of delegation o Requires periodic review and supervision of agent • Agent has duty of reasonable care • Agent subject to court jurisdiction • Delegation to committees, officers or employees as authorized by other law	**Delegation of Management/Investment:** • Delegation allowed without express standards



State of New Jersey

New Jersey Law Revision Commission

TENTATIVE REPORT

Relating to

Adverse Possession

OCTOBER 2007

This tentative report is distributed to advise interested persons of the Commission's tentative recommendations and to notify them of the opportunity to submit comments. The Commission will consider these comments before making its final recommendations to the Legislature. The Commission often substantially revises tentative recommendations as a result of the comments it receives. If you approve of the tentative report, please inform the Commission so that your approval can be considered along with other comments.

COMMENTS MUST BE RECEIVED BY THE COMMISSION NOT LATER THAN DECEMBER 10, 2007.

Please send comments concerning this tentative report or direct any related inquiries, to:

John M. Cannel, Esq., Executive Director
NEW JERSEY LAW REVISION COMMISSION
153 Halsey Street, 7th Fl., Box 47016
Newark, New Jersey 07101
973-648-4575
(Fax)973-648-3123
email: njlrc@njlrc.org
web site: http://www.lawrev.state.nj.us

Adverse Possession

Introduction

This report recommends a new statue to clarify the law concerning adverse possession and promote the stability of land titles in light of the New Jersey Supreme Court's decision in *J & M Land Co. v. First Union Bank*, 166 *N.J.* 493 (2001). That case held that under the current statutes governing adverse possession, 2A:14-30 and 2A:14-31, a possessor is vested with title to real estate after 30 years' actual possession of the real estate, unless the property consists of woodlands or uncultivated tracts. Title vests to the possessor of woodlands or uncultivated tracts after 60 years' possession. Two other statutes seem to conflict with 2A:14-30 and 2A:14-31. Section 2A:14-6 provides that every person with any right or title of entry into real estate must make such entry within 20 years after the right or title accrues; under 2A:14-7, every action for real estate must be commenced within 20 years after the cause of action accrues. The Supreme Court noted that the Legislature might choose to clarify the matter by enacting appropriate legislation. 166 *N.J.* at 521.

Another statute, 2A:14-8, appears to establish a 20-year statute of limitation for State's claims to real estate. This statute can be read to make adverse possession easier to establish against the State than against a private party. This reading conflicts with the common law principle that, in general, adverse possession is not available against the State. See *Devins v. Borough of Bogota*, 124 *N.J.* 570, 575-579 (1991)

The Commission addresses these problems by recommending the repeal of 2A:14-30, 2A:14-31, 2A:14-6, 2A:14-7 and 2A:14-8 and enacting a statute that provides that title may be acquired by an adverse possessor after 20 years in most cases. Under this statute, once the applicable time period has expired, the record owner is not merely barred from attempting to recover possession; his title is extinguished and title is vested in the adverse possessor. This provision would bring New Jersey's statutory scheme in line with that of most other states, in which the relevant time period for adverse possession is 20 years or less.

The Commission proposal also deals with the problem of the use of adverse possession against governmental entities. First, the statute codifies the holding of *Devins v. Borough of Bogota*, 124 *N.J.* 570 (1991) as to local government property. In that case, the Court held that municipal property not dedicated to a public purpose was subject to adverse possession. The case involved a lot that the municipality had taken for non-payment of taxes. Nothing in the holding suggests that property that the municipality is using or intends to use for a public purpose is not exempt from adverse possession. The provision proposed by the Commission adopts that distinction and protects public property held for any public purpose.

In general, the Commission proposal also follows the common law rule exempting State property from the effect of adverse possession. However, one exception is made for riparian lands. The provision allows persons who meet the requirements for adverse possession for thirty years and, in addition, have record title to their property and have paid taxes on that property to establish good title to the property. These requirements are more onerous than those ordinarily imposed for adverse possession, but they allow property owners who acquired property relying on a chain of title and who have paid taxes in the same way as other owners to establish ownership free of the State's tidelands claims.

Proposed Adverse Possession Provision

a. A person who has possessed real estate for twenty years shall have complete right and title in the real estate and all claims that may be made or actions commenced by any person whatsoever for the recovery of the real estate shall be barred.

b. To satisfy this section, possession must be:

(1) actual, open and notorious, of a kind that would notify others of the claim to the property;

(2) under a claim of right to the property that is inconsistent with ownership of the property by others; and

(3) continued uninterruptedly for the requisite period by the person and the person's predecessors by occupancy, descent, conveyance or otherwise.

c. This section shall not limit the right or title of, or bar any claim or action by:

(1) any agency or authority of the State except as provided by subsection (d); or

(2) any agency or authority of a county or municipality in regard to lands held for, or dedicated to, a public use.

d. If a person has possessed real estate for 40 years; the real estate was formerly tidal-flowed and is subject to a riparian rights claim by the State, and the real estate has not been tidal-flowed for any part of that period, any action by the State to enforce its claim shall be barred and the person shall have complete right and title in the real estate, provided:

(1) the person's possession is based on a document or documents describing the property that have been filed in the recording office of the county for 40 years, and

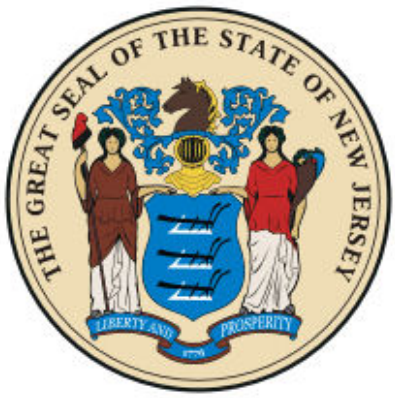
(2) the person has been assessed real estate taxes on the property and all taxes assessed have been paid.

COMMENT

Subsections (a) and (b) state the general rule for adverse possession. Subsection (a) establishes the period for adverse possession at 20 years and applies that period both as a basis for good title in the possessor and a statute of limitations for actions by others

claiming the land. Subsection (b) restates the rules (now partly statutory and partly common-law) for the kind of possession that establishes adverse possession. The wording of subsections (b)(1) and (b)(2) is derived from case law. See, *Baker v. Normanoch Ass'n* 25 *N.J.* 407, 420 (1957). Subsection (b)(3) continues the statutory requirement that the possession be continuous and adds the common law principle that periods of adverse possession by successive owners may be aggregated.

Subsection (c)(1) exempts local governmental property dedicated to public use from adverse possession. See, *Devins v. Borough of Bogota,* 124 *N.J.* 570 (1991). Subsection (c)(2) provides a general exemption for State property, but that exemption is subject to the exception in subsection (d). That provision allows a person to establish title free of riparian land claims by the State on land that has been free of tidal-flow for 40 years if he not only meets the requirements for adverse possession (for a period of 40 years, rather than 20) but also shows that his title has been recorded for thirty years and he has paid taxes on the property.



State of New Jersey

New Jersey Law Revision Commission

TENTATIVE REPORT

Relating to

UNCONSTITUTIONAL STATUTE

OCTOBER 2007

This tentative report is distributed to advise interested persons of the Commission's tentative recommendations and to notify them of the opportunity to submit comments. The Commission will consider these comments before making its final recommendations to the Legislature. The Commission often substantially revises tentative recommendations as a result of the comments it receives. If you approve of the tentative report, please inform the Commission so that your approval can be considered along with other comments.

COMMENTS MUST BE RECEIVED BY THE COMMISSION NOT LATER THAN MARCH 1, 2008.

Please send comments concerning this tentative report or direct any related inquiries, to:

John M. Cannel, Esq., Executive Director
NEW JERSEY LAW REVISION COMMISSION
153 Halsey Street, 7th Fl., Box 47016
Newark, New Jersey 07101
973-648-4575
(Fax)973-648-3123
email: njlrc@njlrc.org
web site: http://www.lawrev.state.nj.us

Introduction

Section 18A:36-3 of the New Jersey Statutes requires public schools to display the American flag and for students to stand and recite the flag salute. The statute allows students with conscientious scruples against the pledge or salute not to participate but requires them to stand at attention during the ceremony. That provision, requiring students to stand was held unconstitutional in by the United States Court of Appeals in Lipp v. Morris 579 F.2d 834 (C.A.N.J.,1978). Although the provision has been unenforceable for thirty years, it has never been removed from the statute. School officials who consult the statute may be led to believe that it is still the law and attempt to enforce it. That causes needless controversy. The Commission recommends that the unconstitutional provision be excised. The following amendment to 18A:36-3 will accomplish that result.

18A:36-3. Display of and salute to flag; pledge of allegiance

Every board of education shall:

(a) Procure a United States flag, flagstaff and necessary appliances therefore for each school in the district and display such flag upon or near the public school building during school hours;

(b) Procure a United States flag, flagstaff and necessary appliances or standard therefore for each assembly room and each classroom in each school, and display such flag in the assembly room and each classroom during school hours and at such other time as the board of education may deem proper; and

(c) Require the pupils in each school in the district on every school day to salute the United States flag and repeat the following pledge of allegiance to the flag: "I pledge allegiance to the flag of the United States of America and to the republic for which it stands, one nation, under God, indivisible, with liberty and justice for all," which salute and pledge of allegiance shall be rendered with the right hand over the heart, except that pupils who have conscientious scruples against such pledge or salute, or are children of accredited representatives of foreign governments to whom the United States government extends diplomatic immunity, shall not be required to render such salute and pledge or to stand during it ~~but shall be required to show full respect to the flag while the pledge is being given merely by standing at attention, the boys removing the headdress~~.

State of New Jersey

New Jersey Law Revision Commission

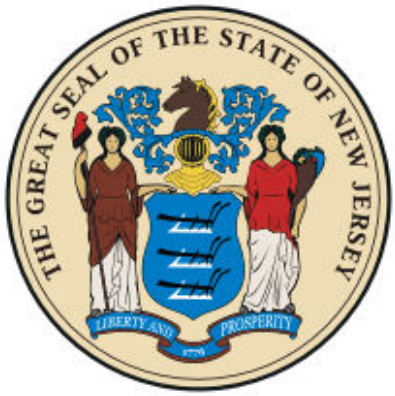
ANNUAL REPORT

2007

Section II

Report to the Legislature of the State of New Jersey
As provided by 1:12A-9.

(LRC 87-2007)



NEW JERSEY LAW REVISION COMMISSION

DRAFT TENTATIVE REPORT

Relating to

Title 39 - Motor Vehicles and Traffic Regulation

December 2007

This draft tentative report is distributed to advise interested persons of the Commission's tentative recommendations and to notify them of the opportunity to submit comments. The Commission will consider these comments before making its final recommendations to the Legislature. The Commission often substantially revises tentative recommendations as a result of the comments it receives. If you approve of the tentative report, please inform the Commission so that your approval can be considered along with other comments.

COMMENTS SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN MAY 15, 2008.

Please send comments concerning this tentative report or direct any related inquiries, to:

Laura C Tharney, Counsel
NEW JERSEY LAW REVISION COMMISSION
153 Halsey Street, 7th Fl., Box 47016
Newark, New Jersey 07101
973-648-4575
fax: 973-648-3123
email: lct@njlrc.org
web site: http://www.njlrc.org

Introduction

General Information

Title 39 includes Motor Vehicles and Traffic Regulation. The scope of the Title is broad. It contains provisions pertaining to the organization and structure of the Motor Vehicle Commission, motor vehicle requirements concerning licensing, registration, equipment, and operation. It also includes traffic regulation, enforcement, interstate operation of vehicles, motor vehicle insurance, inspection, the transfer of vehicles, junk yards and driving schools.

Sections of the law have been revised and updated. There are, however, statutory sections in effect that were enacted in every decade beginning in the 1920s. As a result of the size and scope of the Title, these changes to the law, in many instances, have resulted in duplicative and inconsistent provisions.

Additionally, as the body of law in this area has grown over time, it is no longer easy to determine where new provisions should be added when the law is changed. New language has been inserted in the statute in places that are not necessarily adjacent to similar provisions, making it difficult to locate and review all of the potentially applicable provisions at once. In addition, when the law is revised on an as-needed basis, it is more common to add language, rather than remove language that may no longer be accurate or appropriate. This, too, has resulted in the retention of certain statutory requirements which no longer have practical application, or have been superseded or rendered superfluous.

In its current form, Title 39 is less accessible than it should be, given its wide application to many residents of New Jersey and other states and the significance of the impact that it may have on those individuals.

The focus of this draft revision of the Title was not substantive change, although some of the substance has been changed. Instead, the focus of the revision was to consolidate the language, eliminate duplication and inconsistencies, and rearrange the statutes so that related provisions are grouped together. Some portions of the current statute have been combined, others have been split into more than one section where such action seemed warranted.

Throughout the draft, efforts were made to modify the language to make it both more accessible and easier to understand. Certain lengthy sections lacked subsection lettering and numbering, making it difficult both to locate language within the section and to cite it. This was addressed in the draft. The current statute also contains many instances of repetitive language and efforts were made to remove those without changing the substance of the sections. Because the law developed over so many years, there are also stylistic differences between the language in various sections that may interfere with the interpretation and application of the statute. Efforts were made to improve the

consistency of the language to avoid inconsistent application of sections of the statute that should be applied consistently. Efforts were also made to increase consistency in the division of language into statutory sections. There were time periods in which it was more common to make each sentence or each paragraph a different statutory section and other periods in which it was more common to include all provisions being inserted at the same time into one large section of the statute, or very few sections. The draft is an attempt to make the division of language into statutory sections more consistent for ease of location and review. The draft is also an attempt to remove references to "the act" or "this act" and replace them with references to the chapter or section, as appropriate, since it can be difficult for a reader of the current statute to determine what provisions fall within the scope of a particular act. The draft also modifies the manner in which the statute is cited, changing the statutory references within the text to include only the number of the statute rather than including references to C., R.S. or N.J.S.A. Those references have historic, rather than practical, significance but the different citation forms may mislead a reader to believe otherwise.

As is explained below, some parts of the Title have been modified more than others. At all times, the goal has been to improve the clarity and usability of the statute. The comments following the sections are used to explain and track the changes.

Brief History of Traffic Laws in New Jersey

The New Jersey Legislature recognized as early as in 1915, when it adopted the State Traffic Act, that the traffic laws must be uniform throughout the state. Before that Act was adopted, the Governor of New Jersey appointed special commission to investigate existing traffic laws in New Jersey.

That Commission issued a Report,[17] in which it analyzed existing traffic statutes and made recommendations for legislative action. The Commission found that:

> The statutes affecting traffic are fragmentary, and in many cases cumbersome and unenforceable, and appear to have been a gradual accretion, commencing with the Act of 1813 and ending with the Motor Vehicle Act of 1906, with its supplements and amendments.
>
> As each new condition arose, efforts were apparently made to meet the condition without very much reference to previous regulations.

. . .

> In an adjustment of such a situation, there would appear to be no other solution possible except to repeal all existing traffic ordinances by a State law on the subject which will *standardize* traffic regulations by combining the local ordinances now existing and the traffic statutes now among our laws into one system.[18]

The Commission proposed a new statute to govern all traffic on New Jersey

[17] Report of Special Commission to Investigate Traffic Laws and Ordinances and the Enforcement Thereof in New Jersey, MacCrellish & Quigley Co., State Printers (1915).

[18] Id. at 4, 6 (emphasis supplied).

roads. It stated:

> If the proposed statute be adopted the present motor vehicle act will not in any wise conflict with the traffic statute, thus providing under the two acts which co-ordinate for the regulation of traffic by State laws which will be *uniform in their application throughout the whole State*. New Jersey with this system will have the most complete and effective regulations of any State.[19]

That early Commission also suggested that enforcement of the proposed statute should be "placed in the hands not alone of the local authorities, but of the inspectors . . . [of] the Motor vehicle Department," and "before a local ordinance is passed . . . it shall be submitted to the Department of Motor Vehicles for examination."[20] The Commission explained: "[t]his is suggested in order that some central authority might be in a position to protect the provisions of this traffic act from the encroachments on the part of the local municipalities to which the motor vehicle act has been subjected in the past."[21]

In 1918, the New Jersey Supreme Court observed that this statute "is founded on a wise public policy, viz. to promote a *uniformity* of regulating traffic throughout the state."[22] Less than ten years later, the same public policy was applied on federal level to the relationship between traffic laws of different States. Indeed, a Committee on Uniformity of Laws and Regulations was appointed in March 1925 to draft a Uniform Vehicle Act or Code to be adopted by all States.[23] The Congress passed Federal Uniform Vehicle Code in July 1926, which consisted of four acts: (1) a uniform motor vehicle registration act; (2) a uniform motor vehicle anti-theft act; (3) a uniform motor vehicle operators' and chauffeurs' license act; and (4) a uniform act regulating the operation of vehicles on highways.[24] During the legislative session of 1927, New Jersey passed supplementary bill to bring its laws into closer harmony with the Uniform Code, especially with the vehicle operation act.[25]

Since that time, there have been numerous revisions to the Title; some broader in scope than others.

There were more than 100 modifications to the Title in 1951, for example, including changes to: registration and licensing, bicycles and rollerskates, horses, vehicles of unusual size and weight, pedestrians, operation or acts affecting operation of vehicles, law of the road and right of way, speed, traffic signals, parking, highway and traffic signs, and purchase, sale and transfer of motor vehicles.

In 1965 an Act requiring seat safety belts on passenger automobiles manufactured

---

[19] Id. at 59-60, (emphasis supplied).
[20] Id. at 60.
[21] Id.
[22] Id. (emphasis supplied).
[23] A.B. Barber, *Making Our Traffic Laws Uniform*, 133 Annals of the American Academy of Political and Social Science 128, 131 (Sept. 1927).
[24] Id. at 132.
[25] Id.

after July 1 was adopted.[26]

In 1983, the law was changed to abolish certain positions in the Division of Motor Vehicles, transfer personnel in those positions, and to amend, supplement and repeal various parts of the law.[27]

In 2001, the law as it pertains to graduated driver licensing and driving schools was modified[28] and in 2003 the Motor Vehicle Security and Customer Service Act,[29] abolishing the DMV and creating the New Jersey Motor Vehicle Commission (MVC) 'in but not of' the DOT, was adopted. Prior to that time, the

> FIX DMV Commission, established by the Governor's Executive Order No. 19 of 2002, recommended that the DMV be "ripped up by its roots" and replaced with a [MVC]. Of particular importance in the study was the need to improve customer services. Some of this improvement is expected to come with the upgraded facilities, additional parking, computers and on-line technology…
>
> The ending of privatized motor vehicle agencies, criminal history background checks for employees and certain specialized vehicle operators, such as those holding hazmat licensees, are recommended to ensure the integrity of the State's motor vehicle documents and data base and to protect the public safety.[30]

This proposed revision to the statute appears to be consistent with the recent efforts to significantly improve the relationship between the MVC and the citizens of this State.

Summary of Current Revision

Volume I

The definitions section of the Title has not been changed to this time. Instead, the section will be modified after the other revisions have been completed. The next sections of the Title, pertaining to the Department of Motor Vehicles and the Motor Vehicle Commission, have not been changed to any great extent. Sections within those chapters have been rearranged, consolidated or divided into separate sections for ease of review and reference. Additional modifications to this language are anticipated. Since the entire Title is being revised, it seems most logical to combine these sections rather than retaining an unnecessary separation.

---

[26] 1966, 39:3-76.2.
[27] L.1983, c. 403, eff. Dec. 23, 1983.
[28] L.2001, c. 420, eff. Jan. 8, 2002.
[29] 39:2A-1 to 39:2A-41 and scattered provisions. The legislative findings that led to enactment of this bill are included in 39:2A-2.
[30] Committee statement to Assembly, No. 3058-L.2003, c. 13.

The licensing and registration sections of Title 39 are two of the sections that have been heavily revised. In the existing Title, registration and licensing requirements are mixed together throughout approximately 120 sections of the statute and are no longer in any particular order. Provisions regarding Commercial Driver Licenses, touring privileges, tires and others are interspersed throughout the licensing and registration provisions. An effort was made in the draft to reorganize the licensing provisions by consolidating them and ordering them. Additional modifications were made to include statutory language that sets forth current requirements as practiced that are not presently included in the statute. The current statute does not, for example, set forth the requirement of a license for driving in this State in clear and direct terms. The current statute also does not describe the two available driving permits. Sections were added to do so. A definitions section was also added to eliminate the need for duplication and the repetitive use of certain phrases.

The substance of the statutory sections pertaining to the commercial driver's license was not changed since that language is tied to the federal Commercial Motor Vehicle Safety Act of 1986.

The license plates sections have also been heavily revised to consolidate numerous provisions with identical language that appear in the current statute. In the current statute, any new specialty funding license plate is added by way of one or several new statutory sections. One goal of consolidating the sections is to limit future modifications to a single section of the statute so that the requirements for any new plate are easy to locate.

Sections pertaining to touring privileges, documents and the transfer, destruction or loss of documents, license plates, and vehicles were not substantially revised.

The Equipment provisions of the statute, including those pertaining to lamps and reflectors, specialized lights, and other vehicle equipment (brakes, horns, mufflers, mirrors, window glass, safety belts, tires, etc.) were preliminarily reviewed and sections of the statute which appeared to have been superceded by federal law or regulation were removed. Additional review needs to be conducted on the sections in those chapters. Although the language of these sections is not equivalent to the current standards imposed on equipment by federal regulation, if the federal regulations apply only to new vehicles, it may be necessary to have provisions in the law that pertain to older vehicles still in operation. Failing to retain some provisions in the state law could lead to unintended gaps in the statutory coverage pertaining to equipment. Additional research is required to determine the most appropriate language for these chapters.

Sections pertaining to dimensions and weight of vehicles were not substantively changed, but were divided into additional sections for ease of review. Likewise, substantive changes were not made to sections pertaining to specific vehicle types, including motorcycles, tow trucks, school buses, snowmobiles and all-terrain vehicles and limousines. These sections were streamlined, consolidated and rearranged where it seemed appropriate to do so. The compressed or liquefied gaseous fuel and the motor

vehicle theft sections also were not substantively changed.

The general prohibitions section was changed to include references to the new penalty classification system described in detail in Volume II and some of the penalties for particular offenses were modified to bring those penalties more in line with penalties for comparable offenses and/or to address concerned raised by law enforcement officers.

Volume II

The initial sections in this volume, pertaining to the application of the Title, the powers and duties of the Commissioner of Transportation, and the powers of municipalities, counties and the Highway Commissioner remain substantively the same as the original language. The sections pertaining to highways owned by public or semi-public entities and traffic signs and signals also contain the substance of the original sections.

The accidents and reports chapter, the operation of a vehicle under the influence chapter, and the law of the road chapter are also largely unchanged in substance, although the penalty provisions in the accidents and reports chapter were modified to include references to the new penalty classification system.

The chapters pertaining to operation or acts affecting operation, and speed were changed to include references to the new penalty classification system and some of the penalties for particular offenses were modified to bring those penalties more in line with penalties for comparable offenses and/or to address concerned raised by law enforcement officers.

The changes to the general penalty chapter are the most significant changes in this volume of the Title. One of the difficulties associated with the penalties in the current statute is that they appear to have more to do with the time at which the statute was passed than with the severity of the offense for which the penalty is imposed. The Commission has, during the pendency of this project, received numerous requests to rationalize the penalties. An effort has been made to do so. The classifications included in the draft are based on the tables originally prepared which grouped the offenses by the fines assigned to them in the current statute. The classifications were, however, modified to reflect comments of the Commission after review and comparison of the offenses in the various categories.

The classes included in the draft indicate the fine, jail time and community service associated with a particular category of offenses. No suggestion is made regarding whether or not points are assigned as a result of any class of offenses since points are handled by regulation, not statute (with the exception of 39:4-97.2, which refers to the imposition of points, but does not say how many).

To the extent that the fines have a rational basis and are reasonable in relation to the fines charged for other offenses, the same cannot be said about the imposition of jail

time, or the intermittent references to community service, in the current statute. There are, for example, statutory sections that call for 90 days of imprisonment for an offense calling for a $100 fine. There are other offenses that call for up to a $500 fine and make no mention of incarceration. In the present statute, the periods of incarceration called for do not appear to correspond to the fine imposed. In the draft statute, the new classification system calls for periods of jail time and community service time increasing in length with the perceived severity of the offense as indicated by the amount of the fine.

There are problems inherent in the proposed classification system. In an effort to limit the number of classes, the fines were divided into the following categories: up to $50; between $50 and $100; between $100 and $500; between $500 and $1,000; and between $1,000 and $10,000. One of the issues presented by the classification system is found in Class C, which provides for fines between $100 and $500. Some offenses have, under the current law, stepped-up provisions pertaining to first, second and, in some cases, subsequent offences. As a result, Class C it interferes with the current statutory hierarchy. 39:4-97.2 (operation of a vehicle in an unsafe manner likely to endanger a person or property), for example, currently calls for a fine of $50-$150 for a first offense, $100-$250 for a second offense, and $200-$500 plus motor vehicle penalty points for a subsequent offense. Under the current classification system, the penalty for a second offense and for a subsequent offense is in the same class. Similarly, 39:4-129 calls for a fine of $200-$400 for a first offense and $400-$600 for a subsequent offense. Including the asterisked items in this category without any explanation would opens the fines at each level (first, second, subsequent) to the discretion of the individual judge and upsets the scheme created by the Legislature and incorporated in the existing statute.

There are, however, benefits to a classification system. A Title like this one, which contains sections that are frequently revised, results a system of irrational penalties by its nature since penalty provisions are modified individually and increasing the penalty for a single offense causes it to be disproportionate to penalties for offenses deemed similar or of similar severity. A classification system for penalties may be used to maintain proportionality and consistency.

The statutory sections pertaining to turns, signals, railroad tracks, and parking were largely unchanged in substance, although the penalty provisions were modified to include references to the new penalty classification system. Similarly, the statutory sections pertaining to street cars, bicycles, rollerskates, skateboards, motorized bicycles, electric personal assistive mobility devices and horses were largely unchanged in substance, although the penalty provisions were modified to include references to the new penalty classification system. The pedestrian sections of the statute are also largely unchanged in substance, but there are proposed changes to the pedestrian sections under consideration by the Legislature although it is not clear whether or not the Legislature will take action at this time.

The sections pertaining to handicapped individuals as well as the sections concerning vehicles of unusual dimensions, loads, display of information on commercial vehicles and enforcement were largely unchanged in substance, although the penalty

provisions were modified to include references to the new penalty classification system. The Interstate Compact and the Nonresident Violator Compact were also unchanged in substance.

Volume III

To this time, no substantive changes have been made to Volume III, which includes: the motor vehicle security-responsibility law; the unsatisfied claim and judgment fund law; New Jersey automobile reparation reform; compulsory motor vehicle insurance; service of process on non-residents; inspections; hours of service; purchase, sale and transfer of vehicle; abandoned and unclaimed vehicles; motor vehicle component parts; junk yards; driving schools; and auto body repair facilities.

Participation of Various Individuals and Groups in Revision

In the earlier stages of this proposed revision, efforts were made to obtain information from individuals and entities who work with Title 39 on a daily basis, and to incorporate that information as appropriate before seeking comprehensive review and comments on the project from within the State government.

Members of the New Jersey Police Traffic Officer's Association, a voluntary organization of traffic officers throughout the State graciously provided comments on various aspects of the project. The purposes of that organization include keeping officers apprised of the latest technology, training and legislation in the areas of traffic safety, and recommending and supporting legislation consistent with the goals and purposes of the association and public safety. Organizationally, the State TOA is divided into seven regions.[31] Comments were received from various regions within and individual officers in those regions have agreed to provide additional comments once the draft report is released by the Commission. In addition, officers who are members of various County Traffic Officers' Associations also provided comments and expressed a willingness to provide additional information.

Individuals representing departments within the State have also provided some preliminary general comments to this time, and have expressed a willingness to provide more detailed information.

Commitments for review of portions of project

[31] Region 1 Bergen County
Region 2 Essex and Hudson County
Region 3 Morris, Passaic, Sussex, and Warren County
Region 4 Hunterdon, Mercer, Middlesex, Somerset, and Union County
Region 5 Monmouth and Ocean County
Region 6 Burlington, Camden, Gloucester and Salem County
Region 7 Atlantic, Cape May and Cumberland County

Thus far, we have been fortunate to receive commitments from various individuals on behalf of organizations both within and outside of the State of New Jersey to review portions of the Title 39 project once it is released for public comment. Some of the individuals and organizations that have, to this time, agreed to review sections of the draft and provide comments for Commission consideration include:

1. State of New Jersey Motor Vehicle Commission (various individuals to focus on different aspects)
2. State of New Jersey Department of Transportation
3. State of New Jersey Department of Law & Public Safety, Division of Highway Traffic Safety
4. State of New Jersey Department of Human Services, Division of Addiction Services, Intoxicated Driving Program
5. New Jersey Safe Passage Task Force
6. New Jersey State Safety Council
7. New Jersey Police Traffic Officers Association
8. Rutgers University Center for Advanced Infrastructure and Transportation (CAIT)
9. Rutgers University Edward J. Bloustein School of Planning and Public Policy, Alan M. Voorhees Transportation Center
10. State Police Officers
11. Municipal Police Officers
12. Municipal Prosecutors

Efforts will be made to achieve widespread distribution of the project and to obtain as much additional feedback as possible. It is anticipated that other individuals and entities contacted during the pendency of the project and from whom comments have not yet been received will agree to review sections of the project and provide comments during the public comment period. It is hoped that those for whom time constraints precluded a detailed review of an ongoing project with an uncertain release date will be willing and able to commit to a review of at least the portions of this project with which they are most familiar.

In addition to the entities listed above, there are other individuals and entities not contacted in the preliminary stages of this project because from whom comments will be sought now that a preliminary draft of the project will be available in its entirety.

Procedure for review

The draft is not yet available on the Commission's website. At more than 500 pages, the project is so large that a substantial number of links will need to be created in order to make the project as accessible to the public as possible. The limited number of links provided to the Commission on the filing day distribution CD made review more cumbersome than it should have been and changes will be made prior to public distribution.

In addition, before making the project available on the website, Staff will complete its review of the approximately 180 changes that were made to Title 39 in the

time that this project has been ongoing to make sure that all of the necessary changes have been properly incorporated into the draft. Staff will also confirm that the change in the statutory language made early in the project, from "highway" to "roadway" in the text of numerous sections, has been properly undone. While it was of concern that the use of the term "highway" might be misleading to the general public, and lead to a misinterpretation of the applicability of the statutory language, it was suggested that the long-accepted difference between those two terms would result in needless confusion if they were changed.

Prior to release of the draft, the "Comments" sections that are not yet completed in the draft will be finished. Since it is anticipated that the Comments sections will be used by those reading the draft to understand the changes that were made and the reasons for those changes, every effort will be made to provide sufficient detail in the Comments.

In addition, during the preparation of the draft tentative report, Staff flagged additional changes to be made to the language of the draft in order to make it more internally consistent, and it is anticipated that those changes will be made prior to release of the document. The section numbering will also be modified to make it more consistent after some of the sections of the draft are reordered prior to distribution.

After making the draft available to the public, Staff will continue to attend meetings throughout the State to increase awareness of the project and to encourage members of the public to provide comments on the report. Comments will be provided to the Commission and incorporated into the draft as appropriate.

Links to volumes I – III

Title 39 Appendix- Volume I
Title 39 Appendix- Volume II
Title 39 Appendix- Volume III

VOLUME 1

DEFINITIONS

DEPARTMENT OF MOTOR VEHICLES AND MOTOR VEHICLE COMMISSION

LICENSING AND REGISTRATION

LICENSE PLATES

TOURING PRIVILEGES, DOCUMENT, TRANSFER

EQUIPMENT, DIMENSIONS AND WEIGHT

PROVISIONS FOR SPECIFIC VECHILE TYPES

FUEL AND VECHILE THEFT

GENERAL PROHIBITIONS

DEFINITIONS

CHAPTER 1. DEFINITIONS

39A:D-1. Definitions

As used in this subtitle, unless other meaning is clearly apparent from the language or context, or unless inconsistent with the manifest intention of the Legislature:

"Alley" means a public highway wherein the roadway does not exceed 12 feet in width.

"Authorized emergency vehicles" means vehicles of the fire department, police vehicles and such ambulances and other vehicles as are approved by the chief administrator when operated in response to an emergency call.

"Automobile" includes all motor vehicles except motorcycles.

"Berm" means that portion of the highway exclusive of roadway and shoulder, bordering the shoulder but not to be used for vehicular travel.

"Business district" means that portion of a highway and the territory contiguous thereto, where within any 600 feet along such highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks, office buildings, railroad stations, and public buildings which occupy at least 300 feet of frontage on one side or 300 feet collectively on both sides of the roadway.

"Car pool" means two or more persons commuting on a daily basis to and from work by means of a vehicle with a seating capacity of nine passengers or less.

"Chief Administrator" or "Administrator" means the Chief Administrator of the New Jersey Motor Vehicle Commission.

"Commercial motor vehicle" includes every type of motor-driven vehicle used for commercial purposes on the highways, such as the transportation of goods, wares and merchandise, excepting such vehicles as are run only upon rails or tracks and vehicles of the passenger car type used for touring purposes or the carrying of farm products and milk, as the case may be.

"Commission" means the New Jersey Motor Vehicle Commission established by section 4 of P.L.2003, c. 13 (C.39:2A-4).

"Commissioner" means the Commissioner of Transportation of this State.

"Commuter van" means a motor vehicle having a seating capacity of not less than seven nor more than 15 adult passengers, in which seven or more persons commute on a daily basis to and from work and which vehicle may also be operated by the driver or other designated persons for their personal use.

"Crosswalk" means that part of a highway at an intersection, either marked or unmarked existing at each approach of every roadway intersection, included within the connections of the lateral lines of the sidewalks on opposite sides of the highway

measured from the curbs or, in the absence of curbs, from the edges of the shoulder, or, if none, from the edges of the roadway; also, any portion of a highway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other marking on the surface.

"Dealer" includes every person actively engaged in the business of buying, selling or exchanging motor vehicles or motorcycles and who has an established place of business.

"Deputy Chief Administrator" means the deputy chief administrator of the commission.

"Driver" means the rider or driver of a horse, bicycle or motorcycle or the driver or operator of a motor vehicle, unless otherwise specified.

"Explosives" means any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and which contains any oxidizing and combustive units or other ingredients in such proportions, quantities or packing that an ignition by fire, friction, by concussion, by percussion, or by detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or of destroying life or limb.

"Farm tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

"Flammable liquid" means any liquid having a flash point below 200 degrees Fahrenheit, and a vapor pressure not exceeding 40 pounds.

"Gross weight" means the combined weight of a vehicle and a load thereon.

"High occupancy vehicle" or "HOV" means a vehicle which is used to transport two or more persons and shall include public transportation, car pool, van pool, and other vehicles as determined by regulation of the Department of Transportation.

"Highway" means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

"Horse" includes mules and all other domestic animals used as draught animals or beasts of burden.

"Inside lane" means the lane nearest the center line of the roadway.

"Intersection" means the area embraced within the prolongation of the lateral curb lines or, if none, the lateral boundary lines of two or more highways which join one another at an angle, whether or not one such highway crosses another.

"Laned roadway" means a roadway which is divided into two or more clearly marked lanes for vehicular traffic.

"Leased limousine" means any limousine subject to regulation in the State which:

a. Is offered for rental or lease, without a driver, to be operated by a limousine service as the lessee, for the purpose of carrying passengers for hire; and

b. Is leased or rented for a period of one year or more following registration.

"Leased motor vehicle" means any motor vehicle subject to registration in this State which:

a. Is offered for rental or lease, without a driver, to be operated by the lessee, his agent or servant, for purposes other than the transportation of passengers for hire; and

b. Is leased or rented for a period of one year or more following registration.

"Limited-access highway" means every highway, street, or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the same except at such points only and in such manner as may be determined by the public authority having jurisdiction over such highway, street, or roadway; and includes any highway designated as a "freeway" or "parkway" by authority of law.

"Local authorities" means every county, municipal and other local board or body having authority to adopt local police regulations under the Constitution and laws of this State, including every county governing body with relation to county roads.

"Low-speed vehicle" means a four-wheeled low-speed vehicle, as defined in 49 CFR s. 571.3(b), whose attainable speed is more than 20 miles per hour but not more than 25 miles per hour on a paved level surface and which is not powered by gasoline or diesel fuel and complies with federal safety standards as set forth in 49 CFR s. 571.500.

"Magistrate" means any municipal court and the Superior Court, and any officer having the powers of a committing magistrate and the chief administrator.

"Manufacturer" means a person engaged in the business of manufacturing or assembling motor vehicles, who will, under normal business conditions during the year, manufacture or assemble at least 10 new motor vehicles.

"Metal tire" means every tire the surface of which in contact with the highway is wholly or partly of metal or other hard nonresilient material.

"Mid-block crosswalk" means a crosswalk located away from an intersection, distinctly indicated by lines or markings on the surface.

"Motorized bicycle" means a pedal bicycle having a helper motor characterized in that either the maximum piston displacement is less than 50 cc. or said motor is rated at no more than 1.5 brake horsepower or is powered by an electric drive motor and said bicycle is capable of a maximum speed of no more than 25 miles per hour on a flat surface.

"Motorcycle" includes motorcycles, motor bikes, bicycles with motor attached and all motor-operated vehicles of the bicycle or tricycle type, except motorized bicycles as defined in this section, whether the motive power be a part thereof or attached thereto and having a saddle or seat with driver sitting astride or upon it or a platform on which the driver stands.

"Motor-drawn vehicle" includes trailers, semitrailers, or any other type of vehicle drawn by a motor-driven vehicle.

“Motor vehicle" includes all vehicles propelled otherwise than by muscular power, excepting such vehicles as run only upon rails or tracks and motorized bicycles.

"Motorized scooter" means a miniature motor vehicle and includes, but is not limited to, pocket bikes, super pocket bikes, scooters, mini-scooters, sport scooters, mini choppers, mini motorcycles, motorized skateboards and other vehicles with motors not manufactured in compliance with Federal Motor Vehicle Safety Standards and which have no permanent Federal Safety Certification stickers affixed to the vehicle by the original manufacturer. This term shall not include: electric personal assistive mobility devices, motorized bicycles or low-speed vehicles; or motorized wheelchairs, mobility scooters or similar mobility assisting devices used by persons with physical disabilities, or persons whose ambulatory mobility has been impaired by age or illness.

"Motorized skateboard" means a skateboard that is propelled otherwise than by muscular power.

"Motorized wheelchair" means any motor-driven wheelchair utilized to increase the independent mobility, in the activities of daily living, of an individual who has limited or no ambulation abilities, and includes mobility scooters manufactured specifically for such purposes and designed primarily for indoor use.

"Noncommercial truck" means every motor vehicle designed primarily for transportation of property, and which is not a "commercial vehicle."

"Official traffic control devices" means all signs, signals, markings, and devices not inconsistent with this subtitle placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning, or guiding traffic.

"Omnibus" includes all motor vehicles used for the transportation of passengers for hire, except commuter vans and vehicles used in ridesharing arrangements and school buses, if the same are not otherwise used in the transportation of passengers for hire.

"Operator" means a person who is in actual physical control of a vehicle or street car.

"Outside lane" means the lane nearest the curb or outer edge of the roadway.

"Owner" means a person who holds the legal title of a vehicle, or if a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or if a mortgagor of a vehicle is entitled to possession, then the conditional vendee, lessee or mortgagor shall be deemed the owner for the purpose of this subtitle.

"Parking" means the standing or waiting on a street, road or highway of a vehicle not actually engaged in receiving or discharging passengers or merchandise, unless in obedience to traffic regulations or traffic signs or signals.

"Passenger automobile" means all automobiles used and designed for the transportation of passengers, other than omnibuses and school buses.

"Pedestrian" means a person afoot.

"Person" includes natural persons, firms, copartnerships, associations, and corporations.

"Pneumatic tire" means every tire in which compressed air is designed to support the load.

"Pole trailer" means every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach, or pole, or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregularly shaped loads, such as poles, pipes, or structural members capable, generally, of sustaining themselves as beams between the supporting connections.

"Private road or driveway" means every road or driveway not open to the use of the public for purposes of vehicular travel.

"Railroad train" means a steam engine, electric or other motor, with or without cars coupled thereto, operated upon rails, except street cars.

"Recreation vehicle" means a self-propelled or towed vehicle equipped to serve as temporary living quarters for recreational, camping or travel purposes and used solely as a family or personal conveyance.

"Residence district" means that portion of a highway and the territory contiguous thereto, not comprising a business district, where within any 600 feet along such highway there are buildings in use for business or residential purposes which occupy 300 feet or more of frontage on at least one side of the highway.

"Ridesharing" means the transportation of persons in a motor vehicle, with a maximum carrying capacity of not more than 15 passengers, including the driver, where such transportation is incidental to the purpose of the driver. The term shall include such ridesharing arrangements known as car pools and van pools.

"Right-of-way" means the privilege of the immediate use of the highway.

"Road tractor" means every motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any load thereon either independently or any part of the weight of a vehicle or load so drawn.

"Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a highway includes two or more separate roadways, the term "roadway" as used herein shall refer to any such roadway separately, but not to all such roadways, collectively.

"Safety zone" means the area or space officially set aside within a highway for the exclusive use of pedestrians, which is so plainly marked or indicated by proper signs as to be plainly visible at all times while set apart as a safety zone.

"School bus" means every motor vehicle operated by, or under contract with, a public or governmental agency, or religious or other charitable organization or corporation, or privately operated for the transportation of children to or from school for secular or religious education, which complies with the regulations of the New Jersey

Motor Vehicle Commission affecting school buses, including "School Vehicle Type I" and "School Vehicle Type II" as defined below:

"School Vehicle Type I" means any vehicle designed to transport 16 or more passengers, including the driver, used to transport enrolled children, and adults only when serving as chaperones, to or from a school, school connected activity, day camp, summer day camp, summer residence camp, nursery school, child care center, preschool center or other similar places of education. Such vehicle shall comply with the regulations of the New Jersey Motor Vehicle Commission and either the Department of Education or the Department of Human Services, whichever is the appropriate supervising agency.

"School Vehicle Type II" means any vehicle designed to transport less than 16 passengers, including the driver, used to transport enrolled children, and adults only when serving as chaperones, to or from a school, school connected activity, day camp, summer day camp, summer residence camp, nursery school, child care center, preschool center or other similar places of education. Such vehicle shall comply with the regulations of the New Jersey Motor Vehicle Commission and either the Department of Education or the Department of Human Services, whichever is the appropriate supervising agency.

"School zone" means that portion of a highway which is either contiguous to territory occupied by a school building or is where school crossings are established in the vicinity of a school, upon which are maintained appropriate "school signs" in accordance with specifications adopted by the chief administrator and in accordance with law.

"School crossing" means that portion of a highway where school children are required to cross the highway in the vicinity of a school.

"Semitrailer" means every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

"Shipper" means any person who shall deliver, or cause to be delivered, any commodity, produce or article for transportation as the contents or load of a commercial motor vehicle. In the case of a sealed ocean container, "shipper" shall not be construed to include any person whose activities with respect to the shipment are limited to the solicitation or negotiation of the sale, resale, or exchange of the commodity, produce or article within that container.

"Shoulder" means that portion of the highway, exclusive of and bordering the roadway, designed for emergency use but not ordinarily to be used for vehicular travel.

"Sidewalk" means that portion of a highway intended for the use of pedestrians, between the curb line or the lateral line of a shoulder, or if none, the lateral line of the roadway and the adjacent right-of-way line.

"Sign." See "Official traffic control devices."

"Slow-moving vehicle" means a vehicle run at a speed less than the maximum speed then and there permissible.

"Solid tire" means every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load.

"Street" means the same as highway.

"Street car" means a car other than a railroad train, for transporting persons or property and operated upon rails principally within a municipality.

"Stop," when required, means complete cessation from movement.

"Stopping or standing," when prohibited, means any cessation of movement of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic control sign or signal.

"Suburban business or residential district" means that portion of highway and the territory contiguous thereto, where within any 1,320 feet along that highway there is land in use for business or residential purposes and that land occupies more than 660 feet of frontage on one side or collectively more than 660 feet of frontage on both sides of that roadway.

"Through highway" means every highway or portion thereof at the entrances to which vehicular traffic from intersecting highways is required by law to stop before entering or crossing the same and when stop signs are erected as provided in this chapter.

"Trackless trolley" means every motor vehicle which is propelled by electric power obtained from overhead trolley wires but not operated upon rails.

"Traffic" means pedestrians, ridden or herded animals, vehicles, street cars, and other conveyances either singly, or together, while using any highway for purposes of travel.

"Traffic control signal" means a device, whether manually, electrically, mechanically, or otherwise controlled, by which traffic is alternately directed to stop and to proceed.

"Trailer" means every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

"Truck" means every motor vehicle designed, used, or maintained primarily for the transportation of property.

"Truck tractor" means every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

"Van pooling" means seven or more persons commuting on a daily basis to and from work by means of a vehicle with a seating arrangement designed to carry seven to 15 adult passengers.

"Vehicle" means every device in, upon or by which a person or property is or may be transported upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks or motorized bicycles.

Source: 39:1-1.

COMMENT

No changes have yet been made to this section. It is included here for purposes of completeness. It is anticipated that some changes to the definitions contained in this section will be made after the revisions to the balance of the Title have been completed.

DEPARTMENT OF MOTOR VEHICLES AND MOTOR VEHICLE COMMISSION

CHAPTER 2. DEPARTMENT OF MOTOR VEHICLES

39A:DMV-1. Department continued

The Department of Motor Vehicles, see 39:2A-4, created and established by an act passed March 24, 1926 (L.1926, c. 147, p. 228), as amended and supplemented, is continued. The department shall have full charge of the registration and regulation of all motor vehicles as provided by L.1921, c. 208, p. 643, effective January 1, 1922, and the amendments and supplements thereto. The department shall also have such other duties and powers as are described in said L.1921, c. 208, p. 643, or as may hereafter be provided by law.

Source: 39:2-1.

COMMENT

The substance of the section is the same as that contained in the original statute. Instead of being included in a footnote, the reference to the MVC has been inserted into the text of the section. The long title to the Act approved in 1921 and passed in 1926 has been removed. The long title of the 1921 Act effective in 1922 was removed. Instead of being written in words, the dates have been modified to use numbers.

39A:DMV-2. Definitions

As used in this act:

a. "Director" means the Director of the Division of Motor Vehicles in the Department of Transportation.

b. "Division" means the Division of Motor Vehicles in the Department of Transportation.

c. "Motor vehicle record" means any record that pertains to a motor vehicle operator's permit, driver's license, motor vehicle title, motor vehicle registration, or identification card issued by the Division of Motor Vehicles.

d. "Person" means an individual, organization or entity, but does not include the State or a political subdivision thereof.

e. "Personal information" means information that identifies an individual, including an individual's photograph; social security number; driver identification number; name; address other than the five-digit zip code; telephone number; and medical or disability information, but does not include information on vehicular accidents, driving violations, and driver's status.

Source: 39:2-3.3.

COMMENT

The text of this section has not been changed, but the section has been moved so that the definitions for the chapter are in the beginning of the chapter for ease of review.

39A:DMV-3. Director of division of motor vehicles; appointment; term; salary; bond; oath

a. The division shall be administered by the Director of the Division of Motor Vehicles.

b. The director shall be appointed by the Governor with the advice and consent of the Senate and shall serve at the pleasure of the Governor during the Governor's term of office and until the director's successor is appointed and has qualified.

c. The director shall receive such salary as shall be provided by law.

d. The director shall give bond, conditioned for the faithful discharge of his duties, in the sum of $50,000.00, which bond shall be approved by a justice of the supreme court or a judge of the superior court, and shall be filed with the State Treasurer.

e. The director shall take an oath before one of the supreme court justices or superior court judges, in form similar to that now required by the State Treasurer, which oath shall be filed with the Secretary of State.

Source: 39:2-2.

COMMENT

This section is identical to the original. Some clarification of the language should be done to reflect the current titles of the individuals and entities referred to, but more information is needed before those changes may be made.

39A:DMV-4. Powers and duties of commissioner generally; collection of data; contracts; disbursements

The commission shall:

a. Have all the powers and perform all the duties conferred or imposed upon it by this Title;

b. Have charge and supervision of the administration and enforcement of this Title and attend to the enforcement thereof, and for the purpose of enforcement may communicate with the police departments and police officers in the state;

c. Collect such data with respect to the proper restrictions to be placed upon motor vehicles and their use upon the public roads, turnpikes and thoroughfares as shall seem for the public good;

d. Execute all contracts entered into by the commission and approve all bills for disbursement of money under any provision of this chapter and chapter 3 of this title (39:3-1 et seq.), which bills shall be paid by the State Treasurer upon the warrant of the comptroller out of any appropriation regularly made therefor.

Source: 39:2-3.

COMMENT

This section is identical to the original. Some clarification of the language should be done to reflect the current titles of the individuals and entities referred to, but more information is needed before those changes may be made.

39A:DMV-5. Deputy director; powers; bond; oath

a. The director shall appoint a deputy director for a term to correspond with the director's term of office. The deputy director shall assist the director in the administration and enforcement of this subtitle and have all the powers of the director when deputized by the director in the performance of such duties as the director may assign. The deputy director shall receive such compensation as shall be approved by the director and the president of the Civil Service Commission subject to availability of funds.

b. The deputy director shall give bond, conditioned for the faithful discharge of his duties, in the sum of $50,000, which bond shall be approved by a judge of the Superior Court and filed with the State Treasurer. The deputy director shall also take an oath of office before a judge of the Superior Court, in form similar to that now required of the State Treasurer, which oath shall be filed with the Secretary of State.

Source: 39:2-4.

COMMENT

The substance of the section is identical to the original. The text has been changed to make it gender-neutral and the section has been moved within the chapter to place it in proximity to similar sections.

39A:DMV-6. Former positions of chief inspector, deputy chief inspector, inspector and special inspector

a. The positions in the Division of Motor Vehicles designated chief inspector, deputy chief inspector, inspector and special inspector are abolished.

b. A person employed in a position designated as chief inspector, deputy chief inspector, inspector, special inspector or equivalent Civil Service classifications shall have the following reemployment rights:

(1) The person may be appointed, at his request and at the discretion of the superintendent of the Division of State Police, as a member of the State Police; or

(2) The person shall be reemployed by the State of New Jersey, as provided by the laws governing Civil Service.

c. An appointment to the State Police under this section shall be in accordance with 53:1-8, except that upon satisfactory conclusion of the two-year appointment period specified in 53:1-8, the person appointed shall serve continuously as a member of the State Police during good behavior, notwithstanding the requirements of 53:1-8.1.

d. A person appointed to the State Police under this act shall be ranked, approximately equivalent to that person's current salary range and step therein, by the superintendent, as adjusted by the State Treasurer, the President of the Civil Service Commission and the Director of the Division of Budget and Accounting.

e. For the purposes of internal management only, the seniority of a person appointed to the State Police under this act shall be determined by the superintendent.

f. A person appointed to the State Police under this act shall not retain any entitlement upon retirement from the State Police to receive a lump sum payment as supplemental compensation for each full day of earned and unused accumulated sick leave, as authorized by section 1 of 11A:6-16.

g. Notwithstanding the provisions of 53:1-9, the Superintendent of the Division of State Police may establish the qualifications of a person appointed to the State Police under this section.

h. The Boards of Trustees of the Police and Firemen's Retirement System and the Public Employees' Retirement System shall cause to be made any transfer of pension contributions and reserves to the State Police Retirement System of New Jersey necessary to implement the provisions of this section.

i. Except as otherwise provided in this section, nothing in this section shall be construed to deprive a person of tenure rights or of a right or protection under the laws concerning Civil Service, pension or retirement.

j. All of the provisions of this section, except as otherwise provided herein, shall be carried out in accordance with the "State Agency Transfer Act," 52:14D-1 et seq.

k. The provisions of this section are not intended, nor shall they be construed or used, as a basis to privatize existing services or programs, or in any manner reduce the number of State employees performing driver testing duties in the Division of Motor Vehicles.

Source: 39:2-9.1; 39:2-9.2; 39:2-9.3; 39:2-9.4; 39:2-9.5; 39:2-9.6; 39:2-9.7; 39:2-9.8.

COMMENT

The substance of the section is identical to the original. The text has been changed to make it gender-neutral and the section has been moved within the chapter to place it in proximity to similar sections. Subsection (a) is the former 39:2-9.1. Subsection (b) is the former 39:2-9.2. Subsections (c) – (f) are the former 39:2-9.3. Subsection (g) is the former 39:2-9.4. Subsection (h) is the former 39:2-9.5. Subsection (i) is the former 39:2-9.6. Subsection (j) is the former 39:2-9.7. Subsection (j) is the former 39:2-9.8.

39A:DMV-7. Office facilities and supplies

The state house commission shall provide suitable quarters for the department and shall furnish all necessary supplies and equipment for the proper enforcement of this subtitle.

Source: 39:2-11.

COMMENT

This section is identical to the original.

39A:DMV-8. Medical advisory panel

a. There is hereby created in the Division of Motor Vehicles a special study and advisory panel to be known as the Medical Advisory Panel consisting of physicians licensed to practice medicine and surgery (including physicians specialty-board certified in internal medicine, psychiatry, neurology, physical medicine, and ophthalmology), licensed optometrists, and officials of the division supervising motor vehicle driver licensing.

b. The members of the panel shall be appointed by the Governor upon recommendations by the director and shall be in such number as the Governor and director shall deem appropriate. In recommending the physician and optometrist members, the director shall seek the advice and recommendations of the Medical Society of New Jersey with respect to the physician members, and the New Jersey Optometric Association with respect to the optometrist member or members. The panel and the members thereof shall serve at the pleasure of the Governor. They shall receive no compensation for their services but shall be reimbursed for the reasonable expenses actually incurred in the performance of their duties as approved by the director.

c. The Medical Advisory Panel shall study and review all medical criteria and vision standards applicable to the licensing of motor vehicle drivers by the division and recommend such additions and revisions thereof as it shall deem necessary and appropriate. Any such recommended additions and revisions may be adopted by the division on a trial basis to determine the necessity and validity thereof.

d. The director may from time to time require panel members to give testimony at administrative hearings concerning applicants and licensees who may suffer from medical, vision, psychiatric, psychological or characterological disorders relating to a person's ability to safely operate a motor vehicle.

e. No member of the Medical Advisory Panel, the Director of the Division of Motor Vehicles or his employees, or any physician or optometrist licensed to practice in this State shall be liable for any civil damages as a result of providing any reports, records, examinations, opinions or recommendations pursuant to this section.

Source: 39:2-13; 39:2-14; 39:3-15; 39:2-16.

COMMENT

This substance of this section is identical to the original. Subsection (a) is the former 39:2-13. Subsection (b) is the former 39:2-14. Subsections (c) and (d) are the former 39:2-15. Subsection (e) is the former 39:2-16.

39A:DMV-9. Procedure for simultaneous application for driver's license and registration to vote

a. The Secretary of State, with the assistance and concurrence of the Director of the Division of Motor Vehicles, shall formulate a means of permitting a person to simultaneously apply for a motor vehicle driver's license and to register to vote which satisfies both the requirements necessary to receive a license to operate a motor vehicle, pursuant to 39:3-10, and to be permitted to register to vote, pursuant to 19:4-1. The Division of Motor Vehicles, upon receipt of a completed voter registration application

under this section, shall stamp or otherwise mark the lower right hand corner of the document with the date on which it was so received and forward the document to the Secretary of State no later than the 10th day following the date of acceptance.

b. Each application for voter registration which is received by the Division of Motor Vehicles shall be considered and processed as the replacement for any pre-existing voter registration of the applicant.

c. Each change of address notification submitted to the Director of the Division of Motor Vehicles for the purpose of maintaining current information on a person's motor vehicle license shall be reported to the Secretary of State no later than the 10th day following its receipt by the Division of Motor Vehicles and shall serve as notification for the change of address process, unless the registrant indicates that the change of address is not for voter registration purposes.

Source: 39:2-3.2.

COMMENT

This section is identical to the original. Some clarification of the language should be done to reflect the current titles of the individuals and entities referred to, but more information is needed before those changes may be made.

39A:DMV-10. Disclosure of personal information

a. Notwithstanding the provisions of 47:1A-1 et seq. or any other law to the contrary, except as provided in this act, the Motor Vehicle Commission and any officer, employee or contractor thereof shall not knowingly disclose or otherwise make available to any person personal information about any individual obtained by the commission in connection with a motor vehicle record.

b. A person requesting a motor vehicle record including personal information shall produce proper identification and shall complete and submit a written request form provided by the chief administrator for the commission's approval. The written request form shall bear notice that the making of false statements therein is punishable and shall include, but not be limited to, the requestor's name and address; the requestor's driver's license number or corporate identification number; the requestor's reason for requesting the record; the driver's license number or the name, address and birth date of the person whose driver record is requested; the license plate number or VIN number of the vehicle for which a record is requested; any additional information determined by the chief administrator to be appropriate and the requestor's certification as to the truth of the foregoing statements. Prior to the approval of the written request form, the commission may also require the requestor to submit documentary evidence supporting the reason for the request.

c. In lieu of completing a written request form for each record requested, the commission may permit a person to complete and submit for approval of the chief administrator or the chief administrator's designee, on a case by case basis, a written application form for participation in a public information program on an ongoing basis. The written application form shall bear notice that the making of false statements therein is punishable and shall include, but not be limited to, the applicant's name, address and telephone number; the nature of the applicant's business activity; a description of each of

the applicant's intended uses of the information contained in the motor vehicle records to be requested; the number of employees with access to the information; the name, title and signature of the authorized company representative; and any additional information determined by the chief administrator to be appropriate. The chief administrator may also require the applicant to submit a copy of its business credentials, such as license to do business or certificate of incorporation. Prior to approval by the chief administrator or the chief administrator's designee, the applicant shall certify in writing as to the truth of all statements contained in the completed application form.

d. Personal information shall be disclosed for use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls or advisories; performance monitoring of motor vehicles and dealers by motor vehicle manufacturers; and removal of non-owner records from the original owner records of motor vehicle manufacturers to carry out the purposes of the Automobile Information Disclosure Act, Pub.L.85- 506, the Motor Vehicle Information and Cost Saving Act, Pub.L.92-513, the National Traffic and Motor Vehicle Safety Act of 1966, Pub.L.89-563, the Anti-Car Theft Act of 1992, Pub.L.102-519, and the Clean Air Act, Pub.L.88-206, and may be disclosed as follows:

(1) For use by any government agency, including any court or law enforcement agency in carrying out its functions, or any private person or entity acting on behalf of a federal, State or local agency in carrying out its functions.

(2) For use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles, motor vehicle parts and dealers; motor vehicle market research activities, including survey research; and the removal of non-owner records from the original owner records of motor vehicle manufacturers.

(3) For use in the normal course of business by a legitimate business or its agents, employees or contractors, but only:

(A) to verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and

(B) if such information as so submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against the individual.

(4) For use in connection with any civil, criminal, administrative or arbitral proceeding in any federal, State or local court or agency or before any self-regulatory body, including service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of a federal, State or local court.

(5) For use in research activities, and for use in producing statistical reports, so long as the personal information is not published, redisclosed, or used to contact individuals.

(6) For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, antifraud activities, rating or underwriting.

(7) For use in providing notice to the owners of towed or impounded vehicles.

(8) For use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license that is required under the "Commercial Motor Vehicle Safety Act," 49 U.S.C.App.s.2710 et seq.

(9) For use in connection with the operation of private toll transportation facilities.

(10) For use by any requestor, if the requestor demonstrates it has obtained the notarized written consent of the individual to whom the information pertains.

(11) For product and service mail communications from automotive-related manufacturers, dealers and businesses, if the commission has implemented methods and procedures to ensure that:

(A) individuals are provided an opportunity, in a clear and conspicuous manner, to prohibit such uses; and

(B) product and service mail communications from automotive-related manufacturers, dealers and businesses will not be directed at individuals who exercise their option under subparagraph (a) of this paragraph.

(12) For use by an organ procurement organization designated pursuant to 42 U.S.C. s.1320b-8 to serve in the State of New Jersey,or any donor registry established by any such organization, exclusively for the purposes of determining, verifying, and recording organ and tissue donor designation and identity. For these purposes, an organ procurement organization shall have electronic access at all times, without exception, to real time organ donor designation and identification information. An organ procurement organization may also have information for research activities, pursuant to paragraph (5) of subsection c. of this section.

e. As provided by the federal "Drivers' Privacy Protection Act of 1994," Pub.L.103-322, a person authorized to receive personal information under paragraphs (1) through (10) of subsection d. of this section may resell or redisclose the personal information only for a use permitted by paragraphs (1) through (10) of subsection d. of this section subject to regulation by the commission. A person authorized to receive personal information under paragraph (11) of subsection c. of this section may resell or redisclose the personal information pursuant to paragraph (11) of subsection c. of this section subject to regulation by the commission. An organization authorized to receive personal information under paragraph (12) of subsection c. of this section may redisclose the personal information only for the purposes set forth in that paragraph.

f. As provided by the federal "Drivers' Privacy Protection Act of 1994," Pub.L.103-322, a person authorized to receive personal information under this section

who resells or rediscloses personal information covered by the provisions of this act shall keep for a period of five years records identifying each person or entity that receives information and the permitted purpose for which the information will be used and shall make such records available to the commission upon request. Any person who receives, from any source, personal information from a motor vehicle record shall release or disclose that information only in accordance with this act.

g. The release of personal information under this section shall not include an individual's social security number except in accordance with applicable State or federal law.

h. A person who knowingly obtains or discloses personal information from a motor vehicle record for any use not permitted under this section is guilty of a crime of the fourth degree.

i. A person who knowingly obtains, discloses or uses personal information from a motor vehicle record for a purpose not permitted under this section shall be liable to the individual to whom the information pertains, who may bring a civil action in the Superior Court. The court may award:

(1) actual damages, but not less than liquidated damages in the amount of $2,500;

(2) punitive damages upon proof of willful or reckless disregard of the law;

(3) reasonable attorney's fees and other litigation costs reasonably incurred; and

(4) such other preliminary and equitable relief as the court determines to be appropriate.

j. Nothing in this section shall be construed as authorizing the division to obtain personal information, except as provided in subsection (b) and (c).

Source: 39:2-3.4; 39:2-3.5; 39:2-3.6; 39:2-3.7.

COMMENT

The section is substantially unchanged except subsection (b), which was originally two paragraphs, has been divided into two separate subsections for purposes of reference, and the remaining subsections have been relettered accordingly. Subsection (h) is the former 39:2-3.5. Subsection (i) is the former 39:2-3.6. Subsection (j) is the former 39:2-3.7.

39A:DMV-11. Electronic processing; regulations

a. Whenever any law, rule or regulation requires or permits documents or information to be prepared by or submitted to the Division of Motor Vehicles in the Department of Transportation, the director may permit the documents or information to be prepared by or submitted to the division in electronic or digital form, or processed electronically. An individual shall not be required to submit documents or information only in electronic or digital form; nor shall documents or information be made available to an individual only in electronic or digital form. Submission in electronic or digital form may be permitted pursuant to this section notwithstanding that any law, rule or

regulation requires documents or information to be written or to be submitted in writing, specifies that documents or information be signed, certified, verified or witnessed, or otherwise explicitly or implicitly requires the preparation or submission of documents or information on paper or in written form. As used in this subsection, "individual" means a natural person.

b. The director, after consultation with the State Records Committee in the Department of State, shall adopt, pursuant to the "Administrative Procedure Act," 52:14B-1 et seq., regulations specifying how the signature, verification, certification, witnessing or other formal requirements shall be met with respect to documents or information permitted to be prepared or submitted in electronic or digital form pursuant to this section and specifying such additional safeguards as the director deems necessary to protect the privacy, and prevent improper access to or disclosure, of any personal information as defined in section 1 of 39:2-3.3 that may be transmitted in an electronic or digital form, or processed electronically. Regulations adopted pursuant to this subsection may permit the use of digital signature technology for the signing of documents and other appropriate purposes.

Source: 39:2-3.8.

COMMENT

This section is substantially unchanged.

39A:DMV-12. Records and seal; authentication of documents

a. The director shall keep a record of all his or her official acts, shall preserve copies of all decisions, rules and orders made by the director and shall adopt an official seal.

b. Copies of any act, rule, order or decision made by the director and of any paper filed in the director's office may be authenticated under such seal, at a cost not to exceed $5.00 for each authentication, and when so authenticated shall be evidence the same as the original.

Source: 39:2-10.

COMMENT

The substance of the section is identical to the original. The text has been changed to make it gender-neutral.

CHAPTER 2A. MOTOR VEHICLE COMMISSION

39A:MVC-1. Motor Vehicle Commission

39:2A-1 to 39:2A-41, 39:3-10.17a, and 39:3-37.1 shall be known and may be cited as "The Motor Vehicle Security and Customer Service Act." The Legislature finds and declares that:

a. The Division of Motor Vehicle Services (DMV) is one of the State's principal customer service agencies with regular and direct contact with virtually every citizen;

b. The DMV has over 15 million contacts a year with the public, including 39 million transactions, more than any other State agency;

c. The DMV has responsibility for issuing and certifying motor vehicle driver's licenses, ensuring the proper registration of motor vehicles, as well as conducting safety and emissions inspections of motor vehicles;

d. The public expects courteous, efficient and accessible service from government agencies, including the DMV;

e. The DMV's failed security systems are contributing to a growing national problem of identity theft that is costing New Jersey and the nation millions of dollars each week;

f. In the past, the DMV has been unable to deal with fraud and corruption because of inadequate funding, training, security, internal controls and oversight;

g. The DMV must improve its security system and equipment, and its fraud detection, training and monitoring so that fraudulent driver's licenses, such as those used in the furtherance of terroristic activities, will be eliminated;

h. Internal audits and controls and investigations are also needed to detect patterns of fraud, theft, corruption, identity theft and mismanagement in the issuance of driver's licenses, registrations, and titles because DMV documents must be more resistant to compromise;

i. Criminals have used counterfeit passports, Social Security cards, county identification cards, pay stubs and W-2 forms to obtain fraudulent driver's licenses and identification cards in furtherance of identity-theft schemes;

j. Proper identification must be required at all phases of the licensing and driver testing process to assure that only those persons qualified to legally obtain licenses do so;

k. It is essential that DMV records be matched with Social Security Administration records in order to verify the validity of Social Security numbers in DMV databases;

l. Cameras, armed security guards, panic buttons, alarms, safety upgrades, card access systems and door replacements are needed in order to prevent fraud;

m. Employees or agents of the DMV should be required to undergo background checks and fingerprinting;

n. Cleaning crews and maintenance workers at DMV facilities must be supervised by DMV employees to ensure the security of DMV records;

o. In a time of rapidly changing information technology and Internet communications, the DMV lacks an information technology plan to bring it to the 21st Century and still operates on a decades-old computer network with patchwork hardware, antiquated software and obsolete display terminals that lack processing abilities;

p. Previous DMV efforts to implement complex technological mandates have failed, due to bureaucratic mismanagement, inefficient planning and inadequate oversight, as characterized by reports of the State Commission of Investigation;

q. The DMV has become a reactive agency, struggling to keep up with the demands of newly legislated responsibilities, and without the necessary resources to prevent fraud and corruption at its front-line agencies and without the ability to provide even adequate service to its six million customers;

r. The DMV needs a strategic business plan, which is a key to the operation of an agency, and must work within the confines of such plan in an effort to adopt best practices, improve customer service and gain back the confidence of New Jersey citizens and the Legislature;

s. The DMV's privatization of some of its agencies in July 1995 has created poor, disjointed and confused service delivery without consistency among the agencies in terms of policies and procedures, which has led to confusion and frustration in the minds of New Jersey citizens;

t. The DMV privatization has also resulted in poorly paid employees who have received inadequate benefits, resulting in a high turnover rate at DMV agencies;

u. A major benefit to a State-operated DMV system is the ability to centralize anti-fraud policies and procedures;

v. Historically, the privately-operated local motor vehicle agencies have been plagued with long lines, poor customer service and inadequate business practices that have routinely caused network delays and failures for hours at a time;

w. The DMV would be in a better position to plan for long-term improvements, replacements and daily operations if it had a dedicated and consistent source of funding;

x. In order to address the various problems with the DMV, a "FIX DMV Commission" was formed on April 25, 2002, by Governor's Executive Order Number 19 to conduct a comprehensive review of the DMV and to make recommendations on the restructuring and reorganization of the agency;

y. The "FIX DMV Commission" has reported that the DMV is in crisis and has recommended that a New Jersey Motor Vehicle Commission be formed in, but not of, the Department of Transportation to replace the current New Jersey Division of Motor Vehicles with the purposes of: (1) identifying and regulating drivers and motor vehicles to deter unlawful and unsafe acts; (2) identifying and correcting vehicle defects and limiting the amount of vehicle-produced air pollution; (3) focusing on and responding to customer service and security issues; and (4) effectuating change by bringing greater attention and resources to the needs of the organization;

z. It is therefore in the public interest to create a New Jersey Motor Vehicle Commission, the duties of which would include, but not be limited to: (1) addressing the multitude of functions assigned to it while curtailing fraudulent and criminal activities that present threats to the State's security system; (2) following a multi-year strategic business plan that is constantly reviewed and updated, thus avoiding the need for the cyclical reforms that have characterized its history; and (3) conducting operations on a fiscal year budget, controlling fees sufficient to fund the budget, adopting regulations regarding processes and fees; and implementing an annual strategic business plan.

Source: 39:2A-1; 39:2A-2.

COMMENT

The substance of this section is identical to the original. The first sentence of the first paragraph is the former 39:2A-1. The balance of this section is the former 39:2A-2. It is not clear if all of the language of the former 39:2A-2 must remain in the statute.

39A:MVC-2. Definitions

As used in this act:

a. "Agency" or "motor vehicle agency" means that enterprise run by an agent designated by the commission to be the commission's agent for the registering of motor vehicles, issuing registration certificates and licensing of drivers, as provided in 39:3-3 and 39:10-25.

b. "Agent" or "Motor Vehicle Agent" means a person designated as agent in 39:3-3 and 39:10-25.

c. "Chair" means the chair of the commission.

d. "Chief Administrator" or "administrator" means the chief administrator of the commission.

e. "Commission" means the New Jersey Motor Vehicle Commission established and created by 39:2A-4.

f. "Commissioner" means the Commissioner of Transportation of this State.

g. "Department" means the Department of Transportation of this State.

h. "Deputy Chief Administrator" or "deputy administrator" means the deputy chief administrator of the commission and all references in any law, rule, regulation or order to the Deputy Director of the division shall mean and refer to the deputy administrator.

i. "Director" means the Director of the Division of Motor Vehicles.

j. "Division" or "DMV" means the Division of Motor Vehicles in the Department of Transportation.

k. "Service charge" means an amount charged by the commission for services rendered, which includes all new fees and surcharges, increases in existing fees and surcharges, and such amounts as provided in 39:2A-36. Service charges are revenue of the commission and are not subject to appropriation as Direct State Services by the Legislature.

Source: 39:2A-3.

COMMENT

The substance of this section is identical to the original.

39A:MCV-3. Motor Vehicle Commission

a. There is hereby established a body corporate and politic, with corporate succession, to be known as the "New Jersey Motor Vehicle Commission" (“MVC”). The commission shall be established in the Executive Branch of the State Government and for the purposes of complying with the provisions of Article V, Section IV, paragraph 1 of the New Jersey Constitution, the MVC is allocated, in but not of, the Department of Transportation. Notwithstanding this allocation, the MVC shall be independent of any supervision and control by the department or by any board or officer thereof. The MVC is hereby constituted as an instrumentality of the State exercising public and essential governmental functions, and the exercise by the MVC of the powers conferred by this act shall be deemed and held to be an essential governmental function of the State.

b. The Division of Motor Vehicles, transferred to the Department of Transportation pursuant to Reorganization Plan No. 002-1995, is abolished as a division in the Department of Transportation, and all of its functions, powers and duties, except as herein otherwise provided, are transferred to, and are continued in the MVC and shall be exercised by the chief administrator of the MVC. Unless otherwise specified in this act, this transfer shall be subject to the provisions of the "State Agency Transfer Act," (52:14D-1 et seq.). All records, equipment and other personal property, appropriations, and any unexpended balances of funds appropriated or otherwise available to the division, shall be transferred to the MVC pursuant to the "State Agency Transfer Act."

c. Whenever any law, rule, regulation, order, contract, tariff, document, reorganization plan, judicial, or administrative proceeding or otherwise thereunder, refers to the Division of Motor Vehicles in the Department of Law and Public Safety or in the Department of Transportation, or to the director thereof, the reference shall mean and refer to the MVC, unless otherwise stated in this act.

d. Regulations adopted by the division shall continue with full force and effect until amended or repealed pursuant to law.

e. The MVC shall operate on a fiscal year budget cycle.

f. The MVC shall continue in existence until dissolved by act of the Legislature. However, any dissolution of the MVC shall be on condition that the MVC has no debts, contractual duties or obligations outstanding, or that provision has been made for the payment, discharge or retirement of these debts, contractual duties or obligations. Upon any dissolution of the MVC, all property, rights, funds and assets thereof shall pass to and become vested in the State.

Source: 39:2A-4.

COMMENT

The substance of this section is identical to the original.

References to the “commission” have been replaced with “MVC”. It is of concern that confusion may result from a number of sections in Title 39 as a result of the fact that there are, throughout the Title, references to the division, department, commission, and commissioner. Even with the assistance of a definition section, the terms are easy to confuse. The references to the commission, for example, refer to the MVC, but the head of the commission is not the commissioner. Instead, the head of the MVC is either the chair or the chief administrator. The term “commissioner” refers to the head of the Department of Transportation. As a result, an effort is being made throughout the revised Title to use very specific terms when possible to do so without excessive duplication of language.

39A:MVC-4. Employees of MVC

a. Upon the abolishment of the division, all career service employees serving in the division on that date shall be employees of the commission and shall be transferred to the MVC pursuant to the "State Agency Transfer Act," (52:14D-1 et seq.) and shall retain their present career service employment status and their collective bargaining status, including all rights of tenure, retirement, pension, disability, leave of absence, or similar benefits. Future employees of the MVC shall be hired consistent with the provisions of Title 11A of the New Jersey Statutes and the rules promulgated thereunder.

b. The Commercial Bus Unit in the Department of Transportation, together with all of its functions, powers and duties is transferred to and vested in the commission. This transfer shall be subject to the provisions of the "State Agency Transfer Act," (52:14D-1 et seq.). All career service employees who serve in the Commercial Bus Unit shall be employees of the commission and shall retain their present civil service employment status and their collective bargaining status, including all rights of tenure, retirement pension, disability, leave of absence, or similar benefits. All records, property appropriations, and any unexpended balance of funds appropriated or otherwise available to the Commercial Bus Unit, shall be transferred to the commission pursuant to the "State Agency Transfer Act."

c. Upon action of the MVC, all agency employees shall become employees of the MVC. Such employees shall be assigned to appropriate titles by the Department of Personnel. Those private motor vehicle agency employees who were employed by the agency on or before January 1, 2003 and who are assigned to career service titles upon employment with the MVC shall, upon completion of the special probationary period described in 39:2A-7, attain permanent, regular appointments in their respective titles. No special probationary period shall be required for those who have previously completed a probationary period during their previous State service employment. Except for managerial and confidential employees as defined by the "New Jersey Employer--Employee Relations Act," (34:13A-1 et seq.), such employees shall be covered under the State of New Jersey's collective bargaining agreements and shall obtain all employment and collective bargaining rights consistent therewith.

d. Officers and employees of the commission shall be enrolled in the Public Employees' Retirement System and shall be eligible to participate in the State Health Benefits Program established pursuant to the "New Jersey State Health Benefits Program Act," (52:14-17.25 et seq.).

e. Notwithstanding the provisions of Title 11A of the New Jersey Statutes and rules promulgated thereunder to the contrary, employees of a private motor vehicle

agency who were employed with that agency immediately after serving in the division prior to its privatization, shall, upon returning to State service as employees of the MVC, receive civil service seniority credit for all years of employment service retroactive to the date upon which they commenced State employment prior to employment with the private motor vehicle agency. These employees shall also receive civil service seniority credit for all years of employment with the private motor vehicle agency as if the employment were total and continuous.

f. Employees employed by the private motor vehicle agency who enter State service as employees of the MVC but who have no prior State service shall receive civil service seniority credit for all years of employment with the private motor vehicle agency.

g. Civil service seniority credit for all employees referred to in subsections (d) and (e) of this section shall only be used to determine seniority credit for layoff and promotional purposes and accrual of paid leave.

h. Accumulated sick and vacation leave for employees entering or returning to State service as provided in subsections (d) and (e) of this section shall be transferred and credited to their State leave accounts immediately upon their return to State service.

i. Notwithstanding the provisions of Title 11A of the New Jersey Statutes and the rules promulgated thereunder to the contrary, all employees entering or returning to State service other than those on a Special Reemployment List as employees of the MVC following employment with a private motor vehicle agency, who have been employed with the private motor vehicle agency on or before January 1, 2003, and assigned to the career service shall be subject to a special probationary period unless they have already completed a probationary period during their previous State service employment. The special probationary period shall have a duration of six months from the date that the employees enter or return to State service as employees of the MVC. Each employee's work performance shall be evaluated to determine whether the employee can satisfactorily perform the duties of the title to which the employee is appointed and progress reports shall be provided to the employee as provided by the rules of the Merit System Board in the Department of Personnel. An employee who is determined to have satisfactorily performed the duties of the employee's career service title shall attain permanent status in that title at the conclusion of the special probationary period. An employee who is determined not to have satisfactorily performed the duties of that title during or at the conclusion of the special probationary period shall be immediately separated from State service and shall not have any right of appeal regarding the separation to the Merit System Board.

j. Notwithstanding the provisions of Title 11A of the New Jersey Statutes and the rules promulgated thereunder to the contrary, the employees entering or returning to State service as employees of the MVC in career service titles following employment with a private motor vehicle agency, shall receive a salary commensurate with total years of service as determined by the MVC in the salary range assigned to the career service titles to which they have received an appointment.

k. Notwithstanding the provisions of Title 11A of the New Jersey Statutes and the rules promulgated thereunder to the contrary, employees entering State service other than

those on a Special Reemployment List as employees of the MVC in career service titles following employment after January 1, 2003 with a private motor vehicle agency shall be considered provisional employees subject to competitive testing.

l. Notwithstanding the provisions of Title 11A of the New Jersey Statutes and the rules promulgated thereunder, employees entering State service as provided in subsection (j) of this section shall not be subject to displacement by persons on preexisting Special Reemployment Lists. Special Reemployment Lists for applicable titles shall be used only to fill vacant positions in the MVC.

Source: 39:2A-5; 39:2A-6; 39:2A-7; 39:2A-8; 39:2A-9; 39:2A-35.

COMMENT

The substance of this section is identical to the original. Subsections (a) and (c) – (d) are the former 39:2A-5. Subsection (b) is the former 39:2A-35. Subsections (e) – (h) are the former 39:2A-6. Subsection (i) is the former 39:2A-7. Subsection (j) is the former 39:2A-8. Subsections (k) and (l) are the former 39:2A-9. Some minor changes are anticipated to this section to streamline and consolidate the language.

39A:MVC-5. Powers and duties of Chief Administrator

In addition to any powers and duties otherwise imposed by this act, the chief administrator shall have general responsibility for the implementation of this act, and shall, without limitation:

a. Perform, exercise and discharge the functions, powers and duties of the MVC through such offices as may be established by this act or otherwise by law;

b. Administer and organize the work of the MVC in such organizational units, and from time to time alter the plan of organization as deemed expedient, as necessary for the secure, efficient and effective operation of the MVC;

c. Appoint, remove and fix the compensation of subordinate officers and other personnel employed by the MVC in accordance with the MVC's table of organization, except as herein otherwise specifically provided;

d. Appoint, remove, and fix the compensation and terms of employment of the deputy administrator, who shall serve in the State unclassified service, in accordance with the MVC's table of organization;

e. Organize and maintain an administrative office and employ therein such secretarial, clerical and other assistants in the MVC as the internal operations of the MVC may require;

f. Formulate and adopt rules and regulations for the efficient conduct of the work and general administration of the MVC, its officers and employees;

g. Prepare an annual budget, and submit it to the MVC;

h. Prepare annually, a strategic business plan and submit it to the MVC, including a facilities improvement and management plan and a table of organization;

i. Institute or cause to be instituted such legal proceedings or processes as may be necessary to properly enforce and give effect to any of the powers or duties of the administrator;

j. Report as the Governor shall from time to time request or as may be required by law;

k. Collect all fees, fines, penalties, surcharges, service charges and other charges imposed by this act and the regulations issued pursuant thereto or pursuant to law;

l. Develop and maintain a master list of all assets;

m. Oversee the implementation of the facilities improvement and management plan, in consultation with the State Treasurer; and

n. Perform such other functions as may be prescribed in this act or by any other law or by the MVC.

Source: 39:2A-28.

COMMENT

The substance of this section is identical to the original but the section has been moved closer to the beginning of the chapter so the provisions are more visible and precede the section pertaining to the deputy chief administrator. Some minor changes are anticipated to this section to streamline and consolidate the language.

39A:MVC-6. Deputy Chief Administrator

a. The Deputy Chief Administrator shall assist the administrator in the day-to-day administration of the MVC and shall have all of the powers and duties of the administrator, as authorized and assigned by the administrator.

b. The deputy administrator shall carry out all of the administrator's duties and responsibilities during the administrator's absence, disqualification or inability to serve, and shall perform such other duties and responsibilities as the administrator shall determine and assign. The deputy administrator shall serve at the pleasure of the administrator and shall receive such salary as fixed by the administrator in accordance with the table of organization. The deputy administrator shall be in the State unclassified service.

Source: 39:2A-10.

COMMENT

The substance of this section is identical to the original.

39A:MVC-7. Authorized actions of administrator and deputy chief administrator

The administrator, and the deputy administrator under the direction of the administrator, shall have as their immediate goal the improvement of the safety and security of the State's motor vehicle licensing, registration, titling and inspection system and to this end are authorized to:

a. Make technological improvements, including the modernization of software and hardware, the addition of surveillance cameras, alarms, and access systems, and the utilization of biometrics;

b. Increase the number of audit staff, security guards, and other security- related employees;

c. Improve training and monitoring procedures;

d. Utilize document imaging from the field;

e. Integrate the New Jersey title database with the National Motor Vehicle Title Information System;

f. Improve license plate management, including an automated inventory system and reissuance program;

g. Acquire the ability to access State vital statistics data to immediately update driver's license information;

h. Implement additional proofs of identity verification for a non-driver identification card, driver's license, permits, and registrations;

i. Implement card access systems, clear visibility barriers and door replacements where needed;

j. Replace the written driver's license knowledge test with an online test;

k. Increase the use of credit or debit cards or any other electronic payment device;

l. Increase the use of scanned documents;

m. Match motor vehicle records with Social Security records to verify Social Security numbers in the motor vehicle database, to the extent allowable; and

n. Seek the assistance of the Immigration and Naturalization Service to verify authenticity of motor vehicle applicants and their eligibility for documents.

Source: 39:2A-29.

COMMENT

The substance of this section is identical to the original.

39A:MVC-8. Appointing authority

Except as otherwise provided by law, the administrator shall be considered the "appointing authority" for the MVC within the contemplation of the civil service laws and the table of organization. The administrator may delegate such appointing authority to the deputy administrator as the administrator deems necessary.

Source: 39:2A-11.

COMMENT

The substance of this section is identical to the original.

39A:MVC-9. Commission members

a. The MVC shall consist of the following eight members:

(1) The Commissioner of Transportation, who shall serve as an ex officio voting member;

(2) The State Attorney General, who shall serve as an ex officio voting member;

(3) The Chair of the commission who shall be a nonvoting member. The Chair shall be appointed by the Governor with the advice and consent of the Senate. The Chair shall serve at the pleasure of the Governor during the Governor's term of office, and shall receive such salary as shall be fixed by the Governor which is not greater than the salary of a cabinet-level official of the State. Prior to nomination, the Governor shall cause the Attorney General to conduct an inquiry into the nominee's background, financial stability, integrity and responsibility and reputation for good character, honesty and integrity. The person appointed and serving as Chair shall also be Chief Administrator of the commission and shall devote full time to the performance of his duties. The Chief Administrator shall be in the State unclassified service;

(4) The State Treasurer, who shall serve as an ex officio voting member; and

(5) Four public members who shall be appointed by the Governor with the advice and consent of the Senate, not more than two of whom shall be of the same political party. The public members shall be voting members and serve for a term of four years. These members shall be New Jersey residents who shall provide appropriate geographic representation from throughout the State and who shall have experience and familiarity with public safety, customer service, security, or business operations. At least one member shall reside in a northern county (Bergen, Essex, Hudson, Morris, Passaic, Union, Sussex and Warren), at least one member shall reside in a central county (Hunterdon, Mercer, Middlesex, Monmouth and Somerset), and at least one member shall reside in a southern county (Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean and Salem).

b. Initial appointments of public members to the MVC shall be for terms as follows: one member for four years, one member for three years, one member for two years, and one member for one year. After the initial appointments, all public members shall be appointed for terms of four years; and may be appointed for any number of successive terms. A member's term shall be deemed to commence on January 1 of the year in which the member is appointed. The MVC may elect a secretary and a treasurer, who need not be members, and the same person may be elected to serve both as secretary and treasurer.

c. Each ex officio member of the MVC may designate two employees of the member's department or agency, who may represent the member at meetings of the commission. A designee may lawfully vote and otherwise act on behalf of the member. The designation shall be in writing delivered to the MVC and shall continue in effect until revoked or amended by writing delivered to the MVC.

d. Each public member shall continue in office after the expiration of the member's term until a successor is appointed and qualified. The successor shall be appointed in like manner for the unexpired term only.

e. A vacancy in the membership of the MVC occurring other than by expiration of term shall be filled in the same manner as the original appointment, but for the unexpired term only.

f. Members of the MVC shall be subject to the provisions of the "New Jersey Conflicts of Interest Law," (52:13D-12 et seq.).

g. Each appointed member of the MVC may be removed from office by the Governor for cause, after a public hearing and may be suspended by the Governor pending the completion of the hearing. Before assuming the duties of MVC membership, each member shall take and subscribe an oath to perform the duties of the office faithfully, impartially and justly to the best of the member's ability. A record of the oaths shall be filed in the office of the Secretary of State.

Source: 39:2A-12; 39:2A-18; 39:2A-19.

COMMENT

This section is substantially identical to the original. Language specifying the first chair and chief administrator of the commission has been removed as no longer necessary. Subsections (a) – (e) are the former 39:2A-12. Subsection (f) is the former 39:2A-18. Subsection (g) is the former 39:2A-19.

39A:MVC-10. Powers and duties of commission

a. In addition to any powers and duties conferred upon it elsewhere in this act, the MVC shall be authorized to:

(1) Make, amend and repeal bylaws not inconsistent with State and federal law;

(2) Adopt an official seal;

(3) Maintain an office at such place or places within the State as it may designate;

(4) Apply for and accept grants from the State or federal government, or any agency thereof, or grants, gifts or other contributions from any foundation, corporation, association or individual, or any private source, and comply with the terms, conditions and limitations thereof, as necessary and proper to carry out the purposes of this act;

(5) Delegate to the administrator and any other officers of the MVC such powers and duties as necessary and proper to carry out the purposes of this act;

(6) Operate, lease, license or contract in such manner as to produce revenue for the MVC, as provided in this act;

(7) Accept and use any funds available to the MVC;

(8) Enter into agreements or contracts to pay for services rendered from any public or private entity, and receive payment for services rendered to any public or private entity; and

(9) Enter into agreements or contracts, execute any and all instruments, and do and perform acts or things necessary, convenient or desirable for the purposes of the MVC, or to carry out any power expressly or implicitly given in this act.

b. The MVC is further authorized to:

(1) Review and approve a statement of the vision, mission, and goals of the MVC, as submitted by the administrator;

(2) Review and approve the strategic business plan of the MVC which shall include the commission's long-term objectives, policies, and programs, including a facilities improvement and management plan and a table of organization, as submitted by the administrator;

(3) Review and approve the annual budget of the MVC as submitted by the administrator and ensure that projected revenues and service charges are sufficient to adequately fund the MVC both in the short and long-term;

(4) Receive reports and recommendations from the Advisory Councils created pursuant to this act and provide policy direction related thereto to the administrator;

(5) Review and recommend all capital purchases and construction projects undertaken by the MVC;

(6) Review any proposed bill, joint resolution or concurrent resolution introduced in either House of the Legislature which establishes or modifies any motor vehicle statute or regulation in this State. Such a review shall include, but not be limited to, an analysis of the fiscal impact of the bill or resolution on the MVC and any comments upon or recommendations concerning the legislation including rejection, modification or approval. Additionally, the MVC shall suggest alternatives to the legislation which it deems may be appropriate; and

(7) Recommend to the Governor and the Legislature any statutory changes it deems appropriate, including, but not limited to, any revisions to fees or service charges or changes to programs, in order to insure the proper functioning and operation of the MVC.

c. Except as provided in this section and section 39:2A-21 all administrative functions, powers and duties of the MVC may be exercised by the administrator and any reference to the MVC in any law, rule or regulation may for this purpose be deemed to refer to the administrator.

d. The MVC shall elect annually, by a majority of the full membership, one of its members, other than the Chair, to serve as Vice-Chair for the ensuing year. The Vice-Chair shall hold office until January 1 next ensuing. The Vice-Chair, acting in the capacity of presiding officer, shall carry out all of the responsibilities of the Chair of the MVC during the Chair's absence, disqualification, or inability to serve.

e. Members other than those serving ex officio shall serve without compensation, but the MVC shall reimburse commission members for actual expenses necessarily incurred in the discharge of their duties.

Source: 39:2A-13; 39:2A-14; 39:2A-15.

COMMENT

This language in this section is substantially identical to the original. Subsections (a) – (c) are the former 39:2A-13. Subsection (d) is the former 39:2A-14. Subsection (e) is the former 39:2A-15.

39A:MVC-11. Meetings

a. The MVC shall meet monthly or at more frequent times at the discretion of the Chair or as a majority of the MVC shall decide. Meetings of the MVC shall be held at such times and places as the Chair may deem necessary and convenient.

b. The meetings shall be subject to the provisions of the "Open Public Meetings Act," (10:4-6 et seq.).

c. Any other law, rule or regulation to the contrary notwithstanding, the MVC shall take all necessary steps to ensure that all interested persons are given adequate notice of MVC meetings and the agenda of such meetings, using media engaged in the dissemination of information.

d. The powers of the MVC shall be vested in the members thereof. Four members of the MVC shall constitute a quorum at any meeting. Actions may be taken and motions and resolutions adopted by the MVC by the affirmative vote of at least four members. No vacancy in the membership of the MVC shall impair the right of a quorum to exercise all the rights and perform all the duties of the MVC.

e. A true copy of the minutes of every meeting of the MVC shall be delivered by and under the certification of the secretary of the MVC, without delay, to the Governor. No action taken at the meeting shall have force or effect until 10 days, Saturdays, Sundays, and public holidays excepted, after the minutes are delivered, unless during the 10-day period the Governor approves the minutes, in which case the action shall become effective upon approval. If, in that 10-day period, the Governor returns copies of the minutes with a veto of any action taken by the MVC or any member, the action shall be null and void and of no effect.

Source: 39:2A-16; 39:2A-17.

COMMENT

This language in this section is substantially identical to the original. Subsections (a) – (c) are the former 39:2A-16. Subsection (e) is the former 39:2A-17. It is anticipated that changes will be made to this section to streamline the language.

39A:MVC-12. Actions and responsibilities; liability; immunity

a. The MVC may, in acceptance of payment of any fees, fines, penalties, surcharges, service charges or other charges, authorize the use of a credit or debit card or any other electronic payment device.

b. The MVC shall adopt all rules and regulations in accordance with the "Administrative Procedure Act," (52:14B-1 et seq.) for the proper functioning of the MVC, and as necessary to effectuate the purposes of this act, except for those relating to the internal governance of the MVC adopted by the administrator. Current rules and regulations of the division shall remain in full force and effect until such time as they are repealed or amended by the MVC or in accordance with any other law.

c. The administrator is directed to immediately commence a study on the location and adequacy of agency facilities. Special attention shall be paid to siting agencies which are accessible to transit and parking facilities. The study shall examine the affordability

and practicality of using smaller satellite offices. The study shall reexamine the location and number of the MVC's regional service centers. The study shall reevaluate the core business practices used in the administration of motor vehicle services and so report to the MVC.

d. Members, officers and employees of the MVC shall not be liable in an action for damages to any person for any action taken or recommendation made within the scope of their employment as a member, officer or employee if the action or recommendation was taken or made without malice. The members of the MVC shall be indemnified and their defense of any action provided for in the same manner and to the same extent as employees of the State under the "New Jersey Tort Claims Act," (59:1-1 et seq.) on account of acts or omissions in the scope of their employment.

e. As the MVC is a State agency, all absolute and qualified immunities and defenses provided to public entities and public employees by the "New Jersey Tort Claims Act," (59:1-1 et seq.), the "New Jersey Contractual Liability Act," (59:13-1 et seq.), and any other law shall apply to all interests held and activities performed by the MVC and its employees pursuant to this act.

f. The Attorney General shall provide legal representation to the commission and its employees to the same extent as representation is provided to other State agencies and their employees.

Source: 39:2A-20; 39:2A-21; 39:2A-23; 39:2A-24; 39:2A-25; 39:2A-27.

COMMENT

This language in this section is substantially identical to the original. Subsection (a) is the former 39:2A-20. Subsection (b) is the former 39:2A-21. Subsection (c) is the former 39:2A-27. Subsection (d) is the former 39:2A-23. Subsection (e) is the former 39:2A-24. Subsection (f) is the former 39:2A-25.

39A:MVC-13. Taxes and assessments

The exercise of the powers granted by this act will be in all respects for the benefit of the people of the State, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions, and as the operation and maintenance of facilities and assets by the MVC will constitute the performance of essential governmental functions, the MVC shall not be required to pay any taxes or assessments upon any facility and assets or any property acquired or used by the MVC under the provisions of this act or upon the income therefrom, and any facility and assets and any property acquired or used by the MVC under the provisions of this act and the income therefrom shall be exempt from taxation.

Source: 39:2A-31.

COMMENT

This language in this section is substantially identical to the original. It is anticipated that some minor changes will be made to streamline the language.

39A:MVC-14. Fingerprinting of employees; criminal history background checks

a. The MVC shall require the fingerprinting of all prospective employees, employees of the MVC, and employees of the agents of the MVC, for purposes of

determining employment eligibility in any title or capacity that is either directly or indirectly involved in the issuance or processing of driver's licenses, permits, business licenses, identification cards, driving records, or vehicle registrations and titles, and of all independent contractors and their employees who work on a motor vehicle premises or have access to motor vehicle records or documents. The MVC is hereby authorized to exchange fingerprint data with, and receive criminal history record information from, the Federal Bureau of Investigation and the Division of State Police, consistent with the provisions of Pub.L.92-544, for use in determining employment eligibility.

b. The MVC may, as deemed necessary by the MVC, receive the results of periodic follow-ups of criminal history record checks of all employees of the MVC and employees of its agents, for purposes of determining continuing employment eligibility in any title or capacity that is either directly or indirectly involved in the issuance or processing of driver's licenses, identification cards, driving records, or vehicle registrations and titles.

c. If the information from the criminal history record background check discloses that a prospective or current employee has a record of criminal history, the MVC shall review the information with respect to the type and date of the criminal offense to determine if the person is qualified for employment with the MVC. Criminal offenses which shall disqualify an individual from employment include, but are not limited to, any crime or offense, whether committed in New Jersey or in another jurisdiction, which in New Jersey would constitute murder, assault with intent to murder, espionage, treason, rape, kidnapping, unlawful possession of an explosive or weapon, extortion, armed robbery, distribution of or intent to distribute a controlled substance, possession of a controlled substance, willful destruction of property, burglary, theft, fraud, forgery, terrorism, solicitation of money or resources for a terrorist organization and aggravated assault.

d. Notwithstanding the provisions of subsection b. or c. of this section, an individual shall not be disqualified from employment or service under this act on the basis of any conviction disclosed by a criminal record check performed pursuant to this act without an opportunity to challenge the accuracy of the disqualifying criminal history record.

e. An individual who has been disqualified under the provisions of this act shall be entitled to reapply for the position if the disqualifying conviction is reversed.

f. Notwithstanding the provisions of subsection b. or c. of this section, an individual shall not be disqualified from employment or service on the basis of any conviction disclosed by a criminal history record background check performed pursuant to this act if the individual has affirmatively demonstrated to the administrator, clear and convincing evidence of the individual's rehabilitation. In determining whether an individual has affirmatively demonstrated rehabilitation, the following factors shall be considered:

(1) the nature and responsibility of the position which the applicant would hold, has held or currently holds, as the case may be;

(2) the nature and seriousness of the offense;

(3) the circumstances under which the offense occurred;

(4) the date of the offense;

(5) the age of the applicant when the offense was committed;

(6) whether the offense was an isolated or repeated incident;

(7) any social conditions which may have contributed to the offense; and

(8) any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of those who have had the applicant under their supervision.

Source: 39:2A-32.

COMMENT

This language in this section is substantially identical to the original. It is anticipated that some minor changes will be made to streamline the language.

39A:MVC-14. Contracts for ancillary services

a. The MVC may contract for ancillary services at facilities used by the MVC, including food and beverage concessions, service concessions that would be beneficial to its customers, and information services that would be of interest or informative to its customers, such as television displays, public service displays, and the like.

b. In entering into a contract pursuant to this section, the MVC shall award a contract on the basis of competitive public bids or proposals to the responsible bidder or proposer whose bid or proposal is determined to be in the best interest of the State, price and other factors considered.

c. The MVC is authorized to receive funds from the contract and shall have the right to use the same. The revenue shall not be subject to appropriation as Direct State Services by the Legislature. In addition, this revenue shall not be restricted from use by the MVC in any manner except as provided by law. This revenue shall be used in the furtherance of MVC purposes. This revenue shall be considered revenue of the MVC and shall not be subject to the calculation of proportional revenue remitted to the MVC pursuant to section 105 of this act.

Source: 39:2A-33.

COMMENT

This language in this section is substantially identical to the original. It is anticipated that some minor changes will be made to streamline the language.

39A:MVC-15. Service charges; fees; revenue

a. The first $200,000,000 of fees and surcharges thereon collected pursuant to the following statutes shall be considered service charges which are revenues to be remitted to the MVC and the remainder shall be remitted to the General Fund, provided that if the total amount of such fees and surcharges collected, as verified by the relevant fiscal year

New Jersey Comprehensive Annual Financial Report, produce more or less revenue than the sum of $200,000,000 and the amount anticipated in the fiscal year 2004 Appropriations Act for those statutes, then the $200,000,000 in revenue from those service charges to the MVC shall be increased or lowered proportionately:

12:7-73; 12:7A-24; 12:7A-28; 17:29A-33; 17:29A-35; 27:5F-42; 39:2-10; 39:3-4b; 39:3-4c; 39:3-8; 39:3-8.1; 39:3-8.2; 39:3-10; 39:3-10a; 39:3-10b; 39:3-10f; 39:3-10.30; 39:3-13; 39:3-18; 39:3-19; 39:3-19.2; 39:3-19.5; 39:3-20; 39:3-20.1; 39:3-21; 39:3-24; 39:3-25; 39:3-26; 39:3-27.4; 39:3-27.6; 39:3-27.9; 39:3-27.16; 39:3-27.19; 39:3-28; 39:3-30; 39:3-31; 39:3-31.1; 39:3-32; 39:3-33a; 39:3-33b; 39:3-33.4; 39:3-33.6; 39:3-36; 39:3-54.14; 39:3-75.2; 39:3-84; 39:3-84.7; 39:3C-3; 39:4-14.3j; 39:4-14.3w; 39:4-26; 39:4-30; 39:4- 139.12; 39:5-30.4; 39:5-36.1; 39:6-42; 39:6B-3; 39:7- 3; 39:8-11; 39:8-16; 39:8-17; 39:8-23; 39:8-45; 39:8-47; 39:8-52; 39:8-69; 39:8-53; 39:8-54; 39:10-11; 39:10-12; 39:10-14; 39:10-16; 39:10-19; 39:10-25; 39:10-35; 39:10A-15; 39:11-8; 39:12-2; 39:12-5; and 39:13-2.

Proportional revenues remitted to the commission for the fiscal years beginning July 1, 2004 and thereafter shall have the same proportion as the proportional revenues remitted to the MVC for the fiscal year beginning July 1, 2003, and this calculation shall not be impacted by the acceleration of revenue attributable to new passenger automobile registrations implemented pursuant to P.L.2004, c. 64.

b. In addition to the proportionately increased or lowered revenue provided for in subsection a. of this section, the MVC shall receive 100 percent of the revenues collected from any new service charge and 100 percent of the increased revenues collected from any existing service charge increased by law. Any new or increased service charge shall not be included in the calculation of the proportional revenue remitted to the MVC.

c. In addition to the revenues provided for in subsections a. and b. of this section, all fees collected pursuant to Chapter 3 of Title 39 of the Revised Statutes required to defray the costs of the MVC with respect to producing, issuing, renewing, and publicizing license plates, or related computer programming shall be considered revenues of the commission notwithstanding any other provision of law.

d. Notwithstanding any other provision of law, all fees established pursuant to P.L. 2001, c. 391 shall take effect on the enactment of 39:2A-1 et al. The $6 digitized picture fee shall be charged regardless of whether the license or identification card displays a picture, and shall be revenues of the MVC for use in the furtherance of any MVC purpose. This fee shall be considered revenues of the MVC and shall not be subject to the calculation of proportional revenue remitted to the MVC pursuant to this section.

e. In addition to the vehicle registration fees imposed pursuant to the provisions of chapters 3, 4, and 8 of Title 39 of the Revised Statutes, the MVC shall impose and collect an additional $7 for each new and renewal vehicle registration as a security surcharge, which surcharge shall take effect on the enactment of 39:2A-1 et al. and shall expire ten years thereafter. The security surcharges collected pursuant to this section shall be

revenues of the commission and shall not be subject to the calculation of proportional revenue remitted to the MVC pursuant to this section. The security surcharge shall not be imposed on the registration of passenger vehicles registered to persons possessing a valid handicapped person identification card issued pursuant to 39:4-205 or to persons aged 65 years of age or older at the time of registration or registration renewal.

f. Revenues of the MVC shall not be subject to appropriation as direct State services by the Legislature. In addition, the revenues of the MVC shall not be restricted from use by the MVC in any manner except as provided by law. Revenues of the MVC may be used in the furtherance of any purpose of the MVC or as otherwise provided for by law.

g. All monies paid to the MVC pursuant to 39:6-58 are revenues of the MVC and shall not be subject to the calculation of proportional revenues remitted to the MVC pursuant to this section.

Source: 39:2A-36; 39:2A-37; 39:2A-38; 39:2A-39.

COMMENT

This language in this section is substantially identical to the original. Subsections (a) – (c) and (f) are the former 39:2A-36. Subsection (d) is the former 39:2A-37 (that former section also included language like that in subsection (f). Subsection (e) is the former 39:2A-38 (that former section also included language like that in subsection (f). Subsection (g) is the former 39:2A-39. The statutory citation form has been shortened as in other sections, it is anticipated that additional minor changes will be made to streamline the language.

39A:MVC-16. Annual report; audit; semi-annual report

a. On or before September 30 of each year, the MVC shall file with the Governor and the presiding officer of each House of the Legislature a report setting forth the operational, capital and financial expenditures of the previous year, the operational, capital and financial plan, and the table of organization and staffing plan, for the current year and a proposed operational, capital and financial plan for the next ensuing year. The report may include recommendations for revisions to fees or service charges which the MVC deems appropriate and shall include the latest audited annual financial statement. In this statement, the MVC shall disclose all revenues remitted to the commission and provide a detailed listing of the various categories in which it receives revenue, including any surplus revenue from the prior year.

b. The MVC shall cause a financial audit of its books and accounts to be made at least once each year by certified public accountants and a copy thereof shall be filed with the State Treasurer.

c. On or before September 30 and March 30 of each year, the MVC shall file with the Governor and the presiding officer of each House of the Legislature a report providing an assessment of the quality of service provided by the MVC and a description of any security improvements made by the commission in the prior six month period and those anticipated in the current six month period. To the extent practicable, the report also shall include data setting forth in detail the number of transactions annually performed at each MVC agency or facility and by other means including, but not limited to, electronic transactions. This portion of the report also shall disclose, to the extent

practicable, the average waiting time to process a transaction at each MVC agency or facility and, where applicable, through other means. If the MVC determines that it is not able to ascertain these data for inclusion in the six month report, the report shall set forth the reasons the data could not be included and provide a date by which the MVC reasonably estimates that it will be able to provide these data. In addition, the report shall include the number of criminal complaints filed against any MVC employee or any other person, in connection with commission related activity. Complaints which are determined to be unfounded shall not be included. The report shall set forth the various crimes and offenses for which complaints were filed against any MVC employee or in connection with any MVC activity.

Source: 39:2A-22.

COMMENT

This language in this section is substantially identical to the original. It is anticipated that some minor changes will be made to streamline the language.

39A:MVC-17. Advisory councils

There are created within the MVC five advisory councils, which shall provide the MVC with advice, technical expertise, information, guidance, and recommendations in four general areas. The MVC shall designate the appropriate State and local government representatives, interest group representatives, technical experts, and constituent representatives as appropriate to serve on the councils, with no council having more than five members. Federal government representatives and representatives of national organizations shall be asked to serve, and if willing, shall be designated by the MVC to serve. All council members shall be designated by MVC action and shall serve on rotating terms so as to provide stability and continuity on each council. The Chair, or the Chair's designee, shall serve on each council. The councils shall meet and report to the commission monthly, or as frequently as the MVC requests. The councils are as follows:

a. The Safety Advisory Council, which shall advise the MVC regarding its policies, operating practices, regulations and standards in regard to driver, motor vehicle and traffic safety and consider new initiatives or legislation to enhance the safety of the motoring public.

b. The Customer Service Advisory Council, which shall advise the MVC regarding its policies, operating practices, employee communications, regulations, and standards in providing appropriate customer service. The council shall: examine benchmarking performance and level of service standards for the Telephone Center; examine internal communications to ensure consistency and systematic application; make recommendations regarding marketing and the dissemination of information to the public to re-establish a robust marketing and public information program which informs and educates public consumers; and advise on all aspects of customer service at the MVC.

c. The Security and Privacy Advisory Council, which shall: advise the MVC as to how to effectively maintain its system and business processes in the securest manner; help it to address its most serious security breaches; advise as to new or modified programs needed to achieve heightened security; recommend methods to curtail fraudulent and criminal activities that present threats to the State's security as well as

measures to protect the privacy of driver information, including but not limited to the Driver's Privacy Protection Act of 1994.

d. The Business Advisory Council, which shall advise the MVC on improvements in the MVC's business practices which affect its public and private partners, regulated entities, interest groups, businesses, and constituents in providing motor vehicle services.

e. The Technology Advisory Council, which shall advise the MVC on the latest and best technological services and equipment to ensure continued modernization of the MVC's facilities, equipment, operations, security, and customer service.

Source: 39:2A-26.

COMMENT

This language in this section is substantially identical to the original. It is anticipated that some minor changes will be made to streamline the language.

39A:MVC-18. Motor Vehicle Affordability & Fairness Task Force

a. There is created a task force to be known as the "Motor Vehicles Affordability & Fairness Task Force" to study the impact of the current point system and non-driving related suspension of driving privileges, in particular, the Merit Rating Plan Surcharges, on the driving public and make recommendations for the reform of the surcharge suspension program to increase motorist safety. In addition, the task force shall examine "The Parking Offenses Adjudication Act," (39:4-139.2 et seq.) and municipal court processes related thereto, as well as court actions on surcharge assessments and license suspensions related to nonpayment of fines or tickets as well as motor vehicle moving violations.

b. The task force shall consist of 19 members as follows: the Commissioner of Transportation, ex officio, or a designated representative; the Chair of the New Jersey Motor Vehicle Commission, ex officio or a designated representative; a representative of the Administrative Office of the Courts; the Director of the Office of Highway Traffic Safety, in the Department of Law and Public Safety, ex officio, or a designated representative; the Director of the Division of Insurance in the Department of Banking and Insurance, ex officio, or a designated representative; the Chairperson of the State Employment and Training Commission, ex officio or a designated representative; and nine public members, to be appointed by the Governor, among whom shall be included a representative of the New Jersey Highway Traffic Safety Policy Advisory Council, a representative of a not-for-profit highway safety organization, a representative of the automobile retailers industry, a representative of the automobile insurance industry, a regular operator of a motor vehicle weighing in excess of twenty-six thousand pounds, one law enforcement officer engaged in highway patrol, a representative from the New Jersey State League of Municipalities, a representative from the New Jersey Institute for Social Justice and a representative of a New Jersey based chapter of the American Automobile Association. The Speaker of the General Assembly and the President of the Senate shall each appoint two members who may be public members or members of the Legislature. No more than two of the legislative appointees shall be from the same political party. Legislative appointees shall serve during the legislative term of the appointing authority.

c. The members of the task force shall serve without compensation, but may be reimbursed for necessary expenses incurred in the performance of their duties.

d. The task force shall organize as soon as may be practicable after the appointment of a majority of its members and shall select a chairperson from among the members. The members shall select a secretary, who need not be a member of the task force.

e. The task force shall meet at the call of the chairperson.

f. The task force shall be entitled to call to its assistance and avail itself of the services of the employees of any State department, board, bureau, commission or agency, as it may require and as may be available for its purposes, and to employ stenographic and clerical assistance and incur traveling and other miscellaneous expenses as may be necessary in order to perform its duties, within the limits of funds appropriated or otherwise made available to it for its purposes.

g. The task force shall study and develop recommendations concerning the following issues, including but not limited to:

(1) the rapid growth in the number of driver's license suspensions;

(2) identification and regulation of drivers to deter unlawful and unsafe acts;

(3) establishment of a mechanism to assist low-income residents that are hard pressed to secure the restoration of driving privileges;

(4) reform of the parking ticket suspension system and "The Parking Offenses Adjudication Act"; and

(5) increasing the collection of outstanding surcharges.

h. The study shall include, but not be limited to, investigating issues of motor vehicle safety, insurance, finance, and socioeconomic conditions. The task force shall review and analyze studies examining the social impacts of driver's license and registration suspensions. The task force shall also review and analyze studies and statistics regarding surcharges and suspensions to develop recommendations for reform.

i. The task force shall develop recommendations for public and private strategies and recommendations for legislative or regulatory action, if deemed appropriate, to address these issues. The recommendations shall include suggestions for the development of public information campaigns to educate and inform motorists about driver's license and registration suspensions, and methods of lessening financial and social burdens on motorists.

j. The task force's recommendations shall be aimed at developing and implementing an amnesty policy and a reform of the surcharge suspension. The task force shall review the impact of suspension of driving privileges upon businesses and individuals dependent upon having a valid driver's license for gainful employment and to conduct commerce in this State.

k. The task force shall prepare and submit a final report containing its findings and recommendations, including any recommendations for legislative or regulatory

action that it deems appropriate, no later than one year after the task force organizes, to the Governor, the President of the Senate and the Speaker of the General Assembly, and the members of the Senate Transportation Committee and the Assembly Transportation Committee, or their successors.

l. Upon the submission of the final report the task force shall dissolve. Any and all materials, records, work products or other property of the task force shall become property of the MVC.

Source: 39:2A-30.

COMMENT

This language in this section is substantially identical to the original. It is anticipated that some minor changes will be made to streamline the language.

39A:MVC-19. Reorganization plans; inconsistencies superceded

To the extent that Reorganization Plans Nos. 002-1995 and 005-1998 are inconsistent with any provisions of this act, they are superseded to the extent of such inconsistencies and any reference in such Plans to the Division of Motor Vehicles in the Department of Transportation shall mean and refer to the MVC.

Source: 39:2A-34.

COMMENT

This language in this section is substantially identical to the original.

39A:MVC-20. Inconsistency and severability

a. All acts and parts of acts inconsistent with any of the provisions of this act are superseded to the extent of such inconsistencies.

b. The provisions of this act shall be deemed to be severable, and if any phrase, clause, sentence or provision of this act is declared to be unconstitutional or the applicability thereof to any person is held invalid, the remainder of this act shall not thereby be deemed to be unconstitutional or invalid.

c. This act shall be liberally construed to obtain the objectives and effect the purposes thereof.

Source: 39:2A-40; 39:2A-41.

COMMENT

This language in this section is substantially identical to the original sections. Subsection (a) is the former 39:2A-40. Subsections (b) and (c) are the former 39:2A-41.

LICENSING AND REGISTRATION

CHAPTER 3. PERMITS, LICENSES AND IDENTIFICATION CARDS

39A:3-L1. Definitions

"Endorsement", with regard to a driver's license, means an amendment to the license on which it appears to permit the operation of additional vehicle(s), as specified.

"Permit" means both a learner's permit and an examination permit unless otherwise specified.

"Supervising driver" means a New Jersey licensed driver at least 21 years old licensed to drive a motor vehicle of the class operated by the permit holder for not less than three years. This term does not include a motor vehicle examiner administering a driving skills test.

Source: 39:3-13.

COMMENT

This section is new. In an effort to limit duplication and the repetitive use of various terms within a single section or chapter, the terms included above were defined so that the term, rather than the longer definition, could be used in the text of the statute. The definition of endorsement is new. It is included since the term appears in this chapter, but was not previously defined.

39A:3-L2. Driving in New Jersey

A person shall not operate a motor vehicle on a public highway in this State unless the person:

a. Has a valid permit; or

b. Has a driver's license, or

c. Is under supervision while participating in an approved New Jersey behind-the-wheel driving course.

Source: 39:3-10.

COMMENT

This section is new. It contains pieces of the old 39:3-10. The licensing and registration sections of Title 39 are two of the sections that have been most heavily revised. In the existing Title 39, registration and licensing requirements are mixed together throughout approximately 120 sections of the statute and are no longer in any particular order. Provisions regarding Commercial Driver Licenses, touring privileges, tires and others are interspersed throughout the licensing and registration provisions. An effort was made in this draft chapter to reorganize the licensing provisions - consolidating them and putting them in an order. Since the current statute does not set forth the requirement of a license for driving in this State in clear direct terms, this section begins with that requirement for the sake of clarity.

39A:3-L3. Learner's and examination permits

a. A permit is required for all individuals seeking a license to drive for the first time. A person must obtain a learner's permit or an examination permit.

b. A learner's permit is authorization to operate a dual pedal controlled motor vehicle in the company, and under the control, of a teacher certified to instruct in an

approved behind-the-wheel driving education course, a licensed drivers' school instructor, or a representative of the Commission while taking the driver's license examination.

c. The Commissioner may issue a learner's permit to a person at least 16 years old, which is valid until the holder's 17th birthday or until the holder qualifies for a provisional license, whichever occurs first.

d. A learner's permit shall be issued only if the applicant presents an application certified by the school principal, if enrolled in a behind-the-wheel driving education course, or by the operator of the driving school where the applicant received behind-the-wheel driving instruction. A learner's permit issued to a person taking a behind-the-wheel driving course in a school shall be retained in the school principal's office except when the person is undergoing behind-the-wheel instruction. Upon successful completion of an approved written examination, eye examination and minimum six-hour behind-the-wheel driving course, the learner's permit shall be validated by the Commission and retained in the possession of the person to whom it was issued. The permittee and the teacher or instructor are accountable for all violations of Title 39 committed by the permittee in the presence of the teacher or instructor.

e. An examination permit is authorization to operate a designated class of motor vehicle with a supervising driver. The Commissioner may issue an examination permit to a person over 17 years old to allow the person to operate and take the license examination regardless of completion of a behind-the-wheel driving course. The permit holder and the supervising driver are accountable for all violations of Title 39 committed by the permittee in the presence of the supervising driver.

f. An examination permit issued to a person under 21 years old is valid for six months. An examination permit issued to a person over 21 years old is valid for three months. An examination permit issued to a disabled person is valid for nine months.

g. The required fees for permits are: basic driver's license, up to $10; motorcycle license or endorsement, $5; bus or school bus endorsement, $25. The Commissioner shall waive the payment of fees for examination permits for bus endorsements when the applicant establishes that the bus endorsement will be used exclusively for operating buses owned by a nonprofit organization duly incorporated under Title 15, 15A or 16.

h. Upon application, a permit period may be extended for up to 60 days, without payment of an added fee, if the holder applied to take the driver's license examination before the expiration of the original permit but the Commissioner was unable to schedule an examination during that period.

Source: 39:3-13; 39:3-13.1; 39:3-13.2; 39:3-13.2a; 39:3-13.4; 9:3-41.

COMMENT

This section contains a streamlined, consolidated description of the two available permits which was culled from a review of the existing sections. The permits are not described in this way in the existing statute, but it appears that a simple, summary explanation might be helpful. This section reorders and consolidates the information regarding permits found in various other sections of the statute. The MVC has advised that a permit is required for all individuals seeking a license to drive for the first time. For individuals licensed in other states, the written test may be waived for a person 18 or older who has a valid non-provisional license issued by any of the 50 states or the District of Columbia. The road test may be waived for an individual with an out-of-state license.

39A:3-L4. Requirements for permits

a. A person shall not be issued a learner's or examination permit until the person passes an approved written examination and complies with any other requirements imposed by law or regulation regarding vehicle operation. A person may not take the examination for a permit without acceptable photo identification unless that person is a high school student participating in an approved course of driving education.

b. The written examination shall include a test of the applicant's vision, ability to understand traffic control devices, and knowledge of:

(1) Safe driving practices;

(2) The effects of alcohol or drugs on the ability to operate a vehicle;

(3) The mechanics of vehicles sufficient to insure the safe operation of the applicant's vehicle; and

(4) The laws and ordinary usages of the road.

c. The examination shall include questions developed by the Commission and the State Department of Health and Senior Services concerning the use of alcohol or drugs as related to highway safety. Those questions shall be on subjects determined to be relevant to youthful drivers by the Commission and the Commissioner of the Office of Highway Traffic Safety. One question shall ask whether the applicant is aware of New Jersey's "Uniform Anatomical Gift Act," and the procedure for indicating on a driver's license the intention to make a donation of body organs or tissues.

d. In addition to the written examination, an applicant shall submit an application and the required fee with satisfactory proof of:

(1) Identity;

(2) Age;

(3) Legal residency, showing the applicant's presence in the United States is authorized under federal law; and

(4) An applicant under 18 years old shall submit the signature of a parent or guardian. The Commission shall postpone for six months the driving privileges of any person who submits a fraudulent signature for a parent or guardian.

e. A digitized picture of the applicant is required for the issuance of an examination permit. The picture shall be stored in a manner prescribed by the Commissioner and may be displayed on the examination permit. The Commissioner may require that when a person to whom an examination permit has been issued has reconstructive or cosmetic surgery which significantly alters the person's facial features, the person shall notify the chief administrator who may require the picture of the person to be updated. The digitized picture or any access thereto or any use thereof shall not be sold, leased or exchanged. Specific use of the examination permit and any information related thereto that is stored or encoded, electronically or otherwise, shall be in accordance with 39:2-3.3 et seq. and the federal Driver's Privacy Protection Act of 1994.

f. If the Commission has reasonable cause to suspect that a document presented pursuant to subsection (d) is altered, false or otherwise invalid, the Commission shall refuse to grant the permit or license until the document is verified by the issuing agency.

g. When issuing a permit, the Commissioner shall make available a current driver's manual and any supplements containing all information necessary to answer any question on an examination for a driver's license or a renewal.

Source: 39:3-10; 39:3-10f; 39:3-12.2. 39:3-10; 39:3-13.1; 39:3-41.

COMMENT

This section combines select portions of several existing sections, to identify, in a single section, the requirements for learners and examination permits. In subsection (a), the word "approved" is substituted for language saying that it is approved by the State Department of Education and conducted in a public, parochial or private school pursuant to 39:3-13.1 (which then refers to another section of the statute). It is not clear if this language is needed in the revised statute. The language of (c)(3) above replaces "his knowledge of such portions of the mechanism of motor vehicles as is necessary to insure the safe operation of a vehicle of the kind or kinds indicated by the applicant ad of the laws and ordinary usages of the road." The provisions of (e) have been modified to mirror those pertaining to digitized license pictures in section 3-L20.

39A:3-L5. Provisional driver's license

a. A provisional license is a limited license provided to first-time licensees. The limitations imposed by the license are designed to decrease some of the risks of driving while inexperienced drivers gain proficiency. All of the requirements of a basic license apply to a provisional license.

b. To obtain a provisional driver's license, an applicant shall:

(1) Be at least 17 years old;

(2) Satisfactorily complete an approved behind-the-wheel driving course as indicated upon the face of the learner's permit over the signature of the principal or the person operating the school in which the course was conducted;

(3) Secure an examination permit;

(4) Complete six months' driving experience with a validated permit; and

(5) Pass the road test after exhibiting acceptable photo identification.

c. A provisional license requires a road test to demonstrate the ability to operate a vehicle. The test shall be given on public streets where practicable, but may be preceded by an off-street screening to assess basic skills. The Commission shall approve new public street locations for the test which pose a minimal risk of injury to the public.

d. A provisional license may be sent by mail and shall be distinguished in appearance from a basic license.

e. A provisional license is not convertible into a basic driver's license. When the requirements for obtaining a basic license are met pursuant to 39A:3-L8, the licensee must return to the MVC to apply for a basic license.

Source: 39:3-13; 39:3-13.1; 39:3-13.2; 39:3-13.2a; 39:3-13.4.

COMMENT

This section consolidates the requirements for a provisional driver's license currently found in a number of different sections of the statute. The MVC has advised that a provisional license is the second step in obtaining an unrestricted license, following a permit (learner's, examination or both) and the first license for all first-time licensees, regardless of age. The MVC confirmed that a provisional license does not automatically become a basic license, but that a licensee who meets the requirements for a basic license must go to an MVC office and apply for the basic license. In the event that the licensee does not do so, the provisional license is valid for the entire four year license period with the restrictions that apply to a provisional license. If the licensee does not apply for the basic license, but retains a provisional license for four years, when the license is renewed, the licensee may apply for a basic license without the restrictions applicable to the provisional license.

39A:3-L6. Operation of vehicle pursuant to permit or provisional driver's license

a. A motor vehicle may be operated by a holder of a learner's permit, with a supervising driver, only between 5:01 a.m. and 11:00 p.m.

b. Neither an examination permit holder nor a provisional driver's license holder shall drive between 12:01 a.m. and 5 a.m. except for:

(1) An emergency which is of sufficient severity and magnitude to substantially endanger the health, safety, welfare or property of a person; or

(2) A bona fide employment, charitable, educational or religion-related activity if the employer, charitable, educational or religious authority provides satisfactory written verification of the activity to the Commissioner.

c. A supervising driver of a passenger automobile shall sit in the front seat of the vehicle.

d. Except during a behind-the-wheel driving course, a permit or provisional license holder shall not operate a passenger vehicle with more than one passenger, unless the driver is at least 21 years old or the passenger is a person with whom the driver resides or is at least 21 years old.

e. A permit or provisional license holder shall not use an interactive wireless communication device while operating a moving vehicle, except in an emergency. "Use" shall include talking or listening on any interactive wireless communication device, or operating its controls.

f. A permit or provisional license holder shall ensure that all occupants of the vehicle are secured with properly adjusted and fastened seat belts or child restraint systems.

Source: 39:3-13; 39:3-13.1; 39:3-13.2; 39:3-13.2a; 39:3-13.4.

COMMENT

This section streamlines and consolidates the provisions regarding the operation of a vehicle pursuant to a permit in order to eliminate duplication and so that the requirements and limitations are found in a single section of the statute. Language in (b)(1) making the local police officer the arbiter of whether a sufficient emergency exists has been removed to allow the determination to be made in municipal court. The exception language in (b)(2) has been expanded to include charitable and educational activities in addition to employment and religious activities.

39A:3-L7. License classifications

The Commission shall issue the following classes of driver's license:

a. Motorcycle: Includes all motorcycles but not three-wheeled vehicles with a cab with glazing enclosing the occupant, seats like a passenger vehicle, seat belts and automotive steering. A driver's license for motorcycles may be issued as a separate license, but if issued to the holder of a basic driver's license, it shall be by endorsement.

b. Bus: Includes buses classified by 39:3-10.1 and school buses as classified by 18:39-1 et seq. Any issuance of such a license shall be by endorsement on the basic driver's license.

c. Basic: Includes non-commercial passenger vehicle licenses other than those for a motorcycle or bus. Drivers obtaining a license for the first time are required to obtain a provisional license before obtaining a basic license.

d. Specialty: In addition to the licenses listed above, the Commission shall issue such specialty licenses as authorized by statute.

Source: 39:3-10.

COMMENT

This section summarizes the general, non-CDL licenses or endorsements that are available. Section (d) was added to make reference to the specialized types of licenses that are available, such as farm licenses and well-drilling licenses, which are found in 39A:3-L16, -L17, and -L18.

39A:3-L8. Requirements for basic license

a. To obtain a basic driver's license, an applicant shall:

(1) Submit an application on the appropriate forms and pay the fee;

(2) Be 18 years old or older;

(3) Be a resident of New Jersey and submit satisfactory proof of legal residency, showing the applicant's presence in the United States is authorized under federal law;

(4) Submit satisfactory proof of identity, age, and legal residency showing the applicant's presence in the United States is authorized under federal law;

(5) Satisfactorily complete the written examination; and

(6) Satisfactorily complete a road test demonstrating ability to operate a vehicle.

(7) For first-time licensees, operate a vehicle for at least one year, not including any period of suspension or postponement, from the date of issuance of a provisional license in compliance with Title 39 and not have been assessed more than two motor vehicle points or been convicted in the previous year for a violation of 39:4-50, 39:4-50.4a, 39:4-50.14, 39:4-129, 2C:11-5, 2C:12-1(c), or any other motor vehicle-related violation the Commission determines to be significant pursuant to regulation.

b. If the Commission has reasonable cause to suspect that a document presented pursuant to subsection (a) is altered, false or otherwise invalid, the Commission shall refuse to grant the permit or license until the document is verified by the issuing agency.

c. A road test shall not be held for a basic driver's license until at least six months after the validation of the permit for an applicant under 21 years old, or three months for an applicant at least 21 years old. For other licenses or endorsements, no road test shall be held until 20 days have passed except, in the case of a bus endorsement, no road test shall be scheduled until 10 days have passed.

d. An applicant who has a provisional license for at least one year need not retake the written or road examination before obtaining a basic license.

e. The Commission may waive the written examination or the road test, or both, for any person at least 18 years old possessing a valid driver's license issued by any other state, the District of Columbia or the United States Territories. The Commission shall provide that person with a booklet that highlights the motor vehicle laws unique to New Jersey.

f. When a the results of a written examination administered as part of a high school driver education program are accepted in satisfaction of the written exam requirement for a license, a certified driver education instructor or special education teacher may read the exam to a student diagnosed by a local child study team as having a deficiency in reading or perception or a cognitive difficulty associated with a learning disability. The student shall record responses on the appropriate answer sheet.

g. Upon the request of an applicant, the Commissioner shall administer oral knowledge tests for the license and any endorsements if the applicant demonstrates to the satisfaction of the Commissioner an inability to comprehend a written test. The Commissioner shall provide an English and a Spanish version of the knowledge tests for a license and for any endorsements and is authorized to provide versions in such other languages as the Commissioner may deem appropriate.

Source: 39:3-13a; 39:3-10; 39:3-10f; 39:3-12.2.

COMMENT

This section streamlines and consolidates the requirements for a basic license that are currently found in several sections of the statute. The (a)(3) requirement for residency in New Jersey in order to obtain a license is new. It was included in the registration sections of the statute, but not here, and it is a requirement for a license, so it was inserted here as well. In subsection (a)(5), the reference to completion of a written examination eliminates language found in the current statute calling for the expansion of the driver's license examination by adding additional questions pertaining to the impact of alcohol and drug use and questions pertaining to subjects relevant to youthful drivers. This requirement was eliminated because it is assumed that the modifications to the exam have already taken place, and it does not appear that the language called for ongoing modifications. The language in (a)(6) may be appropriate for change. As mentioned for other sections of the statute, a string of citations with no reference to the substance of the sections is not particularly helpful to a reader. In addition, a general reference to regulations with no guidance as to where to look for such regulations may be unnecessarily confusing. Also, it may be more appropriate to relocate the provisions of (b) that pertain to licenses other than the basic license. In (e), I will confirm that "local child study team" is the currently accepted terminology. Subsection (f) extends the reading of a license exam to individuals other than students diagnosed with a deficiency or disability and provides for the administration of the examination in a language other than English. This language was taken from the language pertaining to CDLs found at 39A:5-CDL3.

39A:3-L9. Issuance of license

a. An applicant for a New Jersey driver's license shall surrender any current driver's license issued by another jurisdiction upon receipt of the New Jersey license. Failure to do so shall result in the revocation of the New Jersey license.

b. An applicant under 18 years old seeking a permit or license who holds a permit or license for a passenger vehicle issued by another jurisdiction is subject to the requirements and penalties imposed on New Jersey applicants of the same age. If the other jurisdiction has permit or license standards substantially similar to those of New Jersey, the Commission may issue a permit or license without imposing the testing requirements.

c. The Commission may refuse to grant a driver's permit or license to a person with an infirmity that inhibits the safe operation of a motor vehicle.

d. With every new or renewal license and new or renewal identification card, but not with a temporary license or learner's permit, the Commissioner shall provide the opportunity for a person to designate the choice to donate all or any body organs or parts for transplantation, therapy, medical research or education upon that person's death pursuant to the provisions of the "Uniform Anatomical Gift Act".

Source: 39:3-10; 39:3-10f; 39:3-12.2.

COMMENT

This section streamlines and consolidates the provisions regarding the issuance of a license. The language of subsection (a) was modified. The current statute calls for an applicant to surrender a license from another jurisdiction upon receipt of a New Jersey license, but then says that if the applicant fails to comply, the Commission should refuse to issue a license. This language appeared ineffective because it called for the refusal to issue a license already issued, so the current draft calls for a revocation of the NJ license issued. Subsection (b) was modified to say that the Commission may issue a permit or license without imposing the testing requirements. The original language says "shall", rather than "may" but most of the language of the statute is very careful to preserve maximum discretion on the part of the Commission that this language was changed to be consistent. The language of subsection (c) was modified. Initially, this language said that the Commission may refuse to grant a permit or license to a person it determined should not have one, but then subsequent language clarified that this could be done only on the basis of an infirmity, the language was streamlined. In addition, the word "infirmity" was substituted for "defect" in the original.

39A:3-L10. License duration; fee

a. A driver's license shall be valid for four years from the date of issuance. Alternatively, the Commission may, for good cause shown, issue licenses which expire on a date fixed by it. The Commission shall issue licenses for the following license period on and after the first day of the calendar month immediately preceding the commencement of such period, such licenses to be effective immediately.

b. The Commissioner may, for good cause, extend a license and any endorsement beyond their expiration dates for periods not to exceed an additional 12 months, and may do so without payment of a proportionate fee when the Commissioner determines that such extension is necessary for good cause. If any license and endorsement is so extended, the licensee shall pay the full license fee upon renewal as if no extension had been granted.

c. A person 70 years old or older may elect to have a license issued for a period of either two or four years, which election may not be altered by the Commissioner.

d. The expiration of a license issued to an applicant who may legally remain in the United States for a shorter period than the standard license duration shall be based on the termination of the authorized presence in the United States by federal law. The Commission may renew such license only if the applicant's continued presence in the United States is authorized by federal law. This section shall not be construed to alter or extend the expiration of a license issued prior to the operative date of this chapter.

e. The fee for a basic license, and for a motorcycle or a bus license whether issued as a separate license or as an endorsement, is $18 plus the digitized picture fee for a four year license and $9 plus the digitized picture fee for the two year license.

f. The Commission shall waive the fee for a bus license used exclusively for operating buses owned by a nonprofit organization incorporated in New Jersey. The fee for licenses with expiration dates fixed by the Commission shall be fixed in amounts proportionately less or greater than the fee for a standard term license.

g. A driver operating a state, county or city owned motor vehicle or motorcycle exclusively for the use of the state, county or city shall be licensed to do so without charge by the commissioner. A special certificate, to be prescribed and furnished by the commissioner, shall be issued to the licensee. The license so granted shall, unless otherwise revoked, terminate upon the licensee's ceasing to be an employee of the state, county or city, and it shall be surrendered on demand of the commissioner.

Source: 39:3-10; 39:3-10f; 39:3-14; 39:3-87.

COMMENT

This section streamlines and consolidates the current language pertaining to duration and fees. In subsection (a), this draft says that a license will be valid for four years from the date of issuance. The language of the earlier statute is slightly different, it says that a license will be valid until the last day of the 48th calendar month following the month in which it was issued. The language of 39:3-10f, however, says that a license will be valid for a period of 48 calendar months, a phrasing which is closer, but not identical to the 'four year' language in this draft. The italicized language in subsection (a) may not be necessary. If it is, it will be drafted more clearly. Subsection (b), indicates that the Commissioner may extend a license or endorsement duration. It appears that this may be done both with and without a requirement that a proportional fee be paid, this will be confirmed.

39A:3-L11. Application for driver's license or renewal

a. An application for a driver's license or renewal shall include the current street address of the residence or business of the applicant. A post office box may appear on a driver's license application only as part of a mailing address in addition to the street address. The Commissioner, on application, shall permit a victim of a violation of 2C:12-10, 2C:14-2, or 2C:25-17 et seq., or who otherwise has good cause, to use as an address a post office box or other contact point in lieu of including the actual residence address.

b. Applications for renewals of licenses shall be made in accordance with procedures established by the Commission.

c. An applicant for a driver's license application or renewal shall be offered an opportunity to register to vote and a copy of the driver's manual and any supplements.

Source: 39:3-9b; 39:3-10; 39:3-10m; 39:3-12.1; 39:3-41.

COMMENT

This section streamlines and consolidates the language in the original sections of the statute. In subsection (a), it is not clear why an applicant is permitted to supply a business address for a license since the license, unlike a registration (which pertains to a specific vehicle), is specific to a person, who must live somewhere. The language of (a) was modified to make it mirror the similar language in the registration section (39A:2-R4). The language in 39:3-12.1 saying that an individual may apply directly to an agent of the director for a license or registration was eliminated as unnecessary.

39A:3-L12. Vision screening

a. The Commission shall require every licensed driver to pass a vision screening at least once every 10 years as a condition for the renewal of a driver's license or endorsement. The vision screening may be certified by the Commission or by a licensed: optometrist, ophthalmologist, ophthalmic dispenser, or licensed to practice medicine and surgery.

b. If screening shows a need for corrective eyewear or corrective action, renewal is conditioned upon compliance with the corrective action. The Commission may require a road test to determine the adequacy of the corrective action.

Source: 39:3-10c; 39:3-10d.

COMMENT

This section contains the substance of the original statutory sections, but has been streamlined and consolidated. The MVC has advised that the vision testing is not currently being performed as it proved to be burdensome and difficult for agency personnel to administer. The MVC is working on a reintroduction of the program by working with physicians and ophthalmologists to perform the screening and provide the results to the MVC. The provisions of 39:3-10d were eliminated from this draft initially because they were to have been implemented in 1977 and it was assumed that the language was unnecessary. Since the MVC has mentioned the possibility of implementing this section in the future, it may be appropriate to insert the language from that section. It is not clear when screening may resume. The MVC did note that when screening was being performed, applicants for testing were randomly selected.

39A:3-L13. Epileptiform seizures

a. A physician treating a person 16 years old or older for recurrent convulsive seizures, recurrent periods of unconsciousness, or impairment or loss of motor coordination due to conditions including any form of epilepsy, shall, when such conditions persist or recur despite medical treatments, report this to the Commissioner within 24 hours after the physician's determination of such fact. The Commissioner, in consultation with the State Commissioner of Health, shall furnish the forms for such reports and establish a procedure for evaluation and screening of reported cases.

b. A person subject to a condition described in (a) shall report the existence of the condition to the Commissioner.

c. Reports submitted pursuant to this section shall be confidential but a copy shall be provided to the licensee on request. The reports shall not be revealed or used by the

Commission in any manner except to determine the eligibility of a person to operate a motor vehicle in this State.

d. Violation of section (a) is a class C offense. Violation of section (b) is a class C offense and, in the discretion of the Commissioner, the driving privileges of a person convicted of this offense may be suspended or revoked in accordance with the procedures in 39:5-30.

Source: 39:3-10.4; 39:3-10.5; 39:3-10.6; 39:3-10.7; 39:3-10.8.

COMMENT

This section contains the substance of the original sections, but streamlines the language and consolidates the requirements into a single section. In subsection (c), language was added requiring provision of a copy of the report to the licensee on request so that the licensee can determine the accuracy of the information contained in the report. The Commission had asked that provisions be included in subsection (d) providing for notice and a hearing. The reference to 39:5-30 provides for notice and a hearing so no additional language was added to this section. Section (d) designates penalties according to the new penalty classification system contained in 39A:44-GP1. The level of the offenses had been increased to class C by the Commission in response to concerns raised by law enforcement officers.

39A:3-L14. Special license for hearing impaired individual

a. On application by a person with a hearing loss of a pure tone average of 41 dB or greater, verified by an otorhinolaryngologist (ENT) or an audiologist certified by the American Speech, Language, and Hearing Association, the Commissioner shall issue a special driver's license bearing either the international symbol of the deaf or a numerical code designating hearing-impairment, as specified by the applicant.

b. The design of the special driver's license shall be approved by the Commissioner.

c. No fee beyond that required for a basic license shall be imposed for this license.

Source: 39:3-11a.

COMMENT

This section contains the substance of the original, but streamlines the language.

39A:3-L15. Motorcycle license; two year probation; waiver of road test

a. A person may not operate a motorcycle without a motorcycle license or endorsement.

b. An applicant for a motorcycle license or an endorsement to a basic license must satisfy the requirements for a basic driver’s license except that:

(1) An applicant for an endorsement need not take the written exam; and

(2) The Commissioner may waive the road test portion of the examinations for a holder of an examination permit that successfully completed an approved motorcycle safety education course.

Source: 39:3-10b; 39:3-10.31.

COMMENT

This section consolidates requirements for a motorcycle license currently found in separate sections of the statute. The language of 39:3-10b was eliminated as potentially unnecessary and in conflict with other provisions of the statute. In addition, it does not appear that there is currently any implementation of the new driver monitoring. If this is to be implemented, it may be appropriate to insert appropriate language.

39A:3-L16. Special license for certain motor vehicle with capacity of more than six passengers

a. A special license is required to drive a motor vehicle with a capacity of more than six passengers used to transport passengers for hire or to or from summer day or residence camps or a bus used for the transportation of passengers, except vehicles used in ride-sharing arrangements, taxicabs, motor vehicles owned or operated directly by businesses engaged in the practice of mortuary science when the vehicles are used exclusively for providing transportation related to the provision of funeral services and not used at any time to pick up or discharge passengers to any airline terminal, train station or other transportation center, or to transport children to and from any school.

b. The special license is issued by the Commissioner for residents of this State but a nonresident may be licensed pursuant to the laws of his or her resident state with respect to the licensing of bus drivers.

c. A special license shall not be granted by the Commissioner until the applicant:

(1) Is at least 18 years old;

(2) Passes an approved examination determining driving ability and familiarity with the mechanism of the vehicle; and

(3) Presents satisfactory evidence of at least three years of driving experience, good character and physical fitness.

d. A special license is effective until suspended or revoked by the Commissioner, provided the special licensee also holds a New Jersey basic license.

e. The holder of a special license shall furnish satisfactory evidence of continuing physical fitness, good character and experience at the time of application renewal or at such other time and in the form the Commissioner requires.

f. A person applying for a special license for the transporting of children to and from schools shall comply with section C. 18A:39-19.1.

g. Drivers of buses or other vehicles used by a school for transporting pupils to and from school shall, in addition to any examination required by law, submit to a medical exam for the presence of alcohol, narcotics or habit-producing drugs within the scope of the "New Jersey Controlled Dangerous Substances Act".

h. The Commissioner may suspend or revoke a license granted under this section for a violation of this subtitle, or other reasonable grounds, including an opinion by the Commissioner that the licensee is physically or morally unfit. The Commissioner shall, upon receiving notice of disqualification from the Commissioner of Education pursuant to C. 18A:39-19.1, immediately revoke a special license without a further hearing.

i. An applicant for an examination permit for a bus or an articulated vehicle endorsement shall hold a valid basic driver's license.

Source: 39:3-10.1; 39:3-10.1a. 39:3-13; 39:3-13.1; 39:3-13.2; 39:3-13.2a; 39:3-13.4.

COMMENT

This section streamlines and consolidates the requirements of the original. Subsection (a) was revised to eliminate awkward structure and to more accurately reflect the language of the original statute. As a result of this revision, the language no longer appears to present a problem with regard to vans and SUVs able to carry more than six passengers. The MVC confirmed the built-in exception for ride-sharing arrangements and the like. Articulated vehicle will be included in the definition section of the statute since it appears in other sections of the statute in addition to this one. Subsection (i) does not appear to fit in this section and will be relocated.

39A:3-L17. Special agricultural license for persons 16 years of age

a. A person at least 16 but not yet 17 years old may be licensed to drive motor vehicles in agricultural pursuits if the person passes an approved examination demonstrating ability as an operator.

b. The Commissioner may license the applicant to drive any motor vehicle registered under R.S.39:3-24 and R.S.39:3-25 upon: payment of the lawful fee, examination of the applicant and confirmation of the applicant's ability as an operator. A registration and license issued pursuant to this section shall expire on March 31st of each year. The annual license fee for such license shall be $1.

c. The holder of an agricultural permit or license is subject to the requirements, restrictions and penalties applicable to special learner's permit holders.

d. The agricultural license is for limited use only, may not be used in the operation of any other vehicle, and shall have the name of the licensee endorsed on it in the licensee’s own handwriting. No such license shall be granted unless a parent or guardian consents, in writing.

e. The Commissioner may, for good cause, refuse to grant an agricultural license to a person deemed not a proper holder.

f. The holder of an agricultural license who demonstrates sufficient experience and ability may obtain a provisional driver's license upon attaining the age of 17 without completing the other requirements for such a license.

Source: 39:3-11.1; 39:3-11.2.

COMMENT

This section streamlines and consolidates the original sections. Subsection (e) has been modified to require good cause to deny an agricultural license. Subsection (f) has been modified to say that the holder of an agricultural license may obtain a provisional license without completing the requirements for such a license, but requires a demonstration of sufficient experience and ability - this language replaces the language in the original statute which states that the holder of an agricultural license is entitled to a provisional license upon turning 17. Language authorizing the promulgation of regulations has been eliminated.

39A:3-L18. Special license for well-drilling machines or equipment and powered feed impregnating machines

a. The Commissioner may license traction or tractor well-drill machines or equipment, however mounted.

b. The Commissioner, may license any truck equipped with rubber tires which has a permanently affixed powered feed impregnating machine.

c. A license issued pursuant to this section shall be $3 per year or any portion thereof, and shall permit the vehicles to travel upon the public highways of this State.

Source: 39:3-26.

COMMENT

This section contains the substance of the original. This section may be more appropriately included in with the registration provisions and will be moved to that section after a response is received from MVC as to how these items are treated.

39A:3-L19. License with restrictions or conditions

a. When the Commissioner determines that public safety requires, reasonable restrictions and conditions may be imposed on the issuance of a driver's license based on an applicant's physical condition and driving ability, including conditions regarding special control devices required on a vehicle the applicant may operate. Any restrictions or conditions shall be imposed only after notice and a hearing as set forth in 39:5-30.

b. It is unlawful for a person with a conditional or restricted driver's license to operate a vehicle in violation of any of the conditions or restrictions.

c. Violation of any of the conditions or restrictions contained in a conditional or restricted license is a class D offense.

Source: 39:3-11.

COMMENT

This section contains the substance of the original, but streamlines the language. Subsection (a) has been revised to include provisions for notice and a hearing before imposing any restrictions or conditions on a license. Subsection (c) designates penalties according to the new penalty classification system contained in 39A:44-GP1.

39A:3-L20. Driver's license format; temporary license; organ donor designation

a. Each New Jersey license and renewal shall display a digitized color picture of the licensee. The Commissioner may require that the licensee's picture be updated on renewal of the license or may choose to use the stored picture for a period not exceeding four additional years for $18 plus the digitized picture fee. When a person has reconstructive or cosmetic surgery which significantly alters facial features, the person shall notify the Commission and may be required to update a license for $5 plus the digitized picture fee.

b. Each license issued to a person under 21 years old shall be conspicuously distinct from those issued to persons 21 years old or older. The Commissioner, in consultation with the Superintendent of State Police, shall determine the manner in which

to achieve this result. The license shall bear the words "UNDER 21" in a conspicuous manner. Upon reaching 21 years old, a licensee shall be issued a new or a replacement license, as appropriate, for $5 plus the digitized picture fee.

c. The Commissioner shall prescribe procedures for designating on a license that a person has elected to be an organ donor. The designation shall not appear on a temporary license or learner's permit but shall be appear in a conspicuous manner on a license or identification card, and electronically, as "ORGAN DONOR". The designation shall constitute sufficient legal authority for the removal of a body organ or part upon the death of the licensee or identification card holder. The Commissioner shall also prescribe procedures for the removal of the designation.

d. The fee for a digitized picture shall be $6 for each license, renewal or duplicate, and shall be paid in addition to the fee for the issuance of a driver's license. Fees collected for the digitized picture shall be revenues of the Commission.

e. The digitized license picture, access to the picture and use of it, shall not be sold, leased or exchanged. A licensee's picture shall not be released or disclosed by the Commissioner, except, subject to the approval of the Commissioner, when required by: a governmental agency, including a court or law enforcement agency; or a private person or entity acting on behalf of a federal, State or local agency.

f. The Commissioner shall provide, for licenses with digitized color pictures, processes and materials that prevent, to the greatest extent possible, the alteration, delamination, duplication, counterfeiting, photographing, forging or other modification of the license and prevent the superimposition of a digitized color picture other than the authorized original on such license. A license that consists of a composite material, does not use lamination, and offers at least the same level of security as that required by the Commissioner for noncomposite material may fulfill the requirements of this section.

g. The Commissioner may provide for the electronic storage of the licensee's motor vehicle information, including the digitized picture and signature, in a bar code, magnetic stripe or database. Any information encoded in a bar code or magnetic stripe on the license shall be displayed on the license, which may be done in abbreviated form. Information encoded in a bar code or magnetic stripe shall be limited to the following: name, address, municipality of residence, state, zip code, date of birth, under 21 until xx/xx/xx (date of licensee's 21st birthday), gender, color of eyes, height, driver's license number, date of issuance, expiration date, document type, class, endorsements and restrictions, organ donor status, identification of issuer, license fee, transaction number, and the licensee's digitized picture and signature. Specific use of the driver's license and any information related thereto that is stored or encoded, electronically or otherwise, shall be in accordance with C.39:2-3.3 et seq. and the federal Driver's Privacy Protection Act of 1994.

h. A driver's license shall contain the legal name and the signature of the licensee. An electronic representation of the signature is permissible. A person whose name is changed by marriage, divorce or order of court shall notify the Commissioner of the change within two weeks after the change is made. A person who fails to notify the Commissioner of a change of name shall be subject to a fine but not a surcharge pursuant to 17:29A-35.

i. The license shall include features to ensure its security and integrity.

j. Notwithstanding the provisions of any law to the contrary, the Commissioner may issue a temporary driver's license valid without a digitized color picture of the licensee to New Jersey licensees who are serving in the military outside the State or who temporarily are residents of another state or foreign country. The form and content of a temporary license issued under this section shall be prescribed by the Commissioner; shall bear the words "TEMPORARY LICENSE" in a conspicuous manner; and shall be valid for up to one year. If the temporary licensee is under the age of 21 years, the temporary license shall bear the words "UNDER 21" in a conspicuous manner. An applicant for a temporary driver's license shall submit satisfactory proof of identity and age.

k. Nothing in this chapter shall require a county or municipal law enforcement agency to acquire or use any device to verify the authenticity of a New Jersey driver's license, unless the cost of acquisition and use is paid by the State.

Source: 39:3-9a; 39:3-10f; 39:3-10f1; 39:3-10f2; 39:3-10f4; 39:3-10f5; 39:3-10h; 39:3-10n; 39:3-12.2.

COMMENT

This section streamlines and consolidates the requirements pertaining to the design of the driver's license. The words "organ donor designation" were added to the header to alert the reader that those significant provisions are included in this section. In subsection (e), at the end of the first sentence, the words "for value" were removed. It appears that there are strict limitations on the sale, lease or exchange of driver's license pictures and that distribution of the picture to an unauthorized individual, even if not for value, would be a violation of the intent of the statute. The MVC has indicated that it has not yet identified a private (non-governmental) person or entity to whom the digitized picture would be released and that, at present, in light of the discretionary language, the MVC would be disinclined to release the pictures. .

39A:3-L21. Identification card in lieu of license for non-driver

a. The Commission shall issue an identification card, upon request, to an individual who meets the requirements and who does not hold a valid learner's permit or valid driver's license. To obtain an identification care, an applicant shall:

(1) Submit an application on the appropriate forms and pay the fee;

(2) Be 17 years old or older;

(3) Be a resident of New Jersey;

(4) Submit satisfactory proof of identity, age, and legal residency showing the applicant's presence in the United States is authorized under federal law; and

(5) Submit documentary evidence of blindness or other disability.

b. The identification card shall display the true name, correct age, and other identifying data of the applicant and shall bear a color picture of the person to whom it is issued and shall be issued in the standard license form prescribed by the Commission except that the card shall prominently contain the words "For Identification Only."

c. Each original identification card shall be valid for 48 calendar months from its date of issuance unless canceled earlier and shall be renewable upon the request of the

bearer and payment of the required fee. Valid cards issued prior to October 16, 1989 are valid for the life of the holder unless canceled by the holder. An identification card issued to an applicant who is blind, disabled, or handicapped shall be valid for the life of the holder unless canceled by the holder. Valid cards issued to blind, disabled or handicapped persons between October 16, 1989 and the effective date of this chapter shall be made valid for the life of the holder unless canceled by the holder, upon presentation of proof that the blindness, disability, or handicap existed at the time of the original application. The Commissioner may require periodic verification of information included on an identification card valid for the life of the holder. Nothing in this section shall alter or extend the expiration of any identification card issued prior to the date this chapter becomes operative.

d. The expiration of an identification card issued to an applicant who may legally remain in the United States for a shorter period than the standard card duration shall be based on the termination of the authorized presence in the United States by federal law. The Commission may renew such card only if the applicant's continued presence in the United States is authorized by federal law. The fee for identification cards with expiration dates fixed by the Commission shall be in amounts proportionately less or greater than standard term cards.

e. If the Commissioner has reasonable cause to suspect that a document presented by an applicant as proof of identity, age or legal residency is altered, false or otherwise invalid, the Commissioner shall refuse to grant the identification card until such time as the document may be verified by the issuing agency.

f. The fee for an original or renewal identification card is $18. The fee for a replacement is $5. The fee for a digitized picture is $6.

Source: 39:3-29.3; 39:3-29.4; 39:3-29.5; 39:3-29.7; 39:3-29.8; 39:3-29.10.

COMMENT

This section streamlines and consolidates the requirements pertaining to the identification card issued in lieu of a driver's license. Subsection (a) was revised to mirror the applicable sections of the requirements for a driver's license in the same language as used in the licensing section. The language pertaining to the loss or destruction of an identification card was moved to the section pertaining to the loss or destruction of a license or registration. The subsection pertaining to penalties for misuse of an identification card have been moved to a new section which identifies actions that constitute the misuse of a permit, license or identification.

39A:3-L22. Impact of military status

A person who holds a valid driver's license at the time of entry into the active military service of the United States during a time of war or emergency may continue to drive using that license for 180 days after the termination of the war or emergency, or for a period of three months from the date of discharge or release from service under conditions other than dishonorable, without payment of any fee. An individual may only exercise this privilege when attired in official military uniform or when in possession of evidence of the discharge, release, or active military status or assignment.

Source: 39:3-11.5.

COMMENT

This section contains the substance of the original, but has been streamlined.

39A:3-L23. Evaluation and report on new driver performance

The Commission shall monitor the performance of new drivers of motor vehicles and, in conjunction with the Office of Highway Traffic Safety, shall:

a. Report to the Governor and the Legislature evaluating the operation and effectiveness of this chapter;

b. Detail disbursement of monies from the Driver Education Fund; make recommendations necessary to better effectuate this chapter; and

c. Promulgate regulations as needed to effectuate this chapter.

Source: 39:3-13.6.

COMMENT

This section contains the substance of the original. The MVC has indicated that it does not presently make reports on new driver performance to the Legislature. The program has been extended pending an upgrade of the MVC system that will permit better tracking of the performance of new drivers.

39A:3-L24. Instructor's license and license to operate driving school

The Commissioner's authority to suspend, revoke or deny issuance of an initial or renewal license to operate a drivers' school or an instructor's license, and assess fines, shall apply to any violations related to the administration of a remedial training course.

Source: 39:3-13; 39:3-13.1; 39:3-13.2a; 39:3-13.4.

COMMENT

This section consolidates provisions found in separate sections in the original.

39A:3-L25. Conviction of violation while operating with a permit or provisional driver's license

a. When notified by a court of the conviction of a permit or provisional driver's license holder for a violation which causes the holder to have more than two motor vehicle points, or of a violation of R.S.39:4-50; C.39:4-50.4a; C.39:4-50.14; R.S.39:4-129; N.J.S. 2C:11-5; N.J.S. 2C:12-1(c) or other motor vehicle-related law set forth in regulation, the Commissioner shall, without a hearing, suspend a permit for 90 days or suspend a provisional license until the holder attends the remedial training course set forth in subsection (b). The suspension and remedial training course shall be in addition to any other penalty imposed.

b. The Commissioner shall restore the permit or provisional license following the suspension if the holder satisfactorily completes an approved remedial training course of not less than four hours which is subject to oversight by the Commission. The holder shall remit a course fee prior to the commencement of the course.

c. The Commissioner shall, without a hearing, postpone the issuance of a basic license to a permit holder, or suspend a provisional license and postpone eligibility for a basic license for 90 days if notified by a court that a permit or provisional license holder, after completion of the remedial training course, was convicted of a motor vehicle violation which results in the imposition of motor vehicle points or of a violation of 39:4-

50; 39:4-50.4a; 39:4-50.14; 39:4-129; 2C:11-5; 2C:12-1(c) or other motor vehicle-related law set forth in regulation. When the Commissioner is notified by a court that a permit or provisional license holder has been convicted of an alcohol or drug-related offense unrelated to the operation of a motor vehicle, and is not subject to any suspension for that conviction, the Commissioner shall, without a hearing, suspend the permit or provisional license for six months.

Source: 39:3-13; 39:3-13.1; 39:3-13.2a; 39:3-13.4.

COMMENT

This section streamlines and consolidates the requirements currently found in separate sections. This section provides for action by the Commissioner without notice or a hearing, but those actions occur only after a court has convicted the individual of an offense - it is not clear if it would be appropriate to include provisions for an additional notice and a hearing here, or simply provide for a method to challenge an erroneous negative action by the Commissioner. The MVC has been asked how these actions are presently challenged if there is a claim of mistake by the Commissioner.

39A:3-L26. Specific violations of permits or licenses

Violation of any of the following conditions of a permit or a provisional driver's license is a class C offense:

a. Supervision requirements for permit holders;

b. Passenger restrictions;

c. Hours of operation;

d. Seat belt requirements;

e. Interactive wireless communication device use restrictions; or

f. Any other violation of the conditions of a permit or provisional license as the Commissioner may designate.

Source: 39:3-13.8.

COMMENTS

This section contains the substance of the original. The section designates penalty according to the new penalty classification system contained in 39A:44-GP1. The level of the offense has been increased to class C by the Commission to bring the penalty in accord with penalties for similar offenses and to address concerns raised by law enforcement officers.

39A:3-L27. Illegally obtaining a driver’s license

An applicant for a driver's license shall not procure another person to take the license examination for the applicant, nor shall any person take a license examination for an applicant. Violation of this section is a class C offense.

Source: 39:3-12.

COMMENT

This section contains the substance of the original. The section designates penalty according to the new penalty classification system contained in 39A:44-GP1.

39A:3-L28. Misuse of permit, license, or identification card

a. It shall be unlawful for a person to:

(1) Possess, display or cause or permit to be displayed any canceled, fictitious, fraudulently altered, or fraudulently obtained permit, license or identification card;

(2) Lend a permit, license or identification card to any other person or knowingly permit use by another;

(3) Display or represent a permit, license or identification card not issued to that person as being that person's card;

(4) Permit any unlawful use of a permit, license or identification card issued to that person;

(5) Do any act forbidden or fail to perform any act required in reference to a permit, license or identification card;

(6) In any way reproduce a permit, license or identification card or facsimile thereof in such a manner that it could be mistaken for a valid permit, license or identification card, or to display or have in that person's possession any such reproduction, or facsimile unless authorized by this chapter;

(7) Alter any permit, license or identification card in any manner not authorized by this chapter.

b. Unless otherwise specified, any person who violates this section is a disorderly person.

Source: 39:3-29.3; 39:3-29.4; 39:3-29.5; 39:3-29.7; 39:3-29.8; 39:3-29.10.

COMMENT

This section contains the substance of the original section, which pertained solely to identification cards. Since the provisions appeared to be applicable to permits and licenses as well, they were consolidated here.

39A:3-l29. General penalty for license and permit violations

a. Violation of the provisions of L2, L3, L4, L5, L6, L8, L9, L10, or L11 is a class C offense, and if the applicant has never been licensed to drive in any jurisdiction, the court, in addition to the penalty, shall issue an order to the Commission requiring the refusal to issue a license to operate a motor vehicle to that applicant for a period of not less than 180 days.

b. These penalties are not applicable where the failure to have actual possession of a license is due to an administrative or technical error by the Commission.

Source: 39:3-10.

COMMENT

This language is taken from the second to last paragraph of the current 39:3-10. The current statute is not particularly clear regarding what specific things will subject an applicant to this penalty, referring only to any violation of the section as qualifying for the penalties. Since the original section was divided into a number of sections, an effort was made to make the penalty apply to all of the provisions that

might have given rise to the penalty originally, but the scope is not an exact match. This language will be revised as appropriate. The section designates penalty according to the new penalty classification system contained in 39A:44-GP1.

39A:3-L30. Restoration of suspended or revoked license

The Commissioner shall charge a fee of $100 for the restoration of a license suspended or revoked for violation of any law or regulation and for the restoration of vehicle registrations suspended pursuant to any law. No fee shall be imposed for the restoration of a license suspended or revoked in error or that is determined to be improper.

Source: 39:3-10a.

COMMENT

This section is substantially identical to the original. The last sentence was added to clarify that a licensee whose license is revoked or suspended without cause shall not be charged to have the license restored.

39A:3-L31. Involvement in two or more accidents within six months; reexamination

a. If an individual who holds a driver's license is involved in two or more motor vehicle accidents within any six-month period, and those accidents result in death, personal injury, or damage to the property of any one person in excess of $500 such that the individual has been assessed motor vehicle points for each accident, that individual shall submit to a license reexamination.

b. Notice shall be given by the Commission that the individual is required to submit to a reexamination and must successfully pass an examination of ability as an operator and a test of vision.

c. Failure to pass an examination or test is justification for the revocation and refusal to renew the individual's driver's license.

Source: 39:3-10e.

COMMENT

This section contains the substance of the original.

CHAPTER 5. COMMERCIAL DRIVERS LICENSE

39A:5-CDL1. Purpose

The purpose of this chapter, the New Jersey Commercial Driver License Act, is to minimize commercial motor vehicle accidents, fatalities, and injuries by strengthening licensing and testing standards for drivers of commercial motor vehicles and by disqualifying drivers who commit specified offenses. This chapter is designed to substantially conform the laws of this State to the federal "Commercial Motor Vehicle Safety Act of 1986," 49 U.S.C. § 2701 et seq. and the applicable regulations. This chapter is remedial law and shall be liberally construed to promote the public health, safety, and welfare.

Source: 39:3-10.9; 39:3-10.10; 39:3-10.27.

COMMENT

This section is substantially the same as the original sections, but it eliminates the language found in 39:3-10.27 which states that the Director may adopt rules and regulations necessary to carry out the provisions of the Act. Such language is found in many sections of the Title, and it may be more efficient to include a single general provision to that effect, noting any exceptions.

39A:5-CDL2. Definitions

a. "Alcohol concentration" means the number of grams of alcohol per 100 milliliters of blood or per 210 liters of breath.

b. "Commercial driver license" or "CDL" means a license issued in accordance with this chapter authorizing a person to operate a certain class of commercial motor vehicle.

c. "Commercial Driver License Information System" or "CDLIS" means the information system established pursuant to the federal "Commercial Motor Vehicle Safety Act of 1986," 49 U.S.C. § 2701 et seq. to serve as a clearinghouse for locating information related to the licensing and identification of commercial motor vehicle drivers.

d. "Commercial motor vehicle" or "CMV" means a motor vehicle or combination of motor vehicles, not including a recreation vehicle, used or designed to transport passengers or property, including a vehicle:

(1) With a gross vehicle weight rating, or that displays a gross vehicle weight rating, of 26,001 or more pounds;

(2) With a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;

(3) Designed to transport 16 or more passengers including the driver;

(4) Designed to transport eight or more but less than 16 persons, including the driver, and used to transport such persons for hire on a daily basis to and from places of employment;

(5) Used in the transportation of hazardous materials and required to be placarded in accordance with Subpart F. of 49 C.F.R. § 172, or one that displays a hazardous material placard; or

(6) Such other motor vehicles or combinations designated by the Commissioner by regulation.

e. “Controlled substance" means a substance so classified under subsection (6) of section 102 of the "Controlled Substances Act", 21 U.S.C. § 802, and all substances listed on Schedules I through V of 21 C.F.R. § 1308, or under C. 24:21-1 et seq. as revised at the time of the offense. The term includes controlled substance analogs.

f. "Controlled substance analog" means a substance with a chemical structure substantially similar to that of a controlled dangerous substance specifically designed to produce an effect substantially similar to that of a controlled dangerous substance. The term shall not include a substance manufactured or distributed in conformance with the provisions of an approved new drug application or an exemption for investigational use within the meaning of section 505 of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. § 355.

g. "Conviction" means a: final adjudication that a violation has occurred; final judgment on a verdict; finding of guilt in a tribunal of original jurisdiction; or conviction following a plea of guilty, non vult or nolo contendere accepted by a court. It also includes: an unvacated forfeiture of bail, bond or collateral deposited to secure a person's appearance in court; the payment of a fine or court costs; or violation of a condition of release without bail, regardless of whether the penalty is rebated, suspended, or probated.

h. “Disqualification" means:

(1) Suspension, revocation, cancellation, or other withdrawal by a state of a person's privilege to operate a CMV;

(2) Determination by the Federal Highway Administration pursuant to 49 C.F.R. § 386, that a person is no longer qualified to operate a CMV under 49 C.F.R. § 391; or

(3) Loss of qualification which automatically follows conviction of an offense listed in 49 C.F.R. § 383.51.

i. "Felony" means any crime or offense under federal or state law punishable by death or imprisonment for a term exceeding one year.

j. "Gross vehicle weight rating" or "GVWR" means the value specified by a manufacturer as the loaded weight of a single or a combination (articulated) vehicle, or the registered gross weight, whichever is greater. The GVWR of a combination vehicle, commonly referred to as the "gross combination weight rating" or "GCWR," is the GVWR of the power unit plus the GVWR of the towed unit(s). In the absence of a value specified for the towed unit(s) by the manufacturer, the GVWR of a combination vehicle is the GVWR of the power unit plus the total weight of the towed unit, including the loads on them.

k. "Hazardous material" means a substance or material so designated pursuant to the provisions of the "Hazardous Materials Transportation Act", 49 U.S.C. § 1801 et seq.

l. “Out of service order" means a temporary prohibition against operating a CMV.

m. "Recreation vehicle" means a self-propelled or towed vehicle equipped to serve as temporary living quarters for recreational, camping, or travel purposes used solely as a family or personal conveyance.

n. "Serious traffic violation" means conviction for one of the following offenses, as defined by state or local law, committed while operating a CMV:

(1) Any single offense for a speed of 15 miles per hour or more above the speed limit;

(2) Reckless driving, including offenses of driving a CMV in willful or wanton disregard of the safety of persons or property;

(3) Improper or erratic traffic lane changes;

(4) Following a vehicle too closely;

(5) A violation relating to motor vehicle traffic control, other than a parking violation, arising in connection with a fatal accident; or

(6) Any violation relating to motor vehicle traffic control determined by the Secretary of the United States Department of Transportation in 49 C.F.R. § 383.5 to be a serious traffic violation.

(7) This term shall not include vehicle weight or defect violations.

o. “Tank vehicle" means a commercial motor vehicle designed to transport a liquid or gaseous material within a tank either permanently or temporarily attached to the vehicle or the chassis, including cargo tanks and portable tanks but not portable tanks with a rated capacity under 1,000 gallons.

Source: 39:3-10.11.

COMMENT

This section is substantially the same as the original, with some changes made to streamline and consolidate the language, eliminating surplusage. The definitions of “driver’s license”, “endorsement”, “foreign jurisdiction”, “motor vehicle” and “state” were removed from this section since they are defined elsewhere. The definitions of “representative vehicle” and “vehicle group” were removed since they are defined by the statutory sections in which they appear. The definition of “domicile” was removed since defining that term involves complex legal issues, and it was not clear that the definition provided was consistent with state or federal law.

39A:5-CDL3. Tests for CDL

a. The Commissioner shall administer a classified licensing system and a program for testing and ensuring the fitness of persons to operate CMVs in accordance with the minimum federal standards established by the "Commercial Motor Vehicle Safety Act of 1986", 49 U.S.C. § 2701 et seq. and the applicable regulations.

b. The Commissioner shall not issue a CDL to a person unless the person passes a knowledge and skills test for the operation of a CMV which complies with the federal standards. The Commissioner shall waive the skills test for a CDL applicant who meets

the requirements for waiver under the federal "Commercial Motor Vehicle Safety Act of 1986," 49 U.S.C. § 2701 et seq.

c. The Commissioner may issue commercial driver examination or learner's permits subject to necessary conditions and restrictions.

d. A knowledge and skills test shall not be required by the Commissioner for the renewal of a CDL issued pursuant to this chapter. A knowledge and skills test may, however, be required for:

(1) Renewal of an endorsement permitting the operation of vehicles required to be placarded for hazardous materials;

(2) Renewal or reissuance of a CDL if it was suspended or revoked by a court during the last license period preceding the renewal or reissuance; or

(3) Renewal or reissuance of a license which had not been renewed for a period of three or more years.

e. Upon the request of an applicant, the Commissioner shall administer oral knowledge tests for the CDL and any endorsements if the applicant demonstrates to the satisfaction of the Commissioner an inability to comprehend a written test. The Commissioner shall provide an English and a Spanish version of the knowledge tests for a CDL and for any endorsements and is authorized to provide versions in such other languages as the Commissioner may deem appropriate.

f. A person who satisfactorily completes the knowledge tests required by this chapter for a CDL and any endorsement shall not be required to take any other knowledge test for the operation of a CMV.

g. A first-time CDL applicant who satisfactorily completes the knowledge test for the CDL but not the test for an endorsement, or who satisfactorily completes the knowledge test for an endorsement but not the test for the CDL, shall not be required to retake the test which was satisfactorily completed.

g. No provision in this chapter, or in any manual, test, or administrative procedure developed to implement this chapter, shall be deemed to expand the requirements for CMV operators concerning pre-trip inspection, after-trip inspection and inspection during a trip as those requirements are set forth in federal law. This section shall not be deemed to limit the authority of the Commissioner or any State department or agency to promulgate standards and procedures regarding vehicle inspections which are consistent with federal law.

Source: 39:3-10.12; 39:3-10.22.

COMMENT

This section is substantially similar to the original. The section in the original statute dealing with notification of then-current CMV drivers prior to the effective date of the Act has been removed. Are there problems with a person driving a commercial vehicle while unable to read (unable to read signs, including Turnpike warning signs, etc.)? GENERAL NOTE: The language of this section and the following sections, while substantially similar to the language of the original statute, has been reordered in an effort to create a logical progression of information, beginning with the tests for a CDL, moving to the administration of testing, then the issuance of the license, then the possession of the license, etc. The initial

statutory sections were not in this order, and it was more difficult to understand the requirements and restrictions when they did not appear to be organized in a logical way.

39A:5-CDL4. Administration of commercial driver testing

a. The Commissioner may, by contract, by appointment as a motor vehicle agent, or by licensing, authorize persons to administer the knowledge or skills tests for a CDL or endorsement, including:

(1) An agency of this or another state;

(2) An employer;

(3) A private driver training facility or other private institution; or

(4) A department, agency or instrumentality of local government.

b. The Commissioner shall adopt regulations necessary to control the administration of commercial motor vehicle driver testing by third parties including the establishment of maximum fees. The maximum fee for a test administered by a third party shall equal the cost to the State to administer such testing.

c. The Commissioner may limit the number of persons authorized to administer examinations and may suspend or revoke an authorization on any reasonable ground. A person authorized to administer examinations by appointment as a motor vehicle agent shall act until this authority is revoked by the Commissioner.

d. The Commissioner may terminate third party testing at any time.

e. The Commissioner shall provide for the efficient, timely and orderly processing of persons required to obtain CDLs and may require persons to take the skills test for the CDL or for an endorsement at the time and place selected by the Commissioner. The Commissioner may require persons who fail a knowledge test for the CDL or an endorsement to take the knowledge test for a subsequent time at a time and place selected by the Commissioner.

f. An examiner administering a skills test shall not be held accountable for any violation of Title 39 committed by the person being tested.

Source: 39:3-10.21; 39:3-10.23.

COMMENT

This section is substantially similar to the source sections, but it has been slightly reordered and streamlined.

39A:5-CDL5. Issuance of CDL; fingerprint and background check requirements

a. Before issuing a CDL, the Commissioner shall notify the Commercial Driver License Information System (“CDLIS”) of the proposed issuance and request driving record information from CDLIS, the National Driver Register, and any other state which has issued a CDL to the applicant to determine whether the: applicant has a CDL issued by another state; applicant's driving privilege has been suspended, revoked, cancelled; or the applicant has been disqualified from operating a commercial motor vehicle.

b. The Commissioner shall issue a CDL only to a person who operates or will operate a CMV and is domiciled in this State. A person shall apply to the Commissioner within 30 days after establishing domicile in this State for the transfer of a CDL from the state in which the person was previously domiciled.

c. Fingerprinting is required of all applicants for CDL with a hazardous material endorsement, a tank vehicle endorsement, or both, at the initial application and on renewal, in order to determine eligibility for those endorsements.

d. Any person issued a CDL with a hazardous material endorsement, a tanker vehicle endorsement, or both prior to the date of enactment of this chapter, shall undergo a criminal history record background check as a condition to continue to hold, use and renew such an endorsement. The applicant shall bear the cost for the criminal history record check, including all administrative and processing costs. No criminal history record check shall be performed without the applicant's written consent.

e. Failure or refusal to submit a disclosure and fingerprints will result in an automatic disqualification. Upon receipt of the criminal history record information, the Commission shall notify the applicant in writing of the applicant's qualification or disqualification for a CDL with a hazardous material endorsement, a tank vehicle endorsement, or both. The basis for a disqualification shall be identified in the written notice to the applicant and an applicant shall have 30 days from the postmarked date of the written notice of disqualification to challenge the accuracy of the criminal history record information. If no challenge is filed or if the accuracy of the criminal history record information is upheld, the applicant's disqualification for a CDL with a hazardous material endorsement, a tank vehicle endorsement or both, will stand. The Commission, consistent with appropriate federal requirements, shall specify by regulation the grounds upon which an applicant may be disqualified.

Source: 39:3-10.14; 39:3-10.17; 39:3-10.17a.

COMMENT

This section is substantively similar to the language in the original sections. The language has been reorganized, streamlined and consolidated. It is not clear what the “disclosure” is that is referred to in subsection (e), this should be clarified.

39A:5-CDL6. Distribution of information

a. The Commissioner shall provide driving record and other information to the licensing authority of any other state, or province or territory of Canada, which requests such information in connection with a CDL. The Commissioner may charge reasonable fees to cover the costs of providing information, except that no fee shall be charged if the other jurisdiction does not charge this State for similar requests.

b. The Commission is authorized to exchange fingerprint data with, and receive criminal history record information from, the Federal Bureau of Investigation and the Division of State Police, consistent with the provisions of Pub.L.92-544, for use in determining the eligibility of an applicant for a hazardous material endorsement, a tank vehicle endorsement, or both.

c. Within 10 days after the issuance of a CDL, the Commissioner shall notify the CDLIS of that fact, providing all information required to ensure identification of the licensee.

Source: 39:3-10.14; 39:3-10.17a.

COMMENT

This section is substantially similar to the language of the original sections, but has been reorganized, streamlined and consolidated.

39A:5-CDL7. Possession of valid CDL

a. A person who operates a CMV shall not have more than one driver's license. A person convicted of a violation of this subsection shall be fined not more than $5,000 for each offense, imprisoned for a term of not more than 90 days, or both.

b. Except when operating under a valid commercial driver examination or learner's permit and accompanied by the holder of a CDL valid for the class of vehicle operated, a person shall not operate a CMV unless the person has been issued and is in possession of a valid CDL and applicable endorsements for the class and type of vehicle operated. A person shall not operate a CMV if the person is restricted from operating a commercial vehicle of that class or type. A person convicted of a violation of this subsection shall be fined between $250 and $500, imprisoned for not more than 60 days, or both. This penalty shall not be applicable in cases where failure to have actual possession of the CDL is due to an administrative or technical error by the Commission. If a person charged with a failure to have possession of a valid CDL can exhibit the license to the judge of the court before whom the charge is heard, and the license was valid on the day the person was charged, the judge may dismiss the charge but may impose court costs.

c. A person shall not operate a CMV during a period of refusal of a CDL, suspension or revocation of a driving privilege or endorsement, prohibition, disqualification, or during the period of an out of service order. A person convicted of a violation of this subsection shall be fined not more than $5,000 for each offense, imprisoned for a term of not more than 90 days, or both. If a person is involved in an accident resulting in personal injury to another while operating a CMV in violation of this subsection, the court shall impose a fine of $500, a period of imprisonment for 90 days and a suspension of the CMV driving privilege in accordance with 39:3-10.20.

d. If a person's driving privilege is not suspended, revoked or cancelled in this State or in the jurisdiction that issued a CDL, and the person is not disqualified from operating a CMV or subject to an "out of service" order, then that person may operate a CMV in this State if the person has:

(1) Received a waiver of the commercial driver license requirements from the Secretary of the United States Department of Transportation or the licensing authority of any other state;

(2) A CDL issued by any state in accordance with the minimum federal standards for the issuance of CDLs; or

(3) A CDL issued by any other jurisdiction in accordance with minimum standards which are substantially similar to the standards in the federal "Commercial Motor Vehicle Safety Act of 1986," 49 U.S.C. § 2701 et seq. and this chapter.

Source: 39:3-10.18; 39:3-10.19; 39:3-10.26.

COMMENT

This section is substantially similar to the language of the original sections, but it has been reorganized, streamlined and consolidated. It is not clear what the term "technical" adds to the meaning of subsection (b), if it does not add anything, it should be removed.

The penalties in this section have not been included in the classification system because the CDL provisions generally are heavily tied to federal law. A review will be conducted of this section and, if the inclusion of the penalty provisions would not contravene federal law or regulation, they will be included in the classification system created for Title 39.

39A:5-CDL8. Operation of commercial motor vehicle while under influence of alcohol or controlled substance

A person shall not operate a CMV in this State with an alcohol concentration of 0.04% or more, or while under the influence of a controlled substance.

Source: 39:3-10.13.

COMMENT

This section is substantially similar to the language of the original statute. The language "notwithstanding any other provision of law to the contrary" was removed from the beginning of the section.

39A:5-CDL9. Chemical testing; consent; penalties

a. A person who operates a CMV on a public road, street, or highway, or quasi-public area in this State shall be deemed to have given consent to the taking of breath samples for chemical tests to determine alcohol concentration. The taking of samples shall be in accordance with the provisions of this chapter and at the request of a police officer who has reasonable grounds to believe that the person has been operating a CMV with an alcohol concentration of 0.04% or more.

b. A record shall be made of the taking of such a sample, disclosing the date, time, and result of the chemical test, and a copy shall, on request, be made available to the person tested. The police officer shall inform the person tested of the right to obtain a copy of this record.

c. In addition to the samples taken and tests made at the direction of a police officer, the person tested shall be permitted to have samples taken and chemical tests of his breath, urine, or blood made by an individual of the person's own selection. The police officer shall inform the person tested of the right to have these independent tests conducted.

d. No chemical test or specimen described in this section may be made or taken forcibly and against physical resistance by the person sought to be tested. A police officer shall inform the person of the consequences of refusing to submit to such test

including the available penalties by reading a standard statement prepared by the Commissioner.

e. The court shall revoke for six months a person's right to operate any motor vehicle if that person, after being arrested for operation of a CMV under the influence of alcohol or a controlled substance, refuses to submit to the chemical test provided for in this section when requested to do so. If the refusal is in connection with a subsequent offense under this section, 39:3-10.13, 39:4-50 or C. 39:4-50.4a, the revocation period shall be for 2 years. The court shall also impose the penalties provided in 39:3-10.20.

f. An individual shall be convicted of an offense pursuant to this section if the court determines, by a preponderance of the evidence, that: the arresting officer had probable cause to believe that the person had been operating or was in actual physical control of a CMV on the public highways or quasi-public areas of this State with an alcohol concentration at 0.04% or more; the person was placed under arrest; and the person refused to submit to the test upon request of the officer.

g. A person whose driving privilege is revoked for refusing to submit to a chemical test shall satisfy the requirements of a program of alcohol education or rehabilitation pursuant to 39:4-50.

h. A revocation pursuant to this section shall be independent of any revocation imposed by a conviction under 39:4-50 or 39:3-10.20.

i. In addition to imposing any revocation under this subsection, a court shall impose a fine between $250 and $500.

Source: 39:3-10.24.

COMMENT

This section is substantially similar to the source sections, but it has been slightly reordered and streamlined.

39A:5-CDL10. Chemical analysis of breath; uniform reports

a. To be considered valid under the provisions of this chapter, chemical analyses of an arrested person's breath shall have been performed according to methods approved by the Attorney General, by a person certified for this purpose by the Attorney General. The Attorney General is authorized to: approve satisfactory techniques or methods; ascertain the qualifications and competence of individuals to conduct analyses; and make certifications of such individuals, which certifications shall be subject to termination or revocation at the discretion of the Attorney General.

b. The Attorney General shall prescribe a uniform form for reports of the chemical analysis of breath to be used by law enforcement officers and others acting in accordance with the provisions of this chapter. Each officer, board, or official having charge or control of a municipal police department, the Commissioner and the Superintendent of State Police shall be responsible for the furnishing and proper disposition of such forms.

c. Each responsible party shall prepare the records and reports relating to the uniform forms and their disposition in the manner and at the times prescribed by the

Attorney General. Unless otherwise provided by the Attorney General, the approval of methods and techniques, the certification of persons and the prescription of forms of reports pursuant to 39:4-50.3 shall constitute approval, certification or prescription, as the case may be, for purposes of this section.

Source: 39:3-10.25.

COMMENT

This section is substantially similar to the source sections, but it has been slightly reorganized.

39A:5-CDL11. Disqualification; denial; suspension or revocation by Commissioner

a. The Commissioner may refuse to grant a CDL to a person who is not, in the Commissioner's estimation, a proper person to be granted such a license. No defect of the applicant shall bar the applicant from receiving a license unless it can be shown by tests approved by the Commissioner that the defect incapacitates the applicant from safely operating a CMV.

b. Within 10 days after receiving a report of the conviction of a holder of a CDL for any violation of state law related to motor vehicle traffic control committed in a CMV, other than a parking violation, or after the disqualification of the holder of a CDL or suspension of privileges for a period of 60 days or more, the Commission shall notify the driver licensing authority in the licensing state and the CDLIS of the conviction, suspension, or disqualification.

c. The Commissioner may suspend or revoke a license to operate a CMV, may prohibit a person from obtaining such a license, or may suspend or revoke the reciprocity privilege of a person for a violation of any provision of Title 39 or for any other reasonable grounds, after due notice in writing of such proposed suspension, revocation, or prohibition and the grounds thereof.

Source: 39:3-10.15; 39:3-10.16.

COMMENT

This section is substantially similar to the language in the original sections, but the language has been reorganized, streamlined and consolidated.

39A:5-CDL12. CDL suspension or revocation by Court

a. In addition to any other penalty provided by law, a court shall suspend for between one and three years the CMV driving privilege for a first violation of:

1. 39:4-50 or, if the motor vehicle was a CMV, 39:3-10.13.

2. 39:4-129 if the motor vehicle was a CMV operated by the person.

3. Using a CMV in the commission of any "crime" as defined in 2C:1-4(a), (c), or (d).

4. Refusal to submit to a chemical test under section 39:4-50.2 or, if the motor vehicle was a CMV, 39:3-10.24.

5. 39:3-10.18(b)(1).

b. A court shall suspend the CMV driving privilege of a person for a period of not less than 60 days if the person is convicted of a second serious traffic violation committed in a CMV in any state arising from separate incidents occurring within a three year period. A court shall suspend the CMV driving privilege for 120 days if the conviction constitutes the third or subsequent serious traffic violation committed in a CMV in any state arising from separate incidents occurring within a three year period.

c. If a first violation specified in subsection (a) takes place while transporting hazardous material or in a vehicle displaying a hazardous material placard, the court shall suspend the CMV driving privilege of the person for three years.

d. A court shall revoke for life the CMV driving privilege of a person for a second or subsequent violation of any of the offenses specified in subsection (a), or any combination of those offenses arising from two or more separate incidents. The Commissioner may, however, issue regulations establishing guidelines under which a revocation of commercial motor vehicle driving privilege for life may be reduced to a period of not less than 10 years.

e. A court shall revoke for life the CMV driving privilege of a person who uses a CMV in the commission of a crime involving the manufacture, distribution, or dispensing of a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance. A revocation under this subsection is not subject to reduction.

f. After suspending, revoking, or canceling a CMV driving privilege, a court shall make a report to the Commissioner within three days. The Commissioner shall, within ten days, notify the CDLIS and, in the case of non-residents, the licensing authority of the state which issued the CDL or where the person is domiciled.

g. The Commissioner shall suspend a CMV driving privilege of a person holding, or required to hold, a CDL issued by this State if the person is convicted in another state or foreign jurisdiction of an offense of a substantially similar nature to the offenses specified above. A violation such as driving while intoxicated, driving under the influence, or driving while ability is impaired shall be considered substantially similar offenses.

i. Notwithstanding any other provision of law to the contrary, a conviction under this section, 39:3-10.13 or 39:3-10.24, shall not merge with a conviction for a violation of 39:4-50 or 39:4-50.2.

Source: 39:3-10.20.

COMMENT

This section is substantially similar to the language of the original section, although it has been reorganized and streamlined. It is not clear if subsection (a)(1) comports with the intention of the drafters, since the language of the original statutory section was unclear, this needs to be confirmed.

39A:5-CDL13. Agreements or declarations; waiver of provisions

a. The Commissioner may make arrangements, agreements or declarations ("arrangements") to carry out the provisions of this chapter. The Commissioner may enter into an arrangement with the duly authorized representative of another jurisdiction concerning licensing or testing of CMV operators, the exchange of information

concerning operators, and their operating history. Arrangements shall be in the best interest of this State and its citizens, as determined by recognizing the benefits to this State from a nationwide system for regulating CMV operators.

b. The Commissioner may waive, in whole or in part, after notice and an opportunity for comment, the application of any provision of this chapter or any regulation promulgated pursuant to this chapter with respect to a class of persons or class of CMVs if the Commissioner determines that such waiver is not contrary to the public interest and does not diminish the safe operation of commercial motor vehicles. Any waiver shall be published in the New Jersey Register, together with reasons for the waiver. A waiver shall not be granted if granting the waiver will or is likely to place the State in the position of not being in substantial compliance with the requirements set forth in the "Commercial Motor Vehicle Safety Act of 1986," 49 U.S.C. § 2701 et seq. The Commissioner may make applications to the Secretary of the United States Department of Transportation to obtain any waiver permitted under federal law.

Source: 39:3-10.28; 39:3-10.29.

COMMENT

This section is substantially similar to the source sections.

39A:5-CDL14. Permit and license fees; duration

a. The required fee for a CDL examination or learner's permit shall be $35.

b. The Commissioner may limit the validity of an examination or learner’s permit to a specific length of time or number of testing opportunities.

c. After the issuance of a CDL, the examination or learner's permit fee for an additional endorsement or license class shall be $10 per endorsement or class.

d. The required fee for a 48-month licensing period shall be $18 for each CDL and renewal thereof and $2 for each endorsement and renewal plus a $6 fee for a digitized picture.

e. The CDL shall expire on the last day of the 48th calendar month following the calendar month in which the license was issued but the Commissioner may issue licenses and endorsements which shall expire on a date fixed by the Commissioner. The fee for such licenses or endorsements shall be fixed in amounts proportionately less or greater than the fee for the 48 month period.

f. Nothing in this section shall be construed to alter or change any expiration date on any New Jersey CDL issued prior to the operative date of C.39:3-10 and, unless a licensee's driving privileges are otherwise suspended or revoked, except as provided in 39:3-10, the license shall remain valid until its expiration date.

Source: 39:3-10.30.

COMMENT

This section is substantially similar to the source section, but outdated language pertaining to permits issued before 1992 was eliminated. There should be a better way to describe the expiration of the license than that found in subsection (e). The same problem is found in the section pertaining to non-commercial licenses.

39A:5-CDL15. Exemptions from commercial motor vehicle license requirements

a. Unless otherwise required by federal law or regulation, and subject to any applicable regulations, the following individuals shall not be subject to the licensing provisions of the "Commercial Motor Vehicle Safety Act of 1986," 49 U.S.C. § 2701 et seq.:

(1) Designated operator of firefighting apparatus;

(2) Non-civilian operator of a military vehicle owned or operated by the United States Department of Defense or the National Guard;

(3) Operator of a farm vehicle controlled and operated by a farmer, used to transport agricultural products, farm machinery or farm supplies to or from a farm, operated within 150 miles of a person's farm, and not used in the operation of a common or contract motor carrier;

(4) Operator of emergency or rescue equipment operated for the purposes of a first aid, ambulance or rescue squad or for disaster control.

b. A waiver shall not be granted if the granting of the waiver would place the State in a position of not being in substantial compliance with the requirements of the federal act.

Source: 39:3-10j; 39:3-10k; 39:3-10l.

COMMENT

This section is substantially similar to the substantive sections of the source sections. The Legislative findings and declarations section was eliminated, as was the provision requiring the Commissioner to promulgate regulations to effectuate the purposes of the act.

CHAPTER Z. REGISTRATION

39A:2-R1. Definitions

a. "Agent" means a Motor Vehicle Agent.

b. "Apportioned vehicle" means a vehicle:

(1) Intended for use in two or more jurisdictions party to the International Registration Plan;

(2) Designed, used or maintained for the transportation of persons for hire or property;

(3) With a declared gross weight in excess of 26,000 pounds, three or more axles regardless of weight, or used in a combination of vehicles when the gross vehicle weight of such combination exceeds 26,000 pounds.

Recreation vehicles, vehicles displaying restricted plates, municipal pick-up and delivery vehicles, buses used in transportation of chartered parties, and government-owned vehicles are not apportioned vehicles.

c. "Base jurisdiction" means, for fleet registration, the jurisdiction where: the registrant has an established place of business; mileage is accrued by the fleet vehicles; and operational records for the vehicles are maintained or can be made available.

d. "Bus" includes motor vehicles used for the transportation of passengers for hire, except commuter vans and vehicles used in ridesharing arrangements and school buses, if those vehicles are not otherwise used in the transportation of passengers for hire.

e. "Commercial vehicle" means a vehicle operated in interstate commerce and used for the transportation of persons for hire or compensation, or designed or used primarily for the transportation of property, excluding non-commercial type vehicles used for the delivery of mail on rural free delivery routes.

f. "Farm products" means a crop, livestock or fur products.

g. "Farmer" means a person engaged in the commercial raising, growing and producing of farm products on a farm of not less than five acres, who does not buy farm products for resale.

h. "Fleet" means one or more apportioned or commercial vehicles.

i. "Gross weight" means, for commercial vehicles, the weight of all vehicles in a combination of vehicles drawn by a commercial vehicle, including load or contents.

j. "In-jurisdiction miles" means the total number of miles operated by a fleet of apportioned vehicles in a jurisdiction during the preceding year. Mileage of New Jersey registered vehicles accrued in non-member jurisdictions shall be counted toward New Jersey in-jurisdiction miles.

k. "International Registration Plan" means a reciprocity agreement among signatory states of the United States and provinces of Canada providing for payment of registration fees based on fleet miles operated in each jurisdiction.

l. “Jurisdiction” means a state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a foreign country, and a state or province of a foreign country.

m. “Motor carrier audit” means a physical examination of a motor carrier's operational records, including source documentation, to verify fleet mileage and the accuracy of the carrier's record keeping system.

n. “Motor vehicle” means a motor vehicle, motor-drawn vehicle, motor vehicle body or chassis, motorized bicycle and motorcycle.

o. “Operational records” means documents supporting miles traveled in each jurisdiction and total miles traveled, including fuel reports, trip sheets, and logs.

p. “Preceding year” means, for apportioned vehicles, the 12 consecutive months ending July 1 of the year preceding the calendar year during which registration is sought.

q “Properly registered”, as applied to the place of registration, means the jurisdiction where the registrant has a legal residence. For a commercial vehicle, the vehicle is registered in a jurisdiction:

(1) If the commercial enterprise has a place of business there, the vehicle is most frequently garaged, serviced, maintained, or controlled from that location and the vehicle is assigned to that place of business; or

(2) As the result of an arrangement between two or more jurisdictions or pursuant to a declaration.

The Commission shall determine the proper place of registration in the case of doubt or dispute and may confer with the other jurisdictions affected.

r. “Restricted plate” means a license plate with restrictions of time, geographic area, mileage or commodities or persons which may be hauled.

s. “State” means any state in the United States, and includes the District of Columbia.

t. “Total miles” for apportioned vehicles means all miles accumulated in all jurisdictions during the preceding year by all vehicles in a fleet while a part of the fleet. Mileage accumulated by a fleet that did not engage in interstate operations is not included.

Source: 39:3-2; 39:3-6.1; 39:3-6.11; 39:3-25.

COMMENT

This section consolidates definitions found in separate sections in the original, primarily sections 39:3-6.1 and 39:3-6.11. Some of these definitions are not specific to registration and will be moved to the general definitions section. Certain definitions were eliminated, including the definition of the term “member jurisdiction”, “negotiable title”, “owner”, “reciprocity”, “reciprocity agreement”, “registrant”, and “registration year”. The term “source documentation” in (m) will be defined. The paragraph calling for the promulgation of regulation to define other words was eliminated since there will be a general section providing for regulations. In addition, it is not clear if it would cause unnecessary confusion to have some statutory terms defined within the statute and others defined in regulations.

39A:2-R2. Registration and licensing agents

a. The Commissioner shall designate at least one person in each county for each 300,000 inhabitants, or fraction thereof, to act as an agent of the Commission and to register vehicles, issue registration certificates and license drivers subject to the applicable statute and regulations. The agent shall act until the agent's authority is revoked by the Commission and all moneys received shall promptly be deposited with the State Treasurer.

b. Agents who are State employees shall be in the State unclassified service and shall serve at the pleasure of the Commissioner.

c. Agents shall undergo a background check prior to appointment, including a review of State, federal and financial records. No person may be appointed who has contributed $1,000 or more to any gubernatorial or State party committee in any one year during the five years preceding appointment. Agents shall be qualified by education and experience to administer a local Commission office, including a background in law enforcement, security services, customer relations, business administration, finance or management, or public administration or finance.

Source: 39:3-3.

COMMENT

This section contains the substance of the original. The best location for this section is not clear since it contains licensing and registration information, but deals specifically with local MVC offices. The most appropriate location may be the as-yet-unrevised Chapter 2 language regarding the organization of the MVC. Subsection (a) will be checked to see if all provisions are still applicable. This section was fairly recently revised, but MVC will be asked to confirm that these provisions are still followed in practice. Subsection (a) calls for all moneys to be deposited with the State Treasurer, and it is not clear whether this means only funds associated with licenses and registrations and whether there are some funds that should be handled in a different manner. This will be checked. Subsection (b) will be checked to see if it is still accurate. In subsection (c), a determination may be appropriate regarding the validity of the contribution limitation and the educational requirements.

39A:2-R3. Exceptions from registration and licensing

The following vehicles are exempt from registration:

a. Fire engines;

b. Steam road rollers, traction engines, and self-propelled vehicles not used for the conveyance of persons for hire, pleasure or business, or the transportation of freight.

Source: 39:3-1.

COMMENT

This section contains the substance of the original. It is not clear whether this section applies to licensing as well as registration. It may not be appropriate for inclusion in the licensing section since it applies to specific vehicles rather than the operators of those vehicles.

39A:2-R4. Method of registration of passenger vehicles and motorcycles

a. Every New Jersey resident and nonresident whose motor vehicle will be driven in New Jersey shall register the vehicle before using it on the public highways. A vehicle may not be driven in New Jersey unless registered as follows:

(1) The written application shall be completed, signed and submitted by the applicant or, if the applicant is a legally recognized separate business entity, by its agent or officer.

(2) The application shall contain the: name; street address; mailing address; age of the owner; description of the vehicle, including the make and vehicle identification number (VIN), manufacturer's number or number assigned by the Commissioner in the absence of a VIN; the insurer of the vehicle and policy number; and any other information required by the Commissioner. If a vehicle is leased, the application shall include the address and driver license number of the lessee and the name and address of the lessor.

(3) A post office box may appear on an application only as part of a mailing address in addition to the street address. If a street address is not on file for an applicant, it shall be provided on renewal. The Commissioner, upon application, shall permit a victim of a violation of 2C:12-10, 2C:14-2, or 2C:25-17, or who otherwise has good cause, to use as an address a post office box or other contact point in lieu of using their actual residence address.

b. Upon submission of a properly completed application and payment, the Commissioner may grant a registration to the owner of a vehicle who is over 17 years old if the vehicle complies with this chapter. The form and contents of registration certificates shall be determined by the Commissioner but if a vehicle is leased, the registration shall identify it as such.

c. The form and contents of registration certificates shall be determined by the Commissioner but if a vehicle is leased, the registration shall identify it as such. A registration is valid for 12 calendar months following the last day of the month in which it was issued. The Commissioner may, however, require registrations which expire between three and 26 months after the date of issuance, and the fees or charges shall be proportionately less or greater than those established by law. All motorcycles shall be issued registrations which expire between April 30 and October 31 and the fees for motorcycle registrations shall be fixed by the Commissioner.

d. Notwithstanding any other provision of law, every registration for new passenger automobiles shall expire four years from the date on which it was issued. This paragraph shall not apply to new passenger automobiles purchased by a rental company for use as rental passenger automobiles. As used in this paragraph, "rental company" means a person engaged in the business of renting motor vehicles; and "rental passenger automobile" means a passenger automobile that is rented without a driver and used in the transportation of persons or property other than commercial freight. If the new passenger automobile being registered is a leased passenger automobile, the registration shall expire in accordance with the term of the lease. If the term of the lease extends beyond one or more 12-month periods by one or more months, the registration period shall be based

upon the full year into which one or more of the months extend; provided, however, the registration period for a leased automobile shall not exceed four years. Following the four year period of the initial registration of a new passenger automobile, the subsequent registration shall expire on the last day of the 12th calendar month following the calendar month in which the certificate was next issued.

e. For vehicles other than new passenger vehicles, a registration is valid for 12 calendar months following the last day of the month in which it was issued. The Commissioner may, however, require registrations which expire between three and 26 months after the date of issuance, and the fees or charges shall be proportionately less or greater than those established by law. All motorcycles shall be issued registrations which expire between April 30 and October 31 and the fees for motorcycle registrations shall be fixed by the Commissioner.

f. The Commissioner may set the expiration date of registrations, without payment of a proportionate fee, at a date other than 12 months to assist in the implementation of vehicle inspection requirements or for other good cause. If a registration is so extended, upon renewal the owner shall pay the full fee as if no extension had been granted.

g. The Commissioner shall maintain a record of all registrations issued.

h. Application forms for renewals of vehicle registrations shall be sent to the address of the owner as it appears on the records of the Commission.

i. A motor vehicle lessor shall notify the Commissioner, on the prescribed form, of the termination of a lease or change of the lessee within seven days.

j. An insurer shall notify the Commissioner within 30 days of the termination of any policy of insurance on a vehicle registered in New Jersey.

k. A person who owns or controls an unregistered vehicle shall not permit it to be parked or to stand on a public highway. A police officer may remove an unregistered vehicle from the public highway to a storage location, and the expense of removal and storage shall be paid by the owner or lessee (if leased) of the vehicle.

l. Violation of subsection (a) is a class D offense. Misstating a fact in the application for registration, or failing to advise that a vehicle is a leased vehicle is a class C offense.

Source: 39:3-4.

COMMENT

This section contains the substance of the original but has been streamlined. The MVC will be asked whether or not a vehicle may carry multiple registrations. If not, it is not clear why a non-resident should register a vehicle here since non-residents may drive in this State without registering here. Subsection (a) currently begins with the language “except as hereinafter provided”. That language was removed as confusing. In subsection (a) the term motor vehicle replaces the terms “automobile or motorcycle” for the sake of consistency with other sections of the statute, and in (a)(1), the word “corporation” was replaced by “legally recognized separate business entity” to include partnerships, LLCs, and other entities that may conduct business in their own names. Also in (a)(1), references to the application forms was modified to remove language stating those forms were prepared and supplied by the director and were to be submitted to the director. It appears that this need not be stated but it will be reinserted if necessary. In (a)(2), a descriptive term to differentiate between residence address and mailing

address may be appropriate. Subsection (a)(3) was revised so that the language mirrored the language found in 3-L11. In this section, references to the expiration of the registration simply state that it will expire, and do not include the language of the original statute adding that the registration certificate shall become void. It is not clear what the expiration of a registration means if not that the registration is no longer valid. In subsection (d), the deadlines will be revised to make them clearer and more understandable. Subsection (j) was added because there is a requirement in the current statute at 39:3-4b for an insurer to notify the Commissioner of a termination of a policy of insurance covering a vehicle with a temporary registration, so it seemed that similar language might be appropriate for permanent registrations. Language calling for the notification of lessors regarding new provisions pertaining to leased vehicles was removed since it is assumed that such language is no longer needed. Section 39:3-4.1 was not yet incorporated into this draft. It is not clear whether the language is still viable. If so, it will be included. The section designates penalties according to the new penalty classification system contained in 39A:44-GP1.

39A:2-R5. Temporary registration of passenger vehicles, motorcycles and noncommercial trucks

a. A New Jersey resident who acquires and temporarily registers a vehicle in another state may cause the vehicle to be operated on the public highways of this State for the unexpired term of the temporary registration.

b. A resident whose motor vehicle is properly registered in a foreign country may operate the vehicle for 20 days after importing it into New Jersey as though registered here if the foreign registration number is conspicuously displayed in the vehicle.

c. A nonresident who purchases an automobile from a licensed dealer in this State while enroute to another state may apply to register the vehicle in New Jersey temporarily according to 39:2-R4(a) and (b). An application shall contain the name of the insurer and the insurance policy number and the insurer shall notify the Commissioner within 30 days if the policy is terminated. Upon receipt of a properly completed application, and the required fee, the Commissioner or a licensed motor vehicle dealer whose location is not within five miles of a motor vehicle agency may grant temporary registration and temporary license plates to the owner of a vehicle who is over 17 years old if the vehicle complies with this chapter.

d. A temporary registration shall become effective immediately upon issuance and shall be valid for 20 days after the date issued. No temporary registration shall be renewed except as a permanent registration, pursuant to 39:2-R4. The Commissioner shall maintain a record of all temporary registration certificates issued.

e. The Commissioner may prescribe regulations governing the issuance of temporary registration certificates and temporary license plates by motor vehicle dealers, motorized bicycle dealers and the Commission, and may require security sufficient to guarantee payment of all fees. Monies received from a licensed dealer for temporary registration certificates and license plates shall be deposited with the State Treasurer. If a licensed dealer engages in any abuse, the Commissioner may suspend the dealer's privilege to issue temporary registration certificates and temporary license plates. The Commissioner shall annually determine the fee to be charged, which shall not exceed the actual cost to the State of implementing and enforcing this chapter.

f. Violation of subsections (b) or (c) is a class D offense, except that making a misstatement of a fact in the application for registration is subject to the penalties provided in a class C offense.

Source: 39:3-4a; 39:3-4b; 39:3-4c; 39:3-4f.

COMMENT

This section streamlines and consolidates language currently found in separate sections. In subsection (c), it is not clear whether the requirement that a dealer not be located within five miles of a motor vehicle agency is still applicable and, if so, why. In subsection (d), language stating that the form and content of the temporary registration are to be prescribed by the Commissioner has been eliminated. The section designates penalty according to the new penalty classification system contained in 39A:44-GP1.

39A:2-R6. Fees and requirements for registration of passenger vehicles and noncommercial trucks

a. Except for applicants issued a 39:4-205 disabled person identification card, the fee for registration for passenger vehicles and non-commercial trucks manufactured:

(1) In any model year prior to 1971 is:

(A) $14 if the manufacturer's shipping weight (MSW) is less than 2,700 pounds;

(B) $23 if the MSW is between 2,700 and 3,800 pounds; and

(C) $44 if the MSW is more than 3,800 pounds.

(2) In model years between 1971 and 1980, inclusive, is:

(A) $17 if the MSW is less than 2,700 pounds;

(B) $28 if the MSW is between 2,700 and 3,800 pounds; and

(C) $51 if the MSW is more than 3,800 pounds.

(3) In 1980 or any later model year is:

(A) $25 if the MSW is up to 3,500 pounds; and

(B) $50 if the MSW is more than 3,500 pounds.

b. The fee for registration of a motorcycle is $10.

c. An applicant with a 39:4-205 identification card registering a private passenger van or noncommercial truck equipped with a wheelchair lift or other specially designed mechanical device for the handicapped, as designated by the Commissioner, that requires installation in a van or truck because of its dimensions, operating characteristics or manufacturer's installation requirements, shall pay the lowest fee required for registration of a passenger automobile of that model year. Application for registration shall be made on the prescribed form which states the vehicle will not: be used for commercial transportation of goods, wares and merchandise, or for hire; or contain advertising, signs, lettering, names or addresses on its exterior except the trademarks and labels of the manufacturer and dealer. The fee for registration of a noncommercial truck is the same as the weight fees in 39:3-20.

d. Notwithstanding any other provision of law to the contrary, the applicant for registration for any new passenger automobile subject to the four year extended registration period pursuant to 39:3-4, shall prepay to the Commissioner the full amount due for the 48-month period, or the full amount due based upon the term of the lease, upon the initial registration. The portion of that prepayment that is dedicated to specific purposes in accordance with 39:2A-38 and C.39:3-8.2(a) and (b) shall be deposited in their respective dedicated accounts.

e. MSW and model year for each passenger vehicle shall be determined based on information contained in the: certificate of origin; application for registration or renewal; or the records of the Commission. If the weight of a passenger vehicle is unavailable, in doubt or in dispute, the Commissioner may require that it be weighed on a designated scale, and the actual weight shall be considered the MSW for registration purposes. In such cases the Commissioner's determination of the MSW shall be final.

f. The Commissioner may license private utility and house type semitrailers and trailers with a gross load of 2,000 pounds or less at an annual fee of $4 and all other utility and house type semitrailers and trailers at an annual fee of $9. The application for registration shall contain a statement that the vehicle so registered will not be used for the commercial transportation of goods, wares or merchandise or for hire.

g. Except as provided in 39:3-84 for recreation vehicles, no private utility or house type semitrailer or trailer with the following dimensions may be operated on any highway in this State, except with a special permit secured in advance:

(1) Outside width exceeding 96 inches;

(2) Height exceeding 13 feet 6 inches; and

(3) Length for a single vehicle exceeding 35 feet, length for a semitrailer and its towing vehicle exceeding 45 feet, and length for a trailer and its towing vehicle exceeding 50 feet.

h. Special permits may be issued by the Commissioner for vehicles exceeding the maximum dimensions above, including:

(1) A house type semitrailer or trailer with an outside width of 16 feet or less if the vehicle is a manufactured home on a transportation system designed in accordance with the "Manufactured Home Construction and Safety Standards," 24 CFR part 3280.901 et seq., as amended and supplemented if the operator complies with the applicable law and regulations; and

(2) A house type semitrailer or trailer with an outside width exceeding 16 feet if it is transported on a commercial type low-bed trailer, semitrailer or properly registered dolly wheels.

i. The computation of the dimensions of a vehicle for this section shall not include safety equipment such as mirrors or lights if the equipment does not exceed the overall limitations established for it.

j. The application for a special permit shall be accompanied by a fee fixed by the Commissioner.

k. A special permit shall be in the possession of the operator of the vehicle for which the permit was issued.

Source: 39:3-8; 39:3-8.1.

COMMENT

This section contains the substance of the original sections but has been streamlined.

39A:2-R7. Fees and requirements for registration of commercial motor vehicles

a. The Commissioner may issue registrations for commercial motor vehicles other than omnibuses or motor-drawn vehicles upon application and payment of a fee based on the gross weight of the vehicle. The gross weight of disabled commercial vehicles being removed from a highway shall not be included in the calculation of the registration fee for the drawing vehicle.

b. A registration for a commercial motor vehicle other than an omnibus or motor-drawn vehicle shall expire on the last day of the 11th calendar month following the month in which the certificate was issued. For good cause, the Commissioner may require registrations which expire between three and 26 months after issuance. The charges for such registrations shall be proportionately less or greater than the fees established by law.

c. The registration fee determined by gross weight shall be as follows:

(1) Vehicles other than trucks transporting ready-mixed concrete, asphalt, stone, sand, gravel, clay and cleanfill:

(A) Up to 5,000 pounds, $53.50.

(B) Between 5,001 and 10,000 pounds, $53.50 plus $11.50 for each 1,000 pounds or portion thereof in excess of 5,000 pounds.

(C) Between 10,001 and 18,000 pounds, $53.50 plus $13.50 for each 1,000 pounds or portion thereof in excess of 5,000 pounds.

(D) Between 18,001 and 50,000 pounds, $53.50 plus $14.50 for each 1,000 pounds or portion thereof in excess of 5,000 pounds.

(E) In excess of 50,000 pounds, $53.50 plus $15.50 for each 1,000 pounds or portion thereof in excess of 5,000 pounds; and

(2) Trucks transporting ready-mixed concrete, asphalt, stone, sand, gravel, clay and cleanfill:

(A) Up to 5,000 pounds, $53.50.

(B) Between 5,001 and 18,000 pounds, $53.50 plus $11.50 for each 1,000 pounds or portion thereof in excess of 5,000 pounds.

(C) Between 18,001 and 50,000 pounds, $53.50 plus $12.50 for each 1,000 pounds or portion thereof in excess of 5,000 pounds.

(D) In excess of 50,000 pounds, $53.50 plus $13.50 for each 1,000 pounds or portion thereof in excess of 5,000 pounds.

(3) Commercial motor vehicles with three or more axles and a gross weight between 40,000 and 70,000 pounds engaged in construction work or the business of supplying or transporting construction material, $22.50 for each 1,000 pounds or portion thereof.

(4) The following vehicles engaged in the performance of solid waste disposal or collection holding a certificate of convenience and necessity issued by the Department of Environmental Protection, $50 plus $11.50 for each 1,000 pounds or portion thereof in excess of 5,000 pounds:

(A) Two-axles with a gross weight not exceeding 42,000 pounds;

(B) Tandem three-axle and four-axle vehicles with a gross weight not exceeding 60,000 pounds; and

(C) Four-axle tractor-trailer combination vehicles with a gross weight not exceeding 60,000 pounds.

(5) Commercial motor-drawn vehicle, the registration year shall be April 1 to the following March 31, and the fee shall be $18. An applicant for registration such vehicle may be given the option of registering it for four years at a fee of $64 paid in advance. If the vehicle is sold or withdrawn from use, the Commissioner may, upon surrender of the vehicle registration and plate, refund $16 for each full year of unused prepaid registration.

d. The owner, lessee, or bailee of a vehicle found or operated on a New Jersey public highway or public or quasi-public property with a gross weight in excess of the weight limitation permitted by the registration shall be assessed a penalty of $500 plus $100 for each 1,000 pounds or portion thereof in excess of the weight limitation.

e. A vehicle or combination with no valid registration is deemed to have registered for zero pounds for enforcement of this chapter, but is not deemed to be registered for any other purpose. This section does not supersede or repeal 39:3-84, 39:4-75, or 39:4-76.

f. For vehicles with gross vehicle weights in excess of 5,000 pounds, an amount equal to $3 per 1,000 pounds or portion thereof in excess of 5,000 pounds for each registration shall be deposited in the Commercial Vehicle Enforcement Fund for use by the Department of Law and Public Safety and the Department of Transportation for enforcement of laws and regulations governing commercial motor vehicles.

Source: 39:3-20.

COMMENT

This section contains the substance of the original but has been streamlined.

39A:3-R8. Registration of empty vehicles, manufactured and mobile homes

a. The Commissioner may issue, upon proper application, a registration certificate and license plates for:

(1) Trucks, tractors, trailers and semitrailers that are empty and being transported:

(A) From one terminal to another, or from the place of sale to the registrant's terminal or place of business, or

(B) To have additional equipment added or lettering affixed.

(2) Mobile and manufactured homes being transported:

(A) From the place of manufacture to the registrant's terminal or place of business, or

(B) For the purpose of delivering the mobile or manufactured home to a final point of delivery.

b. The annual fee for the issuance of a set of plates which indicate that a vehicle is "in-transit empty" shall be $25.

c. The penalty for misuse of these registration provisions shall be a fine of between $25 and $100 and suspension or revocation of the registration.

Source: 39:3-20.1; 39:3-20.2

COMMENT

This section contains the substance of the original sections but has been streamlined.

39A:3-R9. Registration of farm vehicles and machinery

a. The Commissioner shall register farm tractors and farm traction equipment to travel upon the public highways for a fee of $5 for each year or portion thereof. Farm traction equipment or tractors may draw farm machinery and implements while in transit from one farm to another or between different portions of the same farm without additional registration.

b. The Commissioner may register motor vehicles used exclusively as farming machinery to travel upon the public highways between farms or areas thereof owned or managed by the vehicle's registered owner. The fee shall be $5 for each year or portion thereof. Such a vehicle, and a truck registered pursuant to 39:3-25, may draw not more than one unregistered vehicle used exclusively on the farm. A vehicle registered pursuant to this section or 39:3-25 may be used under contract with a municipality to remove snow from a public highway.

c. Vehicles registered pursuant to this section shall not be operated on a public highway from sunset to sunrise, except while under contract with a municipality to remove snow. The vehicle shall have adequate means adequate to control its movement and to stop and hold it on any up or down grade. Regulations shall specify the coverings that may be used on the wheels, the days, hours and conditions under which they may be operated, the circumstances under which escort vehicles are required, the distance that may be traveled upon the public highways and other safety requirements.

d. Motor vehicles used exclusively as farm tractors, traction equipment, farm machinery or farm implements which cannot be operated at a speed in excess of 20 miles per hour are not required to be registered under this section.

e. A registration for a farm truck shall expire on the last day of the 11th calendar month following the month in which it was issued. The Commissioner may, for good

cause, require registrations which expire between three and 26 months after the date of issuance. The charge associated with such registration shall be proportionately less or greater than the fees established by law.

Source: 39:3-24; 39:3-25.

COMMENT

This section contains the substance of the original sections but has been streamlined.

39A:2-R10. Special registration for well-drilling machines or equipment and powered feed impregnating machines

a. The Commissioner may register traction or tractor well-drill machines or equipment, however mounted.

b. The Commissioner, may register any truck equipped with rubber tires which has a permanently affixed powered feed impregnating machine.

c. A registration issued pursuant to this section shall be $3 per year or any portion thereof, and shall permit the vehicles to travel upon the public highways of this State.

Source: 39:3-26.

COMMENT

This section contains the substance of the original. This section may be more appropriately included in with the registration provisions although it was initially included with licensing information. Since it deals with the treatment of a vehicle, rather than the licensing of a person, it has been moved to this chapter pending a response is received from MVC as to how these items are treated. The term “license” in the original has been changed to “register” in this section.

39A:2-R11. Registration of apportioned vehicles

a. The Commissioner may become a member of the International Registration Plan (IRP) for apportioned vehicles which may include:

(1) Grant of full reciprocity to apportioned vehicles not based in New Jersey which are operated in interstate commerce in exchange for reciprocity for New Jersey-based apportioned vehicles;

(2) Exchange of audits of operational records of apportioned fleets with participating jurisdictions; and

(3) Administrative provisions including collection and disbursement of registration fees, cooperative enforcement activities and the free exchange of information.

b. The Commissioner shall adopt regulations to implement this section and may authorize a private corporation or entity to register apportioned vehicles and to perform audits of the records necessary for participation in the IRP.

c. The Commission or its designee shall:

(1) Register apportioned vehicles within the jurisdiction upon application, proof of insurance, proof of filing of federal Form 2290 pursuant to 26 U.S.C. § 4481 et seq., and payment of the fees. A registration shall be issued for each vehicle identifying it and listing the jurisdictions in which it has been apportioned, its weight, and its fee

classification. The registration shall be carried in the vehicle for which it was issued at all times.

(2) Perform audits of the operational records of carrier accounts registered in New Jersey in accordance with the IRP Agreement and notify each jurisdiction in which a registrant is apportioned of the accuracy of its records.

d. A registration for an apportioned vehicle may be suspended, cancelled or revoked by the Commission if the registrant falsifies information, misstates fact, fails to pay fees, or fails to maintain the vehicle in accordance with the Federal Department of Transportation standards.

e. The registration fee for an apportioned vehicle is determined by the number of in-jurisdiction miles it drives in each jurisdiction in which it is authorized to travel. The formula for the registration fee shall comply with the IRP and be set forth in regulation.

f. The Commission shall establish, by regulation, an administrative fee paid by each registrant to subsidize the administration of the program which shall be deposited into the Commercial Vehicle Enforcement Fund.

g. A registrant with apportioned registration shall preserve its operational records for three years after the close of the registration year. At the carrier's option, pre-approved on-board recording devices may be used in lieu of, or in addition to, handwritten trip reports for record keeping. Records shall be made available to the Commission or its designee during normal business hours upon request for an audit as to the accuracy of computation, payments and assessments for deficiencies or allowances for credits. If a registrant fails to make records available upon proper request, or keep records from which true liability can be determined, the Commissioner may:

(1) Suspend, revoke or cancel the registration;

(2) Assess liability based upon the Commissioner's estimate of the miles traveled by the registrant in each jurisdiction; and

(3) Take any action reasonably necessary to advance the IRP.

h. Upon proper application and payment of the fee set by regulation, the Commissioner may issue a temporary registration for any vehicle or combination that could be operated in the jurisdiction with full apportioned registration. The temporary registration shall be carried in the vehicle for which it is issued and is valid for not more than 72 hours.

i. A person who violates any provision of 39:8-79 through 39:8-84 is subject to a fine of $500 for each offense. Such fine shall be forwarded for deposit into the State General Fund.

j. Registration of apportioned vehicles under this chapter and the State's participation in the IRP supersedes all other law and reciprocal agreements covering matters covered by this chapter but shall not affect agreements the State has with non-member jurisdictions.

k. Fees collected for other jurisdictions shall be held in trust until distributed in a special account within the State Treasury called the "Proportional Registration

Distributive Fund". The monies in this Fund shall not be considered funds of this State. The Commission shall distribute the fees in accordance with the IRP Agreement.

l. Absent an arrangement, a vehicle properly registered in another jurisdiction shall, when operated in this State, receive the benefits and exemptions granted by that jurisdiction to vehicles properly registered here. Reciprocity shall apply to commercial vehicles only when engaged exclusively in interstate commerce, except it shall apply to a foreign registered trailer or semitrailer in intrastate commerce when hauled by a truck, road tractor, or truck tractor registered pursuant to R.S. 39:3-20.

Source: 39:3-6.12; 39:3-6.13; 39:3-6.14; 39:3-6.15; 39:3-6.16; 39:3-6.17; 39:3-6.18; 39:3-6.19; 39:3-20.

COMMENT

This section streamlines and consolidates the requirements of the original sections. In subsection (h) language saying that the application for temporary registration was to be made on forms provided by the division was eliminated. In (i), language specifying that the judge shall forward the funds to the State Treasurer for deposit in the General Fund was removed as unnecessary. It will be determined whether the provisions found in (l) belong in this section, they were copied from language found in 2-R19(d) because it appeared that the language was needed in both sections. THe penalty included in subsection (i) has not been included in the new penalty classification system because it is not clear if the penalty in that section is governed by any provision in the IRP. If not, then the penalty can be included in the new classification system .

39A:2-R12. Bus registration

a. For the registration of each vehicle used as bus, the annual fee is:

(1) $30 for a vehicle with a seating capacity of 18 passengers or less;

(2) $48 for a vehicle with a seating capacity between 19 and 30 passengers;

(3) $48 for a vehicle with a seating capacity of more than 30 passengers and an additional $3 for each passenger in excess of 30 passengers;

(4) $10 per vehicle if the number of regular route passengers carried by the applicant in the prior calendar year represents at least 75% of the combined total of passengers carried by the applicant on regular route, casino, special and charter operations during that year; and

(5) $10 per vehicle for an applicant operating a regular route bus service under contract with the New Jersey Transit Corporation.

b. Applicants seeking to register a vehicle for a reduced fee shall present to the Commissioner a letter from:

(1) The Department of Transportation certifying that the number of regular route passengers carried in the previous calendar year represents at least 75% of the combined total of passengers carried by the applicant on regular route, casino, special and charter bus operations during that year; or

(2) The New Jersey Transit Corporation certifying that the applicant is operating under contract with them.

c. The Commissioner is may issue a registration for a bus on receipt of a proper application indicating the applicant is in the business of transporting passengers for hire. The Commissioner shall provide identification marks like those provided for vehicle registrations and assign a number to each, which shall be preceded by the letter “O”.

d. This section shall not prohibit a bus operator from the use of an automobile duly registered to that operator.

e. A person who uses a vehicle to transport passengers for hire without a bus registration is guilty of a class C offense. Source: 39:3-19; 39:3-19.1.

COMMENT

This section contains the substance of the original sections but has been streamlined. The section designates penalty according to the new penalty classification system contained in 39A:44-GP1.

39A:2-R13. School vehicles; vehicles used for summer camps

a. The Commissioner may issue license plates for school vehicles marked "School Vehicle Type I" or "School Vehicle Type II" as appropriate.

b. A registration for a school vehicle shall expire on the last day of the 11th calendar month following the month in which it was issued.

c. No fee shall be charged the United States Government, the State of New Jersey, a local school district, a regional school district, a county vocational or technical school, or a nonprofit private school for a Type I or Type II school vehicle license plate. All other applicants for "School Vehicle Type I" license plates shall pay an annual fee of $140. All other applicants for "School Vehicle Type II" license plates shall pay an annual fee of $40.

d. This section does not apply to buses used in common carrier line and school transportation service if the owner meets the qualifications in 39:3-19 above; or to a vehicle with a seating capacity of 16 or less used solely used to transport children and supervisory adults to or from summer day or residence camps from May 15 to September 15 of any year.

e. A vehicle with a seating capacity of 16 or less used to transport children to or from summer day or residence camps from May 15 to September 15 shall be inspected by the Commission before May 15 in any year it is to be used for such transportation and checked for compliance with the minimum standards for small vehicles adopted by the Department of Education. The vehicle shall be covered by motor vehicle liability insurance insuring against loss resulting from liability for bodily injury or death sustained by a person arising out of the ownership, maintenance, operation or use of the vehicle. The insurance coverage shall be at least in an amount or limit:

(1) Of $300,000, exclusive of interest and costs, on account of injury to, or death of, one person, in any one accident; and

(2) Subject to the limit for any one person injured or killed, of $500,000, exclusive of interest and costs, on account of injury to, or death of, more than one person in any one accident.

Source: 39:3-19.2; 39:3-19.3; 39:3-19.4.

COMMENT

This section contains the substance of the original sections but has been streamlined.

39A:2-R14. Special registration for convention, pageant or parade vehicles

a. Whenever a manufacturer or dealer desires to make passenger automobiles available for a convention, conference, meeting, pageant, parade, celebration or similar function held in this State, the manufacturer or dealer may request in writing that the Commissioner issue a special registration for such vehicle. The Commissioner may issue special registrations for a fee of $1.

b. Special registrations are valid for the term specified by the Commissioner, which shall be for the duration of the function plus a number of days before and after the commencement and termination of the function, not to exceed a total of 10 days.

c. When issuing a special registration, the Commissioner may also issue special license plates upon the payment of an additional fee equal to the estimated actual cost of manufacturing and handling the special license plates. The design, form and contents of each such special license plate shall be prescribed by the Commissioner.

Source: 39:3-27.2.

COMMENT

This section is substantially identical to the original.

39A:2-R15. General registration for manufacturer, converter, dealer

a. The following individuals doing business in this State may, for motor vehicles owned or controlled by them, obtain approved general registration and license plates with the letter "D" on them as set forth below:

(1) A manufacturer of motor vehicles, but only if the vehicle is operated only for shop, demonstration or delivery purposes;

(2) A bona fide converter of commercial motor vehicles, but only if the vehicle is operated only for shop, demonstration or delivery purposes;

(3) A bona fide dealer with a business license issued by the Commissioner, if the vehicle is not used for hire, except that a bona fide dealer in motorized bicycles may only do so if the motorized bicycle is operated only for shop, demonstration, or delivery purposes.

(4) A bona fide dealer in “nonconventional” type motor vehicles with an established place of business in this State, but only if the “nonconventional” motor vehicle is operated only for shop, demonstration or delivery purposes.

b. Violation of subsection (a) is a class D offense.

c. The following individuals doing business in this State may, for motor vehicles owned or controlled by them, obtain approved general registration and license plates with the word "temporary" on them as set forth below:

(1) A person in the business of lending money for or financing the purchase of motor vehicles, when the vehicle is being transported from the place where

kept by the purchaser or borrower to the place where it is to be kept by the repossessor, or when the repossessor operates it for demonstration for sale.

(2) A corporation in the business of insuring motor vehicles against theft if ownership or control of a vehicle has been obtained by virtue of an insurance against theft contract made by the corporation, when the vehicle is to be transported for delivery to the owner from the place where abandoned by, or seized from, a thief.

(3) A person, partnership or corporation in the business of transporting motor vehicles from the place of manufacture for delivery to dealers, if satisfactory evidence of the financial responsibility of such entity to meet a claim for damages arising from an automobile accident has been filed with Commissioner.

(4) A person engaged in the business of renting or leasing motor vehicles, while the vehicle is not individually registered and not rented or leased.

(5) A person, partnership or corporation in the business of conducting a wholesale automobile auction in this State for licensed dealers only, at least once a week, on a vehicle controlled by the auction to be transported from the place where stored by the owner to the auction. The plates may not be displayed on a vehicle sold at the auction for delivery to the purchaser. Application for the plates shall be approved if satisfactory evidence of the financial responsibility of the entity to meet a claim for damages arising from an automobile accident has been filed with Commissioner.

d. License plates issued pursuant to this section shall be a single plate, issued in sets of five, and shall bear the letter "D" or the word "temporary" and a number corresponding to the number on the certificate of registration. The single license plate shall be displayed according to the law. The annual fee for a certificate of registration, four duplicates and one set of five single "D" or "temporary" plates bearing the registration number is $100; but the annual fee for a registration for motorcycles or motorized bicycles, two duplicates and one set of three single "D" plates bearing the registration number is $20.

Source: 39:3-18.

COMMENT

This section contains the substance of the original. The subsection (b) designates penalty according to the new penalty classification system contained in 39A:44-GP1.

39A:2-R16. Power of attorney given by non-resident; service of process

A individual required to register a motor vehicle and who has a residence outside of the State of New Jersey shall file with the Commissioner an instrument constituting the Commissioner the attorney upon whom process may be served in a proceeding arising from the operation of the vehicle in this State. Service of process shall be made by leaving a copy in the Commissioner’s office with the service fee of $2, to be taxed on the plaintiff's costs of suit. The Commissioner shall notify the registrant of service by certified or registered letter directed to the address stated in the application for registration. Process so served shall have the same effect as if personally served on the individual in this State.

Source: 39:3-7.

COMMENT

This section contains the substance of the original. The section title may not be accurate. The current language refers to an owner with a residence outside of the State, but an individual with multiple residences could be a NJ resident but have a home elsewhere. The term motorcycle was eliminated from the first sentence since "motor vehicle" is to include motorcycles. It appears that even residents of NJ without residences in other places are subject to this provision - if so, the language will be modified.

39A:2-R17. Regulations pertaining to insurers

The Commissioner, after consulting with the Commissioner of Insurance, may adopt, amend, rescind and enforce regulations requiring insurers to provide information regarding the issuance, renewal, cancellation and termination of insurance policies for vehicles to assist in the enforcement of provisions regarding insurance coverage.

Source: 39:3-4e.

COMMENT

This section contains the substance of the original.

39A:2-R18. Registration refused

a. The Commissioner shall refuse registration to a motor vehicle that fails to comply with an inspection requirement imposed by statute or regulation.

b. The Commissioner may refuse registration to a vehicle that does not comply with the requirements of this chapter or that the Commissioner believes to be unsuitable for use on New Jersey highways.

c. The Commissioner may suspend or revoke the registration reciprocity privilege of a vehicle that fails to undergo the required inspection.

Source: 39:3-5.

COMMENT

This section contains the substance of the original. The definition of vehicle has been removed from this section as it will appear elsewhere, but in the current statute it includes an automobile, commercial motor vehicle, trailer, semitrailer, tractor or omnibus. Detailed language regarding the source of inspection requirements has been eliminated from this section. Section 39:3-5.1 has been eliminated pending a determination of where that section is most properly located and whether it is still needed. That section deals with the refusal of registration to a vehicle subject to the federal heavy vehicle use tax.

39A:2-R19. Authority of Commissioner to make arrangements with other jurisdictions

a. The Commissioner may make an arrangement, agreement or declaration ("arrangement") with another jurisdiction, granting benefits and exemptions from all or any portion of a tax or fee normally imposed upon any vehicle, its owner or lessor under New Jersey law, but only to vehicles for which evidence of proper registration or licensing in another jurisdiction is supplied.

b. An arrangement shall provide that vehicles properly registered or licensed in New Jersey shall receive benefits and exemptions of a similar kind or degree when operated upon highways of the other jurisdiction as are extended to vehicles of that jurisdiction when operated here. Each arrangement shall, in the Commissioner's

judgment, be in the best interest of, fair and equitable to, this State and its citizens as determined by recognition of the benefits from the uninterrupted flow of commerce.

c. An arrangement may authorize registration or licensing in another jurisdiction of vehicles located in, or operated from a base in, that jurisdiction even if they would otherwise be required register in New Jersey. Those vehicles shall be entitled to the benefits and exemptions extended by such arrangement.

d. Absent an arrangement, a vehicle properly registered in another jurisdiction shall, when operated in this State, receive the benefits and exemptions granted by that jurisdiction to vehicles properly registered here. Reciprocity shall apply to commercial vehicles only when engaged exclusively in interstate commerce, except it shall apply to a foreign registered trailer or semitrailer in intrastate commerce when hauled by a truck, road tractor, or truck tractor registered pursuant to R.S. 39:3-20.

e. An arrangement may authorize the Commissioner to suspend or cancel the benefits or exemptions granted to a person who violates a condition or term of the arrangement or the motor vehicle laws or regulations of this State.

f. All arrangements, and any amendments, shall be in writing and filed in the office of the Commissioner and with the Secretary of State within 10 days after execution, or the effective date of the instrument, whichever is later.

Source: 39:3-6.2; 39:3-6.3; 39:3-6.5; 39:3-6.6; 39:3-6.7; 39:3-6.9; 39:3-6.10; 39:3-6.21.

COMMENT

This section streamlines and consolidates the requirements of the original sections. Since subsection (c) permits registration or licensing in another jurisdiction, a reference to this might be appropriate in the licensing section.

39A:2-R20. Highway crossing permit in lieu of registration

a. A self-propelled vehicle required to be registered in order to operate upon a public highway, that is intended to be used solely on private property, may be allowed to cross a public highway to gain access from one portion of private property to another, without registration, on issuance of a crossing permit by the Commissioner.

b. To obtain a crossing permit, a property owner shall apply to the Commissioner, setting forth the number and types of vehicles to cross the public highway, the anticipated frequency of crossings, the proposed location(s) of crossings and such further information as the Commissioner deems necessary.

c. On receipt of the application and the required fee, if the Commissioner determines that the proposed crossings may be permitted without danger of damage to the highway or hazard to the traveling public, the Commissioner shall issue a crossing permit, which specifies:

(1) The vehicle(s), or type(s) of vehicles permitted to cross;

(2) The location of the crossing(s) permitted, whose width shall not exceed 150 feet;

(3) Warning signs or safety devices to be erected and maintained by the permit holder at the permit holder's expense, and their location with respect to the crossing;

(4) Safety devices or other equipment, including lights, to be used on vehicles making the crossing;

(5) Restrictions on the time of day at which crossings may be made; and

(6) Any other terms and conditions the Commissioner deems necessary to secure the safety of the public or protect the highway from damage.

d. Each application for a crossing permit shall be accompanied by a fee based on the gross weight of vehicle and load for each vehicle to be operated under the permit, in accordance with the following schedule:

(1) 4,000 pounds or less $5;

(2) 4,001 to 8,000 pounds $8;

(3) 8,001 to 12,000 pounds $12;

(4) 12,001 to 16,000 pounds $16;

(5) 16,001 to 20,000 pounds .....$20; and

(6) 20,001 pounds or more .....$25.

e. If the permit is denied or the number of permitted vehicles is reduced by the Commissioner, the fee or portion thereof in excess of the amount indicated by the number of vehicles permitted shall be refunded.

f. A crossing permit shall be in effect for one year from the date of issuance and renewable annually on payment of the fee. The Commissioner may refuse to renew or modify the terms of the permit upon renewal if the safety of the public or maintenance of the highway requires.

g. The Commissioner shall revoke the crossing permit of a person who permits the operation of an unregistered vehicle upon a highway other than as authorized by the crossing permit and shall subject the permit holder to the penalty provided for operation of an unregistered vehicle upon a highway. No person shall operate a vehicle upon a highway with a crossing permit unless that person has a valid New Jersey driver's license for the class of vehicle being operated.

h. In the event of death, bodily injury or property damage arising in connection with the operation of any vehicle while on a public highway pursuant to a crossing permit, the operator, permit holder and owner of the vehicle shall be subject to the provisions of the "Motor Vehicle Security-Responsibility Law". Circumstances which would authorize or require the Commissioner to suspend the registration of a vehicle pursuant to that law shall authorize or require the revocation of a crossing permit; and the permit shall be revoked in its entirety.

Source: 39:3-26; 39:3-26.2; 39:3-26.3; 39:3-26.4; 39:3-26.5.

COMMENT

This section streamlines and consolidates the requirements of the original sections.

39A:2-R21. Reduction in registration fees

a. If a motor vehicle, other than a passenger automobile or motorcycle, or a commercial motor vehicle, or bus, is registered on or after October 1 in a registration year beginning April 1 and ending the following March 31, the applicant shall pay only one-half of the normal registration fee.

b. A person who enters active service in a branch of the armed forces of the United States and who registers a motor vehicle in this State, shall be entitled to a refund of the registration fee paid for the number of full months remaining in the registration period during which the vehicle will not be operated on the public highways of any State. The refund shall be paid from monies collected from motor vehicle registrations after the submission of the required written application and the surrender of the certificate of registration and the license plates.

Source: 39:3-22a; 39:3-22.1; 39:3-22.2.

COMMENT

This section streamlines and consolidates the requirements of the original sections.

39A:2-R22. Collection of fees required in addition to registration fee

The applicant for registration of any vehicle shall also pay to the Commissioner:

a. The inspection fee fixed in 39:8-2.

b. $1 to be deposited in the 26:2K-36.1 New Jersey Emergency Medical Service Helicopter Response Program Fund.

c. $ .50 to be deposited in the 30:6F-5 Traumatic Brain Injury Fund.

Source: 39:3-8; 39:3-8.2.

COMMENT

This section consolidates the substance of the original sections.

39A:2-R23. Veterans purchasing vehicle from United States

Any person who:

a. Served in the active armed forces of the United States;

b. Was discharged or released under conditions other than dishonorable;

c. Purchases a motor vehicle from an agency of the United States Government authorized to sell surplus property; and

d. Has obtained from the agency a certificate of identification and a temporary license plate which is displayed as required by statute,

may operate the vehicle from the place of purchase to any place within the State for the purpose of registering it without violating any statutory provision requiring registration before operation.

Source: 39:3-33.1.

COMMENT

This section contains the substance of the original.

39A:2-R24. Free registration for certain vehicles

a. No fee shall be charged for the registration of motor vehicles not used for pleasure or hire, owned by:

(1) The United States, the State of New Jersey; a county, a municipality;

(2) A Regional Air Pollution Control Agency; the Passaic Valley Sewerage Commissioners, the North Jersey District Water Supply Commission, a county improvement authority created under the "county improvement authorities law";

(3) A local school district, a regional school district, a county vocational or technical school, a nonprofit private school;

(4) An authorized volunteer fire department, an authorized volunteer first aid, rescue or emergency squad, a recognized auxiliary or reserve police organization of a municipality, hospital, humane society, and anticruelty society in this State;

(5) The New Jersey wing of the Civil Air Patrol incorporated by the Act of July 1946;

(6) The American Red Cross;

(7) Chartered local councils in New Jersey of the Boy Scouts of America, the Girl Scouts of America, the Boys' Clubs of America, the Girls' Clubs of America, or chartered local organizations of the Police Athletic League;

(8) Ambulances owned by a nonprofit organization;

(9) One motor vehicle of passenger type owned by a resident of this State, individually or jointly with a spouse, who:

(A) Is eligible for compensation pursuant to 38:18-1, 38:18-2 and 38:18-3;

(B) Qualifies under the provisions of Public Law 663-79th Congress of the United States of America (August 8, 1946), Public Law 187--82nd Congress of the United States of America (October 20, 1951), or who is a veteran of World War I with service-connected disabilities of the kind set forth in those laws, and holds a current New Jersey driver's license, if the vehicle is equipped with special attachments and devices necessary to provide for the safe operation by that person; or

(C) Is the holder of the Congressional Medal of Honor, which shall be evidenced by the distinctive license plates approved by the Commissioner.

b. These vehicles shall be registered and display number license plates or the Commissioner may issue special registration and special number plates valid for such motor vehicle for a period fixed by the Commissioner, which shall not be later than 26 months after the date of issuance.

c. Upon the expiration or nonrenewal of a special registration the registration and special number marker shall be returned to the Commissioner but upon proper application

to the Commissioner the special registration and number marker may be transferred to another motor vehicle acquired by the owner to whom they were issued.

Source: 39:3-27; 39:3-27.1.

COMMENT

This section streamlines and consolidates the requirements of the original sections.

LICENSE PLATES

CHAPTER 4. LICENSE PLATES

39A:4-LP1. Definitions

"Disabled Veteran" means any citizen and resident of this State honorably discharged or released from active service in any branch of the Armed Forces of the United States who has been or shall be declared by the United States Veterans Administration, or its successor, to have a service-connected disability.

"Historic motor vehicle" is a motor vehicle at least 25 years old, owned as a collector's item, and used solely for exhibition and educational purposes by the owner.

"Non-standard license plates" means any license plate on which the design or the markings are requested by an applicant, rather than routinely issued by the MVC, including vehicle-type license plates, occupation-type license plates, military-type license plates, non-profit organization-type license plates, and specialty funding license plates.

"Street rod" is a registered modified antique automobile manufactured before 1949.

Source: 39:3-27.3; 39:3-27.15; 39:3-27.27.

COMMENT

This section includes definitions specific to the license plate sections of Title 39, found in chapter 3, article 2. The only substantive difference in this section is the addition of a definition of "non-standard license plates" as a category including vehicle, occupation, military, non-profit organization and specialty funding license plates for ease of reference in later sections of this chapter when the requirements for all of those license plates are identical.

39A:4-LP2. License plates; display

a. A motor vehicle driven on the public highways of this State shall display a license plate furnished by the Commission. The plate shall hang between 12 and 48 inches from the ground in a horizontal position and shall be attached so it does not swing. The rear license plate may be displayed more than 48 inches from the ground on tank trucks, trailers and other commercial vehicles carrying flammable liquids and on sanitation vehicles used to collect, transport and dispose of solid waste.

b. If two license plates are issued, they shall be displayed on the front and rear of the vehicle; if only one license plate is issued it shall be displayed on the rear of the vehicle.

c. All license plate markings shall be clear and distinct so they are plainly visible at all times. No person shall drive a motor vehicle with a license plate frame or other item that obscures any marking imprinted upon the license plate.

d. A person shall not drive a motor vehicle that does not comply with this section or a vehicle displaying a fictitious plate or a plate other than that designated for the vehicle in question. During the time between the application for vehicle registration and the receipt of license plates, no person shall affix a plate or marker designed to resemble the license plates for the purpose of advertisement in the position normally reserved for the license plates.

e. Displaying a fictitious license plate number is a class C offense.

f. Violation of any other provision of this section is a class D offense and a subsequent violation of the same provision is a class C offense. These penalties shall not apply to the display of a fictitious license plate number.

Source: 39:3-33.

COMMENT

This section consolidates the requirements found in the original section of the statute, but removes references to registration plate inserts showing the year in which the vehicle registration has been granted. Throughout this chapter, the terms "identification marks" and "registration plates" have been replaced with "license plates" to reflect the common usage. The section designates penalties according to the new penalty classification system contained in 39A:44-GP1.

39A:4-LP3. License plates; requirements and fees generally

a. All passenger motor vehicle license plates shall include the words "Garden State" and a group of letters and numerals assigned by the Commissioner to an applicant.

b. The Commissioner may issue, upon application and payment of the required fee, personalized license plates composed of a requested combination of letters and numerals in accordance with the identification system if the particular combination requested is not then issued to and held by some other person or otherwise reserved or prohibited by the Commissioner.

c. The Commissioner may charge an additional fee for the issuance of particular combination of letters and numerals as the Commissioner may fix from time to time but not exceeding $30 for courtesy plates and $100 for personalized plates.

Source: 39:3-33.2; 39:3-33.3; 39:3-33.4.

COMMENT

This section consolidates the requirements found in the original sections and makes one substantive change, adding the word "prohibited" in subsection (b) to acknowledge the Commission's ability to prohibit the use of profanity on personalized license plates. It is not clear why there is a distinction between the fees for "courtesy plates" and for "personalized plates" and whether such a distinction should be maintained. It is also not clear what fee is to be charged for a personalized courtesy plate.

39A:4-LP4. Restrictions on issuance of license plates

No personalized or non-standard license plate may be issued to an applicant who:

a. Has been convicted of a violation of 39:4-50, 39:4-96, C.39:4-50.2 or of a substantially similar law in another jurisdiction:

(1) During the 10-year period preceding the date of application for an personalized or non-profit organization-type license plate; or

(2) At any time preceding the application for any other non-standard license plate; or

b. Has been convicted of a violation of N.J.S.2C:11-5; or

c. For the two-year period preceding the application has had driving privileges revoked or suspended for any reason in any jurisdiction.

Source: 39:3-33.5; 39:3-33.5a.

COMMENT

This section consolidates the provisions of the original sections and makes the substantive change of more consistently limiting the issuance of all types of specialty license plates rather than making a distinction between "courtesy marks", "identifying marks" and "special organization license plates". It is not clear why a distinction is made between personalized and organization-type license plates, and the remaining types of non-standard plates in subsection (a) and it may be appropriate to make the provisions uniform.

39A:4-LP5. General provisions for license plates or emblems

a. Only one set of non-standard license plates or emblems shall be issued to an applicant upon completion of the required application and submission of satisfactory proof that the applicant meets the conditions for issuance. No personalized or non-standard plate or emblem shall be used on any vehicle other than the vehicle for which it is issued.

b. The owner or lessee of a motor vehicle who obtains a base set of personalized or non-standard license plates may obtain and use a second set in a series upon another motor vehicle owned or leased by that person for an additional fee. Applicants who hold amateur radio licenses issued by the FCC may obtain duplicate special plates for additional vehicles they register containing the same amateur radio designation and the applicant's call letters. The duplicate plates shall contain marks the Commissioner deems appropriate to distinguish them from the original plates.

c. The Commission shall charge an application fee for the issuance of a non-standard license plate only upon the initial issuance of the plate. If a non-standard plate is issued to a lessee of a motor vehicle, upon termination of the lease the lessee may apply to have the plate reissued to another motor vehicle leased or owned by that lessee for a fee of $4.50. If a personalized or non-standard plate is issued to an owner of a motor vehicle, the owner may apply to have the plate reissued to another motor vehicle leased or owned by that owner for a fee of $4.50. Nothing in this section shall prohibit the Commission from charging, at the time of annual registration renewal, the payment of any additional fee required by any other section of the law for a special license plate.

d. The design of special license plates and emblems shall be determined by the Commissioner. In addition to any designation set forth in this chapter, each special plate shall contain the license plate number and other markings required by law.

e. The fees established for non-standard license plates shall be distributed as set forth below. The fee for non-standard license plates shall be as follows:

(1) Vehicle-type, occupation-type or military-type non-standard license plates are $25 in addition to the fees otherwise required for the registration of a vehicle.

(2) Non-profit organization-type license plates are $75.

(3) Commuter van is $50 annually, imposed at the time of the required periodic registration of the vehicle.

(4) Specialty funding license plates are <it varies in the original statute>.

(5) Farmer license plates are $25 plus $4.25 for each 1,000 pounds or portion thereof in excess of 5,000 pounds.

(6) There shall be no fee for P.O.W., Purple Heart, Silver Star, Combat Infantryman Badge, or Navy Cross specialty license plates.

f. Upon the surrender of non-standard license plates, the Commissioner shall issue new license plates, and shall charge the usual fee for the issuance of lost plates. A non-standard plate shall be surrendered to the Commissioner:

(1) Within 15 days of the date that:

(A) Membership in an organization, including law enforcement or military service, is concluded or terminated for any reason;

(B) An amateur radio station license expires or is revoked;

(C) The service of a vehicle used as a commuter van is terminated.

(2) Within 30 days of the date that a municipal or county officer or employee leaves office.

(3) When a former member of government no longer uses the vehicle for which the plates were issued.

g. Non-standard license plates or emblems issued to the following individuals may be retained by the surviving spouse for display on a vehicle registered to that surviving spouse: P.O.W., Purple Heart recipient, Silver Star recipient, Combat Infantryman Badge recipient, active member of the United States Submarine Veterans, and Navy Cross recipient.

h. Violation of any provision of the statute pertaining to non-standard license plates is a class E offense. The Commissioner may also revoke the registration of the vehicle for which the plates were issued.

i. The Commissioner shall promulgate regulations, including those governing the design, issuance and use of non-standard plates, and the nature of the documentation required to be provided in support of an application for personalized or non-standard license plates.

Source: 39:3-25; 39:3-27.5; 39:3-27.6; 39:3-27.7; 39:3-27.8; 39:3-27.9; 39:3-27.10; 39:3-27.11; 39:3-27.13; 39:3-27.14; 39:3-27.17; 39:3-27.18; 39:3-27.19; 39:3-27.20; 39:3-27.24; 39:3-27.25; 39:3-27.27; 39:3-27.29; 39:3-27.30; 39:3-27.32; 39:3-

27.33; 39:3-27.39; 39:3-27.42; 39:3-27.43; 39:3-27.44; 39:3-27.45; 39:3-27.59; 39:3-27.98; 39:3-27.99; 39:3-27.106; 39:3-27.114; 39:3-27.115; 39:3-33a; 39:3-33b.

COMMENT

This section consolidates and streamlines the original sections of the statute. This section changes the reference to distribution of fees to be consistent with the language of the following sections. Originally, the language found in subsection (e) called for all funds generated by special license plates to be allocated to the Commission to offset the costs of preparing the license plates; this language was inconsistent with the detailed distribution of finds set forth in later sections. In addition, this section eliminates references to "personalized, courtesy or special license plates" and substitutes "personalized" and "non-standard" plates as appropriate. The section designates penalty according to the new penalty classification system contained in 39A:44-GP1.

39A:4-LP6. Vehicle-type license plates

a. A New Jersey resident who owns a historic motor vehicle may obtain a nonconventional registration and non-standard license plates for such vehicle. No historic vehicle or vehicle manufactured before 1945 shall be required to display more than one license plate, which shall be displayed on the rear of the vehicle.

b. A New Jersey resident who owns a street rod may obtain a non-standard license plate for such vehicle by providing proof to the Commissioner that the vehicle is registered in a New Jersey street rod club that is fully affiliated with the National Street Rod Association, Inc. Any person issued the special street rod plate shall display a valid National Street Rod Association, Inc. safety sticker on the vehicle in addition to the regularly required inspection sticker.

c. A New Jersey resident who owns a commuter van may obtain a non-standard license plate for such a vehicle by providing proof to the Commissioner that the vehicle meets the statutory definition of such a vehicle, and will be used for the intended purpose.

d. A New Jersey resident who owns a truck and is a farmer may obtain a non-standard plate for such vehicle by providing proof to the Commissioner that the resident is actually engaged in the growing, raising and producing of farm products as an occupation. License plates issued under this subsection shall be placed upon trucks engaged exclusively in the carrying or transportation of applicant's farm products, raised or produced on the farm, and farm supplies, and not engaged in hauling for hire, except for a truck being operated under contract with a municipality to remove snow.

e. The design of the license plates authorized by this section shall be determined by the Commissioner and shall include the word "historic", "street rod", "commuter van" or "farmer" as appropriate. Any special registration or license plate obtained pursuant to this section of the statute is valid for the period of time that the vehicle is owned by the same registrant and upon transfer of title, the plate shall be surrendered to the Commissioner.

Source: 39:3-27.3; 39:3-27.19; 39:3-27.27.

COMMENT

This section streamlines and consolidates the original sections of the statute.

39A:4-LP7. Occupation-type license plates

Upon the application of a person who:

a. Holds an amateur radio license issued by the FCC, the Commissioner shall issue a non-standard license plate bearing the term "amateur radio" and the amateur radio call letters of the applicant.

b. Is a member of any fire Commission, either compensated or not, in the State of New Jersey, the Commissioner shall issue a non-standard license plate bearing a Maltese Cross and the letters "F.D." for a vehicle owned or leased by that person, a spouse or parent, or a business of which the fire Commission member is the principal owner or stockholder.

c. Is a member of any first aid or rescue squad, either compensated or not, in the State of New Jersey, the Commissioner shall issue a non-standard license plate for a vehicle owned or leased by that person, a spouse or parent, or a business of which the first aid or rescue squad member is the principal owner or stockholder.

d. Has been certified by the New Jersey Commissioner of Health as an Emergency Medical Technician-Ambulance, the Commissioner shall issue a non-standard license plate for a vehicle owned or leased by such a person bearing the letters "EMT-A" and the "Tree of Life" insignia.

e. Is a member of the board of chosen freeholders, surrogate, county clerk, county register of deeds and mortgages, elected county executive, sheriff, or any other officer of any county in New Jersey, the Commissioner shall issue a non-standard license plate for a vehicle owned or leased by such a person bearing the appropriate title designation, three letters and a numeral.

f. Is a mayor or chief executive of any municipality in New Jersey, or previously served in such position for one term or longer, the Commissioner shall issue a non-standard license plate for a vehicle owned or leased by such a person bearing the appropriate title designation.

g. Is a former member of the New Jersey State Legislature, the Commissioner shall issue a non-standard license plate for a vehicle owned or leased by such a person bearing the designation "Senate – Former Member" or "Assembly – Former Member" and the shield of the State of New Jersey. If the former member of the Legislature was a member of both the Senate and the Assembly, the plate shall bear the designation "Senate – Former Member".

Source: 39:3-27.5; 39:3-27.8; 39:3-27.9; 39:3-27.10; 39:3-27.29; 39:3-27.30; 39:3-27-42; 39:3-27.59; 39:3-27.114; 39:3-27.115.

COMMENT

This section streamlines and consolidates the original sections of the statute.

39A:4-LP8. Military type license plates

Upon the application of a person who:

a. Is an active member of the New Jersey National Guard, or former active member honorably separated from membership, as certified by the Adjutant General of the New Jersey Commission of Defense, the Commissioner shall issue a non-standard license plate for a vehicle owned or leased by such a person bearing the designation "Air National Guard" or "Army National Guard". An active member with special plates may affix an approved National Guard "Minuteman" emblem to the plates in a manner approved by the Commissioner.

b. Is a disabled veteran eligible to operate a motor vehicle in this State, the Commissioner shall issue a non-standard license plate for a vehicle owned or leased by such a person bearing the designation "Disabled Vet" and numbers to be selected from the registration numbers DV1 through DV9999 and 1DV through 9999DV, which are reserved for disabled veterans as follows:

NEW JERSEY

DV1

DISABLED VET

c. Served in the armed forces of the United States and who was held as a prisoner of war by an enemy of the United States during any armed conflict, as certified by the Commission of Military and Veteran's Affairs, the Commissioner shall issue a non-standard license plate for a vehicle owned or leased by such a person bearing the designation "P.O.W."

d. Is a resident of this State and an active member of a military reserve unit as certified by the appropriate military authority, the Commissioner shall issue a non-standard license plate for a vehicle owned or leased by such a person identifying the person as a member of a military reserve unit.

e. Is a recipient of a: Purple Heart; Silver Star; Combat Infantryman Badge, or Navy Cross, the Commissioner shall issue a non-standard license plate for a vehicle owned or leased by such a person which plate shall bear the appropriate designation. Individuals with the non-standard plates described in this subsection may affix to those plates an approved emblem (Purple Heart, Silver Star, Navy Cross, etc.).

f. While not approved for a non-standard license plate, active members of the United States Submarine Veterans may affix an approved emblem to the license plates on a vehicle they own or lease.

Source: 39:3-27.13; 39:3-27.15; 39:3-27.24; 39:3-27.33; 39:3-27.43; 39:3-27.44; 39:3-27.45; 39:3-27.98; 39:3-27.106.

COMMENT

This section streamlines and consolidates the original sections of the statute. It is not clear why United States Submarine Veterans were not approved for a non-standard license plate and are instead limited to an emblem, it may not be appropriate to retain this distinction. Also, since all license plates are to be designed by the Commissioner, it is not clear why the statute has to contain the design for the disabled veteran plate.

39A:4-LP9. Nonprofit organization type license plates

a. Upon the application of a resident of this State who is a member of a nonprofit community, alumni or service organization in the State approved by the Commissioner shall be issued non-standard license plates to be displayed on motor vehicles owned or leased by that person.

b. Non-standard organization vehicle license plates shall be issued when the following conditions are met:

(1) The organization appoints an organization representative to act as a liaison between the organization and the Commission.

(2) The initial order for special plates shall be for no less than 500 members of the organization in good standing except that the initial order for plates submitted by a service organization shall be for no less than 175 members.

(3) The organization representative shall provide to the Commission:

(A) Proof of the nonprofit status of the organization, and a copy of the charter of the organization indicating its lawful purpose.

(B) Upon request, a Certification of Membership printed at the organization's expense which contains the organization's official letterhead, the signature of the organization's representative, the names and addresses of organization members requesting non-standard organization plates, and the present license plate numbers of the vehicles of the members.

(C) The name or initials the organization wishes to be placed at the bottom of the plate and a logotype.

c. Non-standard organization license plates shall not be provided to any commercially registered vehicle or any motorcycle.

d. The Commissioner shall have final authority to make the decision as to whether or not an organization is approved for the issuance of special plates notwithstanding the organization’s compliance with the provisions of this section and the Commissioner shall have final authority to suspend the approval of any organization granted permission to obtain special plates if the organization no longer qualifies or has perpetrated a fraud against the Commission in obtaining non-standard plates for its members.

Source: 39:3-27.35; 39:3-27.36; 39:3-27.37; 39:3-27-38;

COMMENT

This section streamlines and consolidates the original sections of the statute. It is not clear why organization plates may not be issued to a motorcycle, it may not be appropriate to retain this distinction.

39A:4-LP10. Disposition of funds

Except as set forth below for specialty funding license plates, all money received by the Commissioner pursuant to this chapter shall become a part of the General State Fund.

Source: 39:3-33.6.

COMMENT

This section streamlines the language of the original section.

39A:4-LP11. General provisions for specialty funding license plates

a. Upon submission of the proper application and the payment of a fee of $50, the Commissioner shall issue a non-standard specialty funding license plates for any motor vehicle owned or leased and registered in this State. In addition to the application fee, $10 shall be charged to the registrant of the vehicle in addition to the regular annual registration fee. The fee payable for each specialty funding license plate, including the initial application fee and the additional $10 charged annually, shall be collected by the Commission and deposited in the appropriate fund as set forth below.

b. In addition to the markings required by other law, the specialty funding license plate shall display words or a slogan and the emblem of the cause, organization or entity it is designed to support.

c. The design of the specialty funding license plates shall be determined by the Commissioner after soliciting, in conjunction with the Legislature, input from the general public and any advisory committee established for this purpose, and after reviewing any submissions received.

d. Issuance of specialty funding license plates shall be subject to the limitations of C. 39:3-33.5 and other applicable requirements of Title 39.

e. The Commissioner shall notify eligible applicants of the opportunity to obtain specialty funding license plates by including a notice with all motor vehicle registration renewal forms and by displaying appropriate signs or posters in all Commission facilities and offices.

f. The Commissioner shall annually certify to the State Treasurer the average cost to the Commission for each type of specialty funding license plate for the immediately preceding fiscal year. The cost for each type of plate shall include costs incurred in producing, issuing, renewing, and publicizing the availability of that type of plate. The Joint Budget Oversight Committee or its successor shall approve the annual certification of costs. In the event that the average cost for any specialty funding plate as certified by the Commissioner and approved by the Joint Budget Oversight Committee, or its successor, is greater than the application fee for the specialty funding plate for two consecutive fiscal years, the Commissioner may discontinue the issuance of that type of plate.

g. The Commissioner, the State Treasurer, and the head of the relevant Commission within the State or other organization or entity shall enter into a memorandum of agreement setting forth the procedures to be followed by the Commission and the other relevant parties in carrying out their responsibilities under this chapter.

h. When the statute calls for the payment by an organization or entity to offset the initial costs incurred by the Commission for the preparation and issuance of the specialty funding license plates, other concerned organizations or individual donors may assist by contributing monies to the organization or entity for this purpose.

Source: 39:3-27.48; 29:3-27.49; 39:3-27.50; 39:3-27.51; 39:3-27-52; 39:3-27-53; 39:3-27-54; 39:3-27.55; 39:3-27.57; 39:3-27.58; 39:3-27.62; 39:3-27.63; 39:3-27.66; 39:3-27.67; 39:3-27.68; 39:3-27.70; 39:3-27.71; 39:3-27.72; 39:3-27.73; 39:3-27.74; 39:3-27.76; 39:3-27.77; 39:3-27.78; 39:3-27.79; 39:3-27.80; 39:3-27.82; 39:3-27.83; 39:3-27.84; 39:3-27.85; 39:3-27.85; 39:3-27.86; 39:3-27.87; 39:3-27.88; 39:3-27.89; 13:11A-5; 39:3-27.90; 39:3-27.91; 39:3-27.92; 39:3-27.93; 39:3-27.95; 39:3-27.96; 39:3-27.97; 39:3-27.100; 39:3-27.101; 39:3-27.103; 39:3-27.104; 39:3-27.105; 39:3-27.107; 39:3-27.108; 39:3-27.109; 39:3-27.110; 39:3-27.111; 39:3-27.112; 39:3-27.113; 39:3-27.116; 39:3-27.117; 39:3-27.119; 39:3-27.120; 39:3-27.121; 39:3-27.122; 39:3-27.123; 39:3-27.124; 39:3-27.125; 39:3-27.126; 39:3-27.127; 39:3-27.128; 39:3-27.129; 39:3-27.130; 39:3-27.131; 39:3-27.132; 39:3-27.133; 39:3-27.135; 39:3-27.137; 39:3-27.138; 39:3-27.139.

COMMENT

This section streamlines and consolidates the duplicative provisions found in the original statutory sections. Previously, the provisions concerning payment, notification of availability, annual certification of average cost, etc. were repeated for a number of the available license plates even though the provisions were identical or substantively similar.

39A:4-LP12. Funds created for monies received from specialty funding license plates

a. The funds created pursuant to this chapter shall, unless otherwise specified, be non-lapsing funds created by the Commission of Treasury. There shall be deposited into each fund the monies collected from the applicable non-standard specialty funding license plate, less the amounts necessary to reimburse the Commission for administrative costs as described in 39A:4-LP11(f), which amounts shall be transferred quarterly to the Commission. Monies deposited into a fund shall be held in interest-bearing accounts in public depositories as defined in 17:9-41 and may be invested or reinvested in securities approved by the State Treasurer. Interest or other income earned on monies deposited into a fund, and any monies which may be appropriated or otherwise become available to a fund shall be credited to and deposited to the fund for use as set forth below. The entity charged with responsibility for the administration of the funds shall establish qualifications, as appropriate, for determining grant eligibility, criteria for ranking grant applications, and standards and authorized purposes for the use of such grants.

b. The funds to be established for the monies collected by way of the specialty funding license plates, and the distribution of the monies contributed to those funds shall be as follows:

(1) The Coastal Protection Trust Fund shall be created and funded by the monies collected by the coastal protection specialty funding license plate. The Governor shall include in the annual budget recommendations to the Legislature a recommendation for an appropriation from the fund for the purposes set forth in this section.

(A) The Legislature shall annually appropriate to the Department of Environmental Protection (DEP) from the first $1,000,000 in license plate fees collected pursuant to this chapter and deposited in the fund an amount not to exceed:

i. $600,000 for the cost of any authorized program that utilizes prisoners to clean up or maintain beaches or shores;

ii. $200,000 for the cost of providing aircraft overflights for monitoring, surveillance and enforcement activities of the DEP's Cooperative Coastal Monitoring Program;

iii. $150,000 for establishment of a program of grants for the construction of sewage pump-out devices for marine sanitation devices and portable toilet emptying receptacles at public or private marinas or boatyards; and

iv. $50,000 to implement the provisions of the "New Jersey Adopt a Beach Act".

(B) If the amount collected from license plate fees exceeds $1,000,000 in a given year, the excess funds shall be credited to a special emergency reserve account to be created within the "Coastal Protection Trust Fund", and the Commissioner may, pursuant to specific appropriations made by law, use monies from that emergency reserve account to:

i. Finance shore protection projects of an emergency nature resulting from storm, stress of weather, or similar act of God; and

ii. Provide for the cleanup of discharges of pollutants or contaminants into the ocean waters of New Jersey.

(C) If an amount less than $1,000,000 is collected in any given year, the amounts set forth in section (A) above shall be proportionately reduced, and no amounts shall be credited to the special emergency reserve account that year.

(2) The Animal Population Control Fund shall be established in the Commission of Health and funded by the monies collected by the animal welfare specialty funding license plate.

(3) The Garden State Games Trust Fund shall be created and funded by the monies collected by the United States Olympic specialty funding license plate. Those monies shall be provided in equal amounts to the Garden State Games, for New Jersey's sports festival for amateur athletes, and the United States Olympic Committee.

(4) The Battleship New Jersey Memorial Fund shall be created and funded by monies collected by the Battleship U.S.S. New Jersey specialty funding license plate. Monies deposited in the fund shall be dedicated to the acquisition, restoration and maintenance of the Battleship U.S.S. New Jersey by the U.S.S. New Jersey Battleship Commission.

(5) The Historic Preservation License Plate Fund shall be created in the Commission of State, administered by the New Jersey Historic Trust, and funded by the monies collected by the historic preservation specialty funding license plates. Monies deposited in the fund shall be dedicated for use in awarding grants to State agencies, local government units, and qualifying tax-exempt non-profit organizations to meet the costs related to the physical preservation of, development of interpretive and educational programming for, or operation of New Jersey's historic resources. "Historic resources" means the historic resources in New Jersey and shall include buildings, sites, structures

listed or eligible for listing in the New Jersey Register of Historic Places, and museums and library collections related to New Jersey history. Approval of any grants shall be made by the "Historic Preservation License Plate Advisory Committee", which shall be established in the Commission of State and comprised of: the Chairperson of the Board of Trustees of the New Jersey Historic Trust, and two other trustees thereof, one of whom shall be the Executive Commissioner of the New Jersey Historical Commission; a representative of Preservation New Jersey; a representative of the New Jersey Association of Museums; a representative of League of Historical Societies of New Jersey; a representative of the New Jersey Council for the Social Studies; a representative of the New Jersey Council on the Humanities; and the Administrator of the Historic Preservation Office in the Commission of Environmental Protection.

(6) The Shade Tree and Community Forest Preservation License Plate Fund shall be created in the Commission of Environmental Protection, administered by the Division of Parks and Forestry, and funded by monies collected by the shade tree and community forest preservation specialty funding license plates. Monies deposited in the fund shall be dedicated for support and funding of projects and programs concerned with shade tree and community forest preservation, including the award of grants to municipal shade tree commissions, county shade tree commissions, municipalities and counties.

(7) The Pinelands Preservation Fund shall be funded by monies collected by the pinelands preservation specialty funding license plates.

(8) The Barnegat Bay Decoy and Baymen's Museum Account and the Maritime History and Marine Life Preservation Project Account shall be created in the DEP, and funded by monies collected, respectively, by the Barnegat Bay Decoy and Baymen's Museum specialty funding license plate, and the other maritime history or marine life preservation project specialty funding license plates. The Governor shall include in the annual budget recommendations to the Legislature a recommendation for an appropriation from these accounts for the purposes set forth in this section.

(A) The Legislature shall annually appropriate to the DEP from the first $600,000 in license plate fees collected pursuant to this section and deposited in the fund an amount not to exceed:

i. $400,000 for a grant to the Barnegat Bay Decoy and Baymen's Museum from the account established in that name; and

ii. $200,000 for a grant to an agency, group, organization or individual responsible for a maritime history or marine life preservation project selected by the DEP as eligible for a special license plate to be appropriated from the account established in that name.

(B) If an amount less than $600,000 is collected in license plate fees in any given year, the amounts set forth in section (i) above shall be proportionately reduced.

(9) The Cancer Research Fund shall be created in the Commission of Health, and funded by monies collected by the Conquer Cancer specialty funding license plates which shall be used for approved research projects as defined in 52:9U-3.

(10) The Liberty State Park License Plate Fund shall be created in the DEP, and funded by monies collected by the Liberty State Park specialty funding license plates which monies shall be dedicated to support and funding of projects and programs at Liberty State Park.

(11) The Meadowlands Conservation Trust Fund shall be created pursuant to 13:17-92 and funded, in part, by monies collected by the Meadowlands conservation specialty funding license plates which monies shall be used in accordance with the statutory provisions pertaining to that trust fund.

(12) The Deborah Hospital Foundation Fund shall be created and funded by the monies collected by the Deborah Heart and Lung Center specialty funding license plates, which monies shall be dedicated to fund programs and services for persons served by the Deborah Heart and Lung Center in New Jersey. Monies in this fund shall be withdrawn by the State Treasurer and disbursed to the Deborah Hospital Foundation in Browns Mills, New Jersey, upon request of the foundation using a voucher system established by the State Treasurer. The foundation shall indicate on each voucher request the purpose to which the disbursed monies shall be applied. The State Treasurer shall provide an annual report on the status of the monies in the fund to the Deborah Hospital Foundation, which shall in turn report to the State Treasurer on expenditures of monies from the fund. The Deborah Heart and Lung Center shall initially contribute monies in an amount to be determined by the Commissioner, not to exceed $50,000, to offset the initial costs incurred by the Commission for the preparation and issuance of the specialty funding license plates. Any amount remaining after the payment of those initial costs shall be deposited in the fund created pursuant to this section.

(13) The New Jersey Farm Bureau Fund shall be created and funded by the monies collected by the Promote Agriculture specialty funding license plate, which monies shall be dedicated to fund programs and services offered by the New Jersey Farm Bureau. The New Jersey Farm Bureau shall initially contribute monies in an amount to be determined by the Commissioner, not to exceed $50,000, to offset the initial costs incurred by the Commission for the preparation and issuance of the specialty funding license plates. Any amount remaining after the payment of those initial costs shall be deposited in the fund created pursuant to this section.

(14) The Law Enforcement Officer Memorial Fund shall be created and funded, in part, by the monies collected by the Law Enforcement Memorial specialty funding license plate which monies shall be dedicated to the establishment and funding of a scholarship program for the children of law enforcement officers killed in the line of duty. The State Police Benevolent Association, the State Fraternal Order of Police, and the National Law Enforcement Officers Memorial Fund, Inc. shall initially contribute monies in an amount to be determined by the Commissioner, not to exceed $50,000, to offset the initial costs incurred by the Commission for the preparation and issuance of the specialty funding license plates. Any amount remaining after the payment of those initial costs shall be returned to the contributing organizations.

(15) The Organ and Tissue Donor Awareness Education Fund established by 54A:9-25.17 shall be funded, in part, by the monies collected by the Be An Organ Donor specialty funding license plate which monies shall be used in accordance with the

statutory provisions pertaining to that fund. The New Jersey Transplant Association shall initially contribute monies in an amount to be determined by the Commissioner, not to exceed $50,000, to offset the initial costs incurred by the Commission for the preparation and issuance of the specialty funding license plates. Any amount remaining after the payment of those initial costs shall be returned to the contributors.

(16) The Rewards For Justice License Plate Fund shall be created in the Commission of Transportation, and funded by monies collected by the United We Stand specialty funding license plates which monies shall be distributed, at the discretion of the Commissioner of Transportation, either into a Rewards for Justice Fund established by a nonprofit organization, all of which shall be contributed to the United States State Commission's Rewards for Justice Program, or directly to the United States State Commission's Rewards for Justice Program. The United States State Commission's Rewards for Justice Program shall initially contribute monies in an amount to be determined by the Commissioner, not to exceed $50,000, to offset the initial costs incurred by the Commission for the preparation and issuance of the specialty funding license plates. Any amount remaining after the payment of those initial costs shall be deposited in the fund.

(17) The funds described below shall be created and funded by the monies collected by the wildlife conservation specialty funding license plate, which monies shall be used to for endangered and nongame species conservation, including effectuating the purposes of the Endangered and Nongame Species Conservation Act. Any person whose application for issuance of a wildlife conservation license plate was received by the State prior to the effective date of 39:3-33.11 et seq., or within 30 days thereafter, shall be permanently exempt from payment of the $10 annual wildlife conservation license plate renewal fee unless the person waives the exemption on a form provided by the Commission at the time of renewal of the registration certificate for the motor vehicle. The monies available from the wildlife conservation specialty funding license plate shall be allocated as follows:

(A) 30% shall be deposited into the "Marine Mammal Stranding Center Fund" established in the Commission of the Treasury. Interest or other income earned on monies deposited into the Marine Mammal Stranding Center Fund shall be credited to the fund. Monies in the fund shall be withdrawn by the State Treasurer and disbursed to the Marine Mammal Stranding Center in Brigantine, New Jersey, upon request of the center pursuant to a voucher system to be established by the State Treasurer. The Center shall indicate on each voucher request the purpose to which the monies shall be applied. Monies disbursed from the fund to the Center shall be utilized in support of its work pertaining to the rescue, treatment, rehabilitation, and conservation of marine mammals and reptiles, and toward meeting the costs of related research and public education activities, and may be applied toward the costs of personnel and the purchase and maintenance of equipment and supplies for such purposes. The State Treasurer shall provide an annual report to the Center on the status of the fund, and the Center shall provide an annual report to the State Treasurer documenting expenditures by the center of monies from the fund; and

(B) 70% thereof shall be deposited into the Wildlife Conservation Fund, established in the Division of Fish, Game and Wildlife, of which:

i. 71% <changed percentages slightly – was 71.4> shall be utilized by the Division of Fish, Game and Wildlife for the purpose of funding research, information and data collection and dissemination, population and habitat studies, environmental education, and conservation activities pertaining to endangered and non-game wildlife, and which may include the funding of full-time or part-time personnel and the purchase and maintenance of equipment and supplies dedicated to that purpose; and

ii. 29% shall be made available to the Division of Fish, Game and Wildlife for the purpose of providing funding grants to endangered and non-game wildlife conservation projects proposed by non-profit organizations.

Source: 39:3-27.47; 39:3-27.48; 29:3-27.49; 39:3-27.50; 39:3-27.51; 39:3-27-52; 39:3-27.55; 39:3-27.56; 39:3-27.64; 39:3-27.65; 39:3-27.69; 39:3-27.72; 39:3-27.75; 39:3-27.81; 39:3-27.85; 39:3-27.88; 13:11A-2; 13:11A-3; 13:11A-4; 39:3-27.90; 39:3-27.102; 39:3-27.109; 39:3-27.110; 39:3-27.124; 39:3-27.125; 39:3-27.127; 39:3-27.131; 39:3-27.134; 39:3-27.135; 39:3-33.9; 39:3-33.10; 39:3-33.11;

COMMENT

This section streamlines and consolidates the original statutory sections. In the current statute, any new specialty funding license plate is added by way of one or several new statutory sections. The goal of consolidating these sections is to limit future modifications to a single section of the statute so that the requirements for any new plate are easy to locate.

TOURING PRIVILEGES, DOCUMENT, TRANSFER

CHAPTER 7. TOURING PRIVILEGES

39:7-TP1. Touring privileges

a. A nonresident owner of a motor vehicle properly registered in the nonresident's home jurisdiction, which conspicuously displays that registration number, may operate the vehicle in this State, without complying with New Jersey's registration and equipment requirements, during the same portion of a year as a New Jersey resident would be permitted to operate a similar properly registered vehicle in the jurisdiction of the nonresident; if the vehicle is not:

(1) Used for the transportation of persons for compensation;

(2) Regularly operated in carrying on business within this State; or

(3) Designed or maintained primarily for the transportation of property.

b. Subsection (a) does not apply to a vehicle leased by an owner engaged in the business of leasing vehicles.

c. A vehicle properly registered in another jurisdiction, which conspicuously displays that jurisdiction's registration number, may be operated in this State without complying with New Jersey's registration requirements during the normal period of agricultural seasonal employment. A special permit shall be obtained upon proof an applicant is engaged in such employment, and payment of $1.

d. Except as provided by reciprocity agreement or arrangement or a declaration of the Commissioner, the nonresident privilege does not permit the operation of a commercial type: truck, road tractor, truck tractor or trailer and semitrailer. A trailer or semitrailer registered in another jurisdiction may be drawn in New Jersey by a vehicle registered in this State if the gross weight of the combination does not exceed the maximum weight allowed by the registration of the drawing vehicle. The owner or driver of a vehicle used in intrastate operations not permitted by this section shall be subject to fine as follows:

(1) 2-axle truck, $288;

(2) 3-axle truck, $381.50;

(3) 3-axle combination of vehicles, $475;

(4) combination of vehicles with more than 3 axles, $687.50; and

(5) commercial motor vehicle with 3 or more axles and a gross weight of between 40,000 and 70,000 pounds, the owner or driver of which is engaged in construction or in the business of supplying or transporting material, $1,120.

Source: 39:3-15.

COMMENT

This section is substantially the same as the source section, but it streamlines the language. It appears that the section should be called something other than the outdated "touring privileges", perhaps "reciprocity privileges" would be more appropriate. It is not clear whether describing the display of the

out-of-state registration number as "conspicuous" is sufficient or whether more detail is required. It is also not clear whether the provisions of (a)(2) and (d) pose a federal Commerce Clause problem.

Interestingly, there is New Jersey case law on the issue of whether or not a police officer in this State can stop an out-of-state vehicle based on an observed equipment violation. The Court found that this statute "does not preclude an officer from making a stop and requiring the driver to produce registration and driving credentials when the police officer observes an out-of-state licensed vehicle with an equipment violation. Furthermore, because the federal equipment standards apply equally to out-of-state vehicles, there is no reciprocity…" State v. Cohen, 347 N.J. Super. 375, 381 (App. Div. 2002).

39:7-TP2. Touring privileges of nonresident drivers

a. Touring privileges are extended to a nonresident driver in compliance with the home jurisdiction's licensing law.

b. A nonresident must be 17 or over to operate a vehicle registered in this State.

c. A nonresident must have a license from the home jurisdiction to operate a New Jersey registered vehicle.

d. A nonresident shall have the vehicle's registration certificate and a driver's license while operating a motor vehicle in this State, and shall exhibit them to a police officer or judge upon request.

e. Violation of this section is a class C offense.

Source: 39:3-17.

COMMENT

This section is substantially similar to the source section but has been streamlined. The original section specified that touring privileges were extended to licensed drivers or chauffeurs. The latter term has been eliminated, since chauffeurs are licensed drivers. The section designates penalty according to the new penalty classification system contained in 39A:44-GP1.

39:7-TP3. Suspension of touring privileges

a. The Commissioner may suspend the operating privilege of any or all motor vehicles registered in another jurisdiction when, in the Commissioner's judgment, that jurisdiction prohibits the free operation therein of any or all motor vehicles belonging to New Jersey residents.

b. The Commissioner may suspend the operating privilege of a vehicle owned by a nonresident on any reasonable grounds upon notification of the police and the official performing the registration function in the nonresident's jurisdiction and giving public notice. Driving a vehicle whose operating privilege has been suspended in this State after that time shall subject the driver to the penalties for driving an unregistered vehicle.

Source: 39:3-16.

COMMENT

This section is substantially similar to the source section but has been streamlined.

39:7-TP4. Continuation of touring privileges after becoming a resident

Except as provided for CDLs, a person who becomes a resident of this State and who, immediately prior to residing here, was authorized to operate a motor vehicle in New Jersey as a nonresident, may continue to operate with touring privileges for 60 days after establishing New Jersey residence or until obtaining a New Jersey drivers license, whichever period is shorter, unless a longer period is otherwise provided by law.

Source: 39:3-17.1.

COMMENT

This section is substantially similar to the source section but has been streamlined. The italicized portion of the last sentence does not appear to be helpful in determining what period of time applies, the review of Title 39 completed thus far does not suggest an alternate required time period, but it makes sense to determine if one exists and, if so, to make more specific reference to it in this section to provide guidance.

CHAPTER 8. DOCUMENTS

39A:8-D1. Documents indexed by Commissioner; copies

a. Applications for registration and drivers' licenses shall be indexed by the Commissioner and copied according to the regulations established by the Secretary of State. An original or certified true copy of an application shall be received as evidence in any court to prove the facts contained therein.

b. Copies of applications may be obtained for a fee of $8 for an uncertified copy and $10 for a certified copy.

c. The Commissioner may destroy all records of registration certificates or drivers' licenses, and their indexes, three years after the expiration of the registration certificate or drivers' license.

Source: 39:3-28.

COMMENT

This section is substantially similar to the source section but has been streamlined. The last sentence in (a) seems to be an evidentiary matter, more properly addressed by the Rules of Evidence.

39A:8-D2. Possession of license, registration and insurance identification card

a. A driver's license, a registration certificate and an insurance identification card shall be in the possession of the driver of a vehicle at all times while the vehicle is operated on New Jersey highways. The driver shall exhibit those documents when requested so to do by a police officer or a judge.

b. Violation of this section is a class D offense. If that person can produce a driver's license, registration certificate and insurance identification card valid on the day that person was charged, to the judge of the municipal court, the judge may dismiss the charge but may impose court costs.

Source: 39:3-29.

COMMENT

This section is substantially similar to the source section but has been streamlined. The original section provided that, in addition to supplying the documentation to a police officer when requested, the driver write his or her name "in the presence of the officer, so that the officer may thereby determine the identity of the licensee…" This provision did not appear to have particular significance, but will be checked with law enforcement officers to see if it is appropriate to include it in this revision. The section designates penalty according to the new penalty classification system contained in 39A:44-GP1. The level of the offense had been changed from class C to class D by the Commission to bring the penalty in accord with penalties for similar offenses in response to concerns raised by law enforcement officers.

39A:8-D3. Insurance identification cards

The Commissioner of Insurance shall, after consultation with the Commissioner, promulgate regulations concerning the issuance, design and content of insurance identification cards.

Source: 39:3-29.1.

COMMENT

This section is substantially identical to the source section.

CHAPTER 9. TRANSFER, DESTRUCTION OR LOSS

39A:9-TDL1. Transfer of ownership or destruction of vehicle

a. Upon transfer of ownership or destruction of a vehicle, its registration shall become void.

b. If a vehicle is sold, the original owner shall remove the license plates and surrender them to the Commission unless they are to be used on another vehicle as provided by subsection (c).

c. The original owner may register another vehicle for the unexpired portion of the registration period of the original vehicle by applying and paying $4.50 plus any difference between the original fee paid and that now due if the new motor vehicle is in a higher weight class. Unless the original license plates have been destroyed, the owner shall be assigned the license number previously issued and shall receive a new registration certificate. If the original license plates have been destroyed, replacement of the plates will be made as provided in 39:3-32.

d. A surviving spouse or child of a deceased registered owner of a vehicle who succeeds to ownership of the vehicle may have the registration transferred to the survivor by applying and paying $4.50.

e. The registered owner of a vehicle may have the vehicle registered jointly in the name of the registered owner and spouse by applying and paying $4.50.

f. If a vehicle is registered in the names of a husband and wife, title is presumed to vest in both with right of survivorship. If either dies, a new certificate of ownership and registration certificate may be granted to the survivor upon: application, payment of $4.50, proof of death, proof of marital status on the date of death by an approved affidavit, and surrender of the prior certificate of ownership. This section shall not impair

the rights of a creditor of the decedent nor shall it be construed to waive the requirements of the New Jersey laws regarding Transfer Inheritance Tax.

g. A vehicle registered in the name of a decedent may be operated by a duly licensed driver who is, or is authorized by, the surviving spouse or other member of the family of the decedent, under the decedent's registration certificate, for a period not exceeding 30 days after the decedent's death.

Source: 39:3-30; 39:3-30.1; 39:3-30.1a; 39:3-30.2; 39:3-30.3.

COMMENT

This section is substantially similar to the source sections but has been streamlined and consolidated.

39A:9-TDL2. Duplicate certificate or license

a. The Commissioner may issue a duplicate original or amended registration certificate to the original holder upon receipt of a sworn statement that the original has been destroyed, lost or stolen, or that a duplicate is required for use by a family member. The fee for each duplicate or amended registration certificate is $5. A duplicate original may be used in the same manner and for the same purpose as the original.

b. The Commissioner may issue a duplicate driver's license to the original holder upon receipt of a sworn statement that the original has been destroyed, lost or stolen, or that a new color picture is requested. The fee for each duplicate is $5 in addition to the digitized picture fee.

Source: 39:3-31; 39:3-31.1.

COMMENT

This section is substantially similar to the source section.

39A:9-TDL3. Loss, destruction or defacement of license plates

a. If one or both license plates or one or both inserts are lost, destroyed, or so defaced that the characters are illegible, the owner of the vehicle for which they were issued shall apply to the Commissioner for new plates or inserts within 24 hours of the discovery of the loss, destruction, or defacement. The application fee fixed by the Commissioner shall equal, as nearly as possible, the cost to the Commission of replacing the plates or inserts. The Commission may cancel the original registration and issue new plates, new inserts, and a new registration certificate, if necessary.

b. License plates replaced as a result of defacement shall be replaced with plates of the same identifying characteristics as those on the plates replaced.

c. When a person has surrendered license plates, the Commissioner may charge a fee for the issuance or reissuance of plates, in an amount equal, as nearly as possible, to the cost incurred by the Commission in reissuing or replacing the plates.

Source: 39:3-32.

COMMENT

This section is substantially similar to the source section but it has been streamlined and consolidated. It may be appropriate to delete the reference to "inserts" in (a) if they refer to the registration stickers that were placed on license plates since the Commission has discontinued the use of those stickers.

CHAPTER 11. LAMPS AND REFLECTORS

39A:11-LR1. Definitions

a. "Approved" means approved by the Commission, in good working order, and capable of operating at least 50% of their designed efficiency.

b. "Asymmetric headlamps" means vehicle headlamps or similar devices arranged to permit the driver to use one of several distributions of light on the road, at least one of which is asymmetric about the median vertical axis. (same as multiple beam headlamps?)

c. "Auxiliary driving lamp" means an additional lighting device on a vehicle used to supplement the headlamps in providing general illumination ahead of the vehicle.

d. "Clear road beam" means the beam from multiple-beam headlamps designed to be used when not approaching other vehicles and to provide sufficient candlepower to reveal obstacles at a safe distance under ordinary conditions of road contour and vehicle loading. (high beams?)

e. "Converter dolly" is a vehicle with a fifth wheel lower half or equivalent mechanism, the attachment of which converts a semitrailer to a trailer.

f. "Headlamp" means a major lighting device capable of providing general illumination ahead of a vehicle.

g. "Lower beam" means the beam from multiple beam or asymmetric headlamps designed to be directed low enough to avoid dangerous glare on both sides of the highway.

h. "Meeting beam" means the beam from multiple beam or asymmetric headlamps designed to be used when other vehicles are approaching within 500 feet or when signaled and designed so that the illumination on the left side of the road is reduced sufficiently to avoid dangerous glare for the approaching driver.

i. "Multiple-beam headlamps" means headlamps or similar devices arranged so as to permit the driver of the vehicle to use one of two or more distributions of light on the road.

j. "Reflector" means an approved device designed and used to give an indication by reflected light.

k. "Single beam headlamps" means headlamps or similar devices arranged so as to permit the driver of the vehicle to use only one distribution of light on the road.

l. "When lighted lamps are required" means any time from a half-hour after sunset to a half-hour before sunrise; whenever rain, mist, snow or other precipitation or atmospheric moisture requires the use of windshield wipers by motorists; and any time when, due to smoke, fog, unfavorable atmospheric conditions or any other reason there is

not sufficient light to render clearly discernible persons and vehicles on the highway at a distance of 500 feet ahead.

Source: 39:3-46; 39:3-61.

COMMENT

This section includes defined terms from separate sections of the original statute but eliminates definitions of terms generally defined elsewhere. This chapter was preliminarily reviewed and sections of the statute which appeared to have been superceded by federal law or regulation were removed. Additional review needs to be conducted on the sections in this chapter since although the language of these sections is not equivalent to the current standards imposed on equipment by federal regulation, if the federal regulations apply only to new vehicles, it may be necessary to have provisions in the law that pertain to older vehicles still in operation. Additional research is required to determine the most appropriate language for this chapter.

39A:11-LR2. Powers of Commission

a. The Commission may, as permitted by federal law, promulgate regulations concerning the construction and equipment of a motor vehicle and may require or forbid construction and equipment of a vehicle regarding its safety for use on a highway.

b. The Commission may refuse registration to a vehicle it deems improper to be used upon a highway.

c. The Commission may require approval of any equipment or device and may establish the procedure to be followed to submit equipment or a device for approval. The Commission may disapprove any equipment or device and may, after a hearing, revoke or suspend for cause a certificate of approval.

Source: 39:3-43.

COMMENT

This section is substantially similar to the source section, but includes the phrase “as permitted by federal law” in subsection (a) to address the limitations imposed by federal preemption in this area.

39A:11-LR3. Scope of chapter

a. A person shall not operate or be in custody of, nor shall an owner or lessee cause or knowingly permit to be operated on a highway, a motor vehicle in an unsafe condition as to endanger or be likely to endanger any person or property. A vehicle operated or in the custody of any person shall contain the required parts and equipment in proper condition and shall not be equipped in violation of this chapter.

b. This chapter does not apply to agricultural machinery and implements, road machinery, road rollers, traction engines or farm tractors unless specifically made applicable.

Source: 39:3-44; 39:3-45.

COMMENT

This section combines the substance of two sections of the current law.

39A:11-LR4. Illuminating devices

a. The requirements for lamps, reflective devices and associated equipment are primarily contained in Federal Motor Vehicle Safety Standard Number 108, found at 49 C.F.R. Sec. 571.108 as amended. To the extent that they are not preempted by federal law, the following additional requirements apply.

b. A person shall not operate or be in custody of a motor vehicle on a highway unless it is equipped with the required illuminating devices. All required lamps and illuminating devices shall be kept clean and in good working order.

c A person shall not alter the equipment of a vehicle or its performance after approved at an official inspection station with the intent to defeat the purpose of the inspection, and a person shall not operate a vehicle with equipment so altered.

d Light from a headlamp, driving lamp, clearance lamp, identification lamp, front-mounted single-faced turn signal, and front parking lamp shall be visible to the front. Light from a side-marker lamp and side reflector shall be visible to the side. Light from a stop lamp, tail lamp, clearance lamp, identification lamp, back-up lamp, rear-mounted reflector, rear-mounted turn signal on a vehicle or cab of a truck tractor, and a rear parking lamp shall be visible to the rear. Light from a double-faced turn signal shall be visible to the front and rear. Light from a projecting load marker lamp or combination marker lamp shall be visible from the direction stated in the provision requiring it.

e Every lamp and reflector shall be permanently and securely mounted on a permanent part of the vehicle. When two lamps or reflectors of the same type are required on the front or on the rear of a vehicle, they shall be mounted at the same level and spaced as far apart laterally as practicable. The mounted height of a lamp or reflector shall be measured from its center to the level surface upon which the vehicle stands.

f All required lamps, except for stop lamps, shall be lighted and adequate license plate illumination displayed whenever a vehicle other than a converter dolly is on a highway when lighted lamps are required, except when parked and exhibiting lights as required in 39:3-62 or when stopped and displaying emergency warning lights or devices as required in 39:3-64 or 39:3-54.

g. Turn signals on the side toward which a vehicle is turning shall be flashed to indicate the turning movement.

h. When a law enforcement officer detects a vehicle with a non-working lamp, the driver may be permitted to park the vehicle temporarily at a safe nearby place to repair the lamp before moving the vehicle, in which event there is no violation of this chapter.

i. Failure to use lighted lamps when they are required is a class E offense. No motor vehicle points or automobile insurance eligibility points pursuant to 17:33B-14 shall be assessed for such a violation and a person fined for the violation is not subject to a surcharge under the New Jersey Merit Rating Plan.

Source: 39:3-47; 39:3-48; 39:3-49; 39:3-55; 39:3-57; 39:3-58; 39:3-59; 39:3-60; 39:3-61; 39:3-61.1; 39:3-61.2; 39:3-61.3; 39:3-66.

COMMENT

This section streamlines, consolidates and rearranges the provisions currently found in a number of different sections of the statute. Subsection (a) was added to flag the fact that there is considerable federal regulation in this area which preempts much of the current State statutory language. To this time, the statutory language has not been modified or removed to reflect the federal preemption, but it seems to be appropriate to both remove the language containing standards that are plainly obsolete and to reference the appropriate federal law. The reference to the specific regulatory section will be checked to make sure that it accurately directs the reader to the appropriate section(s) and may be revised to incorporate a reference to subsequent modifications, revisions or the inclusion of additional regulatory sections as also applicable. The section designates penalty according to the new penalty classification system contained in 39A:44-GP1.

39A:11-LR5. Optional lamps

a. The requirements for lamps, reflective devices and associated equipment are primarily contained in Federal Motor Vehicle Safety Standard Number 108, found at 49 C.F.R. Sec. 571.108 as amended. To the extent that they are not preempted by federal law, the following additional requirements apply.

b. A motor vehicle may be equipped with no more than two auxiliary driving lamps mounted on the front at a height between 12 and 42 inches above the level surface on which the vehicle stands. An auxiliary driving lamp shall be aimed so that no part of the high-intensity portion of the beam is directed beyond the left side of the lane in which the vehicle is traveling or more than 100 feet ahead of the vehicle. When a vehicle is equipped with a front lamp projecting a beam of greater than 300 candlepower, not more than four lamps on the front of a vehicle shall be lighted at any one time upon a highway.

c. A motor vehicle may be equipped with not more than two side cowl or fender lamps, and not more than one running board courtesy lamp on each side, which shall emit a white or yellow light without glare. A motor vehicle may be equipped with a back-up lamp which shall not be lighted when the motor vehicle is in forward motion.

d. A motor vehicle may be equipped with not more than one spot lamp which may not be used for driving purposes. Every lighted spot lamp shall be aimed so as not to be dazzling or glaring to any person.

Source: 39:3-49; 39:3-51; 39:3-52; 39:3-53; 39:3-55; 39:3-56.

COMMENT

This section streamlines, consolidates and rearranges the provisions currently found in a number of different sections of the statute. Subsection (a) was added to flag the fact that there is considerable federal regulation in this area which preempts much of the current State statutory language. To this time, the statutory language has not been modified or removed to reflect the federal preemption, but it seems to be appropriate to both remove the language containing standards that are plainly obsolete and to reference the appropriate federal law.

39A:11-LR6. Lights; color; permits

a. The requirements for lamps, reflective devices and associated equipment are primarily contained in Federal Motor Vehicle Safety Standard Number 108, found at 49 C.F.R. Sec. 571.108 as amended. To the extent that they are not preempted by federal law, the following additional requirements apply.

b. Lamps and reflectors on projecting loads shall emit or reflect light with color as provided in 39:3-61.4.

c. A person shall not operate any vehicle or equipment upon a highway equipped with any device or lamp capable of displaying a light of a other color than permitted by law or regulation, except an authorized emergency vehicle, an authorized school bus, or a vehicle authorized by a permit issued by the Director.

d. A permit authorizing a vehicle to be equipped with a lamp capable of displaying a flashing light, except as provided in 39:3-54, or a light of a color other than permitted by law or regulation, visible from directly in front of the vehicle, may be issued by the Commissioner when necessary for the reasonable and safe movement of traffic. The permit shall specify the type and color of the lamp and the conditions under which it may be displayed. The permit shall be valid only when its conditions are complied with and may be revoked by the Commissioner on any reasonable grounds.

Source: 39:3-50.

COMMENT

This section streamlines, arranges and consolidates the current statutory provisions. Subsection (a) was added to flag the fact that there is considerable federal regulation in this area which preempts much of the current State statutory language. To this time, the statutory language has not been modified or removed to reflect the federal preemption, but it seems to be appropriate to both remove the language containing standards that are plainly obsolete and to reference the appropriate federal law.

39A:11-LR7. Restrictions on lamps; emergency warning lights

a. The requirements for lamps, reflective devices and associated equipment are primarily contained in Federal Motor Vehicle Safety Standard Number 108, found at 49 C.F.R. Sec. 571.108 as amended. To the extent that they are not preempted by federal law, the following additional requirements apply.

b. A lighted lamp or illuminating device on a motor vehicle other than a headlamp, spot lamp or auxiliary driving lamp which projects a beam of light of an intensity greater than 300 candlepower shall be directed so that no part of the beam will strike the level of the highway on which the vehicle stands at a distance of more than 75 feet from the vehicle.

c. Flashing lights are prohibited on motor vehicles, motorcycles and motor-drawn vehicles except to indicate a right or left turn; but a vehicle may be equipped with lamps approved by the Commissioner to warn the operators of other vehicles of the presence of a traffic hazard requiring unusual care in approaching, overtaking or passing, and shall display such warning in addition to other warning signals required by law. Warning lights in the front shall be mounted at the same level and as widely spaced laterally as practicable, and shall display simultaneously flashing white, amber, or any shade of color between white and amber. Warning lights in the rear shall be mounted at the same level and as widely spaced laterally as practicable, and shall display simultaneously flashing amber, red, or any shade of color between amber and red. Warning lights shall be visible from a distance of not less than 500 feet when lighted lamps are required. The two front and two rear turn signals shall be flashed simultaneously to display a warning on vehicles of the types mentioned in section 39:3-64.

d. In addition to the flashing devices permitted above, a bus may be equipped with two flashing devices for the purpose of warning the operators of other vehicles and law enforcement officials that an emergency situation exists within the bus and shall:

(1) Be capable of activation by the operator of the bus;

(2) Be of a type approved by the Commissioner;

(3) Be mounted one at the front and one at the rear of the bus; and

(4) Display flashing red lights which shine on the highway under the bus.

Source: 39:3-54.

COMMENT

This section streamlines, arranges and consolidates the current statutory provisions. Subsection (a) was added to flag the fact that there is considerable federal regulation in this area which preempts much of the current State statutory language. To this time, the statutory language has not been modified or removed to reflect the federal preemption, but it seems to be appropriate to both remove the language containing standards that are plainly obsolete and to reference the appropriate federal law.

39A:11-LR8. Lamps and flags on overhang loads

a. The requirements for lamps, reflective devices and associated equipment are primarily contained in Federal Motor Vehicle Safety Standard Number 108, found at 49 C.F.R. Sec. 571.108 as amended. To the extent that they are not preempted by federal law, the following additional requirements apply.

b. When a load in or on a vehicle extends four or more feet beyond the bed or body of the vehicle there shall be displayed:

(1) When lighted lamps are required, at the extreme rear end of the load, two red lamps visible from a distance of at least 500 feet to the rear and two red reflectors visible from the rear and located to indicate maximum width if the width of the overhang load exceeds 50% of the vehicle width. Otherwise, one red lamp is required, and on each side one red lamp, visible from a distance of at least 500 feet to the side, located so as to indicate maximum overhang.

(2) At all other times, on a vehicle having a load which extends beyond its sides or more than four feet beyond its rear, red flags at least 18 inches square marking the extremities of the loads at each point where a lamp would otherwise be required.

c. When lighted lamps are required, a vehicle transporting a load which projects beyond its sides shall be equipped with additional lamps marking the outermost extremities on the front edge of the load with an amber lamp visible from the front and side and on the rear edge of the load with a red lamp visible from the rear and side.

d. Load marker lamps shall conform to the requirements for clearance, side-marker and identification lamps.

Source: 39:3-61.4

COMMENT

This section streamlines, arranges and consolidates the current statutory provisions. Subsection (a) was added to flag the fact that there is considerable federal regulation in this area which preempts much of the current State statutory language. To this time, the statutory language has not been modified or

removed to reflect the federal preemption, but it seems to be appropriate to both remove the language containing standards that are plainly obsolete and to reference the appropriate federal law.

39A:11-LR9. Lamps on parked vehicles

a. The requirements for lamps, reflective devices and associated equipment are primarily contained in Federal Motor Vehicle Safety Standard Number 108, found at 49 C.F.R. Sec. 571.108 as amended. To the extent that they are not preempted by federal law, the following additional requirements apply.

b. When lighted lamps are required, a vehicle parked or stopped on a highway in areas other than a business or residential district shall be equipped with at least two lamps which exhibit white, yellow or amber light visible from a distance of 500 feet to the front and at least two lamps which exhibit red light visible from a distance of 500 feet to the rear except when displaying vehicular traffic hazard warning signals pursuant to 39:3-54 or 39:3-64. Lighted headlamps on a parked vehicle shall be dimmed.

Source: 39:3-62.

COMMENT

This section streamlines, arranges and consolidates the current statutory provisions. Subsection (a) was added to flag the fact that there is considerable federal regulation in this area which preempts much of the current State statutory language. To this time, the statutory language has not been modified or removed to reflect the federal preemption, but it seems to be appropriate to both remove the language containing standards that are plainly obsolete and to reference the appropriate federal law.

39A:11-LR10. Traffic hazard warning signals

a. Every truck, truck tractor, trailer, semitrailer, or pole trailer 80 inches or more in width shall have a signaling system that signals turning movements as provided for in 39:4-126 with a switching arrangement that will cause the two front turn signals and the two rear turn signals on the vehicle or combination of vehicles ("vehicle") to flash simultaneously as a traffic hazard warning signal with the engine operating or stopped.

b. When lighted lamps are required, a person shall not drive on any highway a commercial motor vehicle 80 inches or more in width, or a bus with a carrying capacity of more than 10 passengers except a bus operated within business or residential districts on a route under the jurisdiction of the Board of Public Utility Commissioners, unless it carries, ready for immediate use, portable emergency warning devices as follows:

(1) At least three: liquid burning flares (pot torches), red electric lanterns or portable red emergency reflectors or red-burning fusees.

(2) A commercial motor vehicle transporting flammable liquids in bulk or compressed flammable gases or explosives shall carry red electric lanterns or portable red emergency reflectors.

(3) Each device other than a fusee shall be capable of displaying light visible from a distance of at least 600 feet for a period of at least 12 hours.

(4) Flares, lanterns, reflectors or fusees shall be approved by the Commissioner.

c. When lighted lamps are required, a vehicle of a type mentioned in subsection (b), other than buses manufactured before January 1, 1960, inspected and approved as to construction and safety devices by the Board of Public Utility Commissioners, or any combination of such vehicles that become disabled on a highway or shoulder shall, except where there is sufficient lighting to make the vehicle discernible to persons on the highway at a distance of 500 feet, immediately upon learning of the disability, flash the two front and two rear turn signals simultaneously as a traffic hazard warning signal. The flashing shall continue until the portable emergency warning devices required in subsection (b) have been placed in use, and during the time such devices are being picked up for storage prior to movement of the vehicle or combination.

d. The flashing warning signals may also be given at other times during vehicle disablement in addition to portable emergency warning devices. The driver shall also immediately place on the traveled portion of the highway, at the traffic side of the disabled vehicle, a lighted fusee, a lighted red electric lantern, or a portable red emergency reflector. As soon as possible, and within the burning period of the fusee, the driver shall place three lighted liquid burning flares, lighted red electric lanterns, or portable red emergency reflectors in the following order:

(1) One approximately 100 feet from the disabled vehicle in the center of the traffic lane it occupies and toward traffic approaching in that lane;

(2) One approximately 100 feet in the opposite direction from the disabled vehicle in the center of the traffic lane it occupies; and

(3) One at the traffic side of the disabled vehicle, not less than 10 feet to its front or rear.

e. If vehicle disablement occurs within 500 feet of a curve, crest of a hill or other obstruction to view, the driver shall place the warning device in that direction to afford ample warning to users of the highway, but no less than 100 feet or more than 500 feet from the disabled vehicle. If the vehicle disablement occurs on any highway of a divided or one-way highway, the driver shall place one required emergency warning device at a distance of 200 feet and one at a distance of 100 feet to the rear of the disabled vehicle in the center of the lane it occupies; and one device on the traffic side not less than 10 feet to the rear.

f. If gasoline or other flammable liquid, combustible liquid or gas seeps or leaks from a motor vehicle stopped on a highway, no warning device producing a flame shall be lighted or placed except at a distance as will assure prevention of a fire or explosion.

g. When a vehicle 80 inches or more in width is stopped or parked on a highway or shoulder at a time and under conditions where the immediate activating of traffic hazard warning signal is required in subsection (c), the driver shall immediately flash the front and rear turn signals simultaneously and continue the flashing while the vehicle is stopped or parked.

Source: 39:3-64.

COMMENT

This section streamlines, consolidates, and arranges the current statutory provisions. While there is considerable federal regulation in the area of lamps, reflectors and associated equipment, it does not appear that the information contained in this section has been preempted, but this will be finally determined before the report is issued. To this time, the statutory language has not been modified or removed to reflect any federal preemption, but if it turns out that there is applicable federal language, it seems to be appropriate to both remove the language containing standards that are plainly obsolete and to reference the appropriate federal law.

39A:11-LR11. Lamps on other vehicles

All vehicles, including agricultural machinery or implements, road machinery, road rollers, traction engines and farm tractors required to be equipped with lamps, shall, when lighted lamps are required, be equipped with at least one lamp exhibiting a white light visible from a distance of 500 feet to the front and a lamp exhibiting a red light visible from a distance of 500 feet to the rear, and such lamps shall exhibit lights to the sides of the vehicle.

Source: 39:3-65.

COMMENT

This section streamlines and consolidates the current statutory provisions. While there is considerable federal regulation in the area of lamps, reflectors and associated equipment, it does not appear that the information contained in this section has been preempted, but this will be finally determined before the report is issued. To this time, the statutory language has not been modified or removed to reflect any federal preemption, but if it turns out that there is applicable federal language, it seems to be appropriate to both remove the language containing standards that are plainly obsolete and to reference the appropriate federal law.

CHAPTER 12. SPECIALIZED LIGHTS

39A:12-SL1. Emergency warning lights for member of volunteer fire company, first aid or rescue squad

a. A motor vehicle driven by a member in good standing of a volunteer fire company, first aid or rescue squad authorized to provide service in a municipality may display emergency warning lights. Emergency warning lights may be operated only while the vehicle is answering a fire or emergency call.

b. Emergency warning lights shall be temporarily attached, removable flashing or revolving lights, not more than 7 1/2 inches in diameter, equipped with a blue lens and a lamp not exceeding 51 candlepower controlled by a switch inside the vehicle.

c. No more than two emergency warning lights may be installed on a vehicle. The lights shall be placed on the vehicle as determined by the Commissioner.

d. Identification cards signed by the Commissioner shall be forwarded upon request to the chief executive officer of a municipality served by the volunteer company or squad. The cards shall be countersigned, issued to the members in good standing, and considered permits to display and operate emergency warning lights on a vehicle. A member must carry the identification card while displaying an emergency warning light.

e. The use of emergency warning lights does not grant privileges or exemptions denied to drivers of other vehicles. Members displaying emergency warning lights shall drive with due regard for safety and obey all traffic laws of this State. The drivers of non-emergency vehicles, however, shall yield the right of way to a vehicle displaying emergency warning lights.

f. A willful violation of this section by a person authorized to display emergency warning lights is a class D offense and a subsequent violation is a class C offense. The privilege to display emergency warning lights may be suspended or revoked by the Commissioner after a violation of this section. A willful display of emergency warning lights by a person not authorized to use them is a class D offense and a subsequent violation is a class C offense.

Source: 39:3-54.7; 39:3-54.8; 39:3-54.9; 39:3-54.10; 39:3-54.11; 39:3-54.12; 39:3-54.13.

COMMENT

This section streamlines, consolidates and rearranges various sections of the existing law. It does not appear that the extensive federal preemption in the area of equipment impacts this section, but this will be confirmed. The section designates penalty according to the new penalty classification system contained in 39A:44-GP1. The level of the offenses had been changed from class E to class D for the first offense and from class D to class C for the subsequent offense by the Commission to bring the penalty in accord with penalties for similar offenses and in response to concerns raised by law enforcement officers.

39A:12-SL2. Emergency warning lights for volunteer fire chief or first assistant chief

a. A motor vehicle owned by and registered in the name of the chief or first assistant chief of a volunteer fire company serving a municipality may display a red emergency warning light or lights, a siren, or both. The size and type of lights and siren, and the location of the warning signals and their controls, shall be determined by the Commissioner.

b. Red emergency lights shall be mounted on the exterior of the vehicle and no more than two shall be installed on a vehicle. Sirens shall be mounted under the hood of the vehicle. The warning signals shall be operated only while the vehicle is being used by the registered owner chief or first assistant chief in answering a fire or emergency call.

c. Identification cards signed by the Commissioner shall be forwarded upon request to the chief executive officer of a municipality served by a volunteer fire company. The cards shall be countersigned, issued to chief or first assistant chief of the company, and considered permits to display and operate emergency warning signals. Each chief or first assistant chief must carry the identification card while displaying a red emergency warning light, siren, or both on a vehicle.

d. The use of warning signals does not grant privileges or exemptions denied to drivers of other vehicles. Persons displaying these warning signals shall drive with due regard for safety and obey all traffic laws of this State. The drivers of non-emergency vehicles, however, shall yield the right of way to a vehicle displaying warning signals.

e. A first violation of this section by a person authorized to display red emergency warning lights, sirens, or both, is a class D offense and a subsequent violation is a class C offense. In addition, the privilege to display the lights or sirens may be suspended or revoked after a violation.

Source: 39:3-54.15; 39:3-54.16; 39:3-54.17; 39:3-54.18; 39:3-54.19; 39:3-54.20;

COMMENT

This section streamlines, consolidates and rearranges various sections of the existing law. It does not appear that the extensive federal preemption in the area of equipment impacts this section, but this will be confirmed. The section designates penalty according to the new penalty classification system contained in 39A:44-GP1. The level of the offense had been changed from class E to class D for the first offense, and from class D to class C for the subsequent offense by the Commission to bring the penalty in accord with penalties for similar offenses and in response to concerns raised by law enforcement officers.

39A:12-SL3. Use of amber warning lights by United States Postal Service employees

a. An employee of the United States Postal Service required to use a motor vehicle owned or leased by the employee or a family member in the performance of Postal Service duties may display an amber warning light.

b. The amber warning light may be operated only while the motor vehicle is being used in the performance of the employee's duties as a rural letter carrier.

c. The amber warning light shall be a temporarily attached, removable flashing or revolving light, not more than 7 1/2 inches in diameter, not more than 51 candlepower,

and controlled by a switch inside the vehicle. While in operation, the amber warning light shall be conspicuously displayed on the roof of the vehicle.

d. Displaying and operating an amber warning light does not afford privileges or exemptions denied to the drivers of other vehicles and the driver shall drive with due regard for safety and obey all traffic laws of this State.

Source: 39:3-54.21.

COMMENT

This section streamlines, consolidates and rearranges various sections of the existing law. It does not appear that the extensive federal preemption in the area of equipment impacts this section, but this will be confirmed.

39A:12-SL4. Special identification lights for certain licensed private detective businesses

a. The Commissioner may issue permits authorizing vehicles of licensed private detective businesses under contractual agreement to provide community security services in planned developments as defined in the "Municipal Land Use Law" to display a special identification light. The permits shall be approved and signed by the chief law enforcement official in the municipality in which the permit will be used.

b. The permit shall specify the type of light, the color of the light, the manner in which it shall be displayed and the conditions under which the operator of the vehicle may use the light. The permit shall be carried by the operator when the light is displayed.

c. The Commissioner shall charge a $25 fee for each permit. The permit shall be valid only when its conditions are met, and may be canceled or revoked by the Commissioner on any reasonable grounds.

d. A first violation of this section by a person authorized to display a special identification light is a class D offense and a subsequent violation is a class C offense.

Source: 39:3-54.14.

COMMENT

This section streamlines, and rearranges the existing law. It does not appear that the extensive federal preemption in the area of equipment impacts this section, but this will be confirmed. The section designates penalty according to the new penalty classification system contained in 39A:44-GP1. The level of the offense had been changed from class E to class D for the first offense, and from class D to class C for the subsequent offense by the Commission to bring the penalty in accord with penalties for similar offenses and in response to concerns raised by law enforcement officers.

39A:12-SL5. Itinerant vendors

a. Every itinerant vendor's vehicle shall be equipped with a signaling system that will cause the two front turn signals and the two rear turn signals to flash simultaneously as a traffic hazard warning signal with the engine operating or stopped.

b. When the driver of an itinerant vendor's vehicle stops or parks the vehicle on any highway or shoulder to transact business, the driver shall flash the two front and two rear turn signals of the vehicle simultaneously as long as the vehicle remains stopped or parked for such purpose.

c. “Itinerant vendors' vehicle” means a motor vehicle used in the business of an itinerant vendor to carry the goods, wares or other merchandise offered for sale and from which sales are made to customers invited to the vehicle and solicited for such purpose through the use of a device or means designed to attract attention to the vehicle.

Source: 39:3-64.1; 39:3-64.2; 39:3-64.3.

COMMENT

This section streamlines, consolidates and rearranges various sections of the existing law. It does not appear that the extensive federal preemption in the area of equipment impacts this section, but this will be confirmed.

EQUIPMENT, DIMENSIONS AND WEIGHT

CHAPTER 13. EQUIPMENT

39A:13-E1. Definitions

a. "Safety glass" means glass treated or combined with other materials to reduce the likelihood of injury to persons.

b. "Safety glazing material" means "safety glass"; or other glazing materials, such as plastics; or a combination of safety glass and other safety glazing material. The term "approved safety glazing material" shall be construed as meaning safety glazing material approved by the Commissioner.

c. “Towed vehicle" means a motor-drawn vehicle, pole trailer, semitrailer or trailer;

d. "Towing vehicle" means a road tractor or truck tractor;

e "Windshield" shall be construed to include wings, deflectors and side shields; also front corner lights adjoining windshields.

Source: 39:3-68.2; 39:3-75.

COMMENT

This section includes definitions of terms currently defined in two sections of the statute. This chapter was preliminarily reviewed and sections of the statute which appeared to have been superceded by federal law or regulation were removed. Additional review needs to be conducted on the sections in this chapter since although the language of these sections is not equivalent to the current standards imposed on equipment by federal regulation, if the federal regulations apply only to new vehicles, it may be necessary to have provisions in the law that pertain to older vehicles still in operation. Additional research is required to determine the most appropriate language for this chapter.

39A:13-E2. Brake equipment

a. The requirements for hydraulic and electronic brake systems, brake hoses, air brake systems and passenger car brake systems are primarily contained in Federal Motor Vehicle Safety Standard Numbers 105, 106, 121, and 135, found at 49 C.F.R. Sec. 571.105, 571.106, 571.121, and 571.135 as amended. To the extent that they are not preempted by federal law, the following additional requirements apply.

b. All brakes on a motor vehicle shall be controlled by the driver.

c. A motorcycle operated on a highway must be equipped with at least one brake adequate to control the movement of and to stop such vehicle.

d. A motor vehicle, except a motorcycle or motor-drawn vehicle, must be equipped with brakes adequate to control the movement of and to stop and hold the vehicle, including two separate means of applying the brakes. If the two means are connected, failure of one may not leave the vehicle without adequate brakes. One means must be able to be set to hold the vehicle stationary on any grade, empty or loaded.

e. A motor vehicle manufactured on or after July 1, 1938, driven on a highway, except a motorcycle, must be equipped with brakes on all wheels, except the front wheels of a 3-axle truck tractor or a trailer or semitrailer with a gross weight not exceeding 3,000 pounds. The gross weight of a trailer or semitrailer without brakes shall not exceed 40% of the gross weight of the towing vehicle when connected.

f. A trailer or semitrailer required to have brakes shall be equipped with brakes automatically applied upon break-away from the towing vehicle, and means shall be provided to stop and hold the vehicle.

g. In a combination, the driver must be able to apply the trailer or semitrailer brakes in approximate synchronism with the towing vehicle brakes, and deploy the brakes on the wheels of the rear vehicle at the fastest rate. Alternatively, the driver must be able to apply the brakes first on the rear vehicle equipped with brakes, or both of the above means capable of being used alternatively may be employed.

h. Agricultural machinery and implements, road machinery, road rollers, traction engines and farm tractors used on a highway must have means to control the movement of and to stop and to hold such machines on any grade on which they may be operated.

i. A person shall not operate or be in custody of, on a highway, a motor vehicle not equipped as required by this chapter.

Source: 39:3-67; 39:3-68.

COMMENT

This section streamlines, consolidates and rearranges the provisions currently found in different sections of the statute. Subsection (a) was added to flag the fact that there is considerable federal regulation in this area which preempts much of the current State statutory language. To this time, the statutory language has not been modified or removed to reflect the federal preemption, but it seems to be appropriate to both remove the language containing standards that are plainly obsolete and to reference the appropriate federal law. The reference to the specific regulatory section will be checked to make sure that it accurately directs the reader to the appropriate section(s) and may be revised to incorporate a reference to subsequent modifications, revisions or the inclusion of additional regulatory sections as also applicable.

39A:13-E3. Emergency stopping system for vehicles using compressed air at wheels for service brakes

a. The requirements for hydraulic and electronic brake systems, brake hoses, air brake systems and passenger car brake systems are primarily contained in Federal Motor Vehicle Safety Standard Numbers 105, 106, 121, and 135, found at 49 C.F.R. Sec. 571.105, 571.106, 571.121, and 571.135 as amended. To the extent that they are not preempted by federal law, the following additional requirements apply.

b. A vehicle may not be driven on a highway under its own power after failure of the service brake air system except to move the vehicle to the nearest place of safety.

c. A vehicle may not be equipped with an emergency stopping system that creates a hazard on the highway, increases service brake stopping distance, or interferes with application of the service brakes.

d. Every owner or lessee shall require that a driver be thoroughly familiar with this section. The driver of a vehicle required to comply with this section must be able to demonstrate the application and release of the emergency system on the vehicle and each vehicle in combination.

Source: 39:3-68.

COMMENT

This section streamlines and consolidates the provisions of the current statute. Subsection (a) was added to flag the fact that there is considerable federal regulation in this area which preempts much of the current State statutory language. To this time, the statutory language has not been modified or removed to reflect the federal preemption, but it seems to be appropriate to both remove the language containing standards that are plainly obsolete and to reference the appropriate federal law.

39A:13-E4. Horns and other audible warning devices

a. A motor vehicle, except a motor-drawn vehicle, operated upon a highway must be equipped with a working horn audible under normal conditions from a distance of at least 200 feet. No horn or other audible warning device shall emit an unreasonably loud or harsh sound or a whistle. The driver of a vehicle shall give audible warning when necessary to insure safe operation but shall not otherwise use the horn.

b. A vehicle shall not be equipped with, nor shall any person use, an audible warning device except as permitted. A vehicle may be equipped with a theft alarm signal device which cannot be used by the driver as an ordinary warning signal.

c. An emergency vehicle authorized by the Commission may be equipped with an approved audible warning device capable of emitting sound audible under normal conditions from a distance of at least 500 feet but the device shall not be used except when the vehicle is in response to an emergency call or in the pursuit of a suspected violator of the law. The driver of the vehicle shall sound the device when necessary to warn pedestrians and other drivers.

d. A person may not use a device which emits an audible sound on the exhaust system of a motor vehicle unless authorized by the Commission.

e. A person may not use a siren or whistle on a bicycle.

Source: 39:3-69.

COMMENT

This section streamlines, consolidates and rearranges the provisions of the current statute. It does not appear that this section is preempted by federal law, but this will be confirmed.

39A:13-E5. Mufflers and air pollution control

a. A motor vehicle with a combustion motor shall have a working muffler in constant operation. No person may use a muffler cut-out, bypass or similar device upon a motor vehicle on a highway.

b. A motor vehicle subject to inspection by a duly authorized body shall, as a part of the inspection, demonstrate that the vehicle complies with any applicable requirements for the control of air contaminants established by the Air Pollution Control Commission.

c. A motor vehicle shall be equipped and maintained so that exhaust gases cannot injure any person or animal, and a person shall not use a motor vehicle to cause or be likely to cause any such injury.

d. A person who operates or owns a motor vehicle which is operated upon the public highways of this State which emits smoke and other air contaminants in excess of applicable requirements shall be liable for a penalty of between $25 and $100 enforced in accordance with chapter 5 of Title 39.

Source: 39:3-70; 39:3-70.1; 39:3-70.2; 39:3-76.

COMMENT

This section streamlines, consolidates and rearranges the provisions currently found in a number of different sections of the statute. It does not appear that this section is preempted by federal law, but this will be confirmed.

39A:13-E6. Mirrors

a. The requirements for rearview mirrors are primarily contained in Federal Motor Vehicle Safety Standard Number 111, found at 49 C.F.R. Sec. 571.111 as amended. To the extent that they are not preempted by federal law, the following additional requirements apply.

b. A motor vehicle shall have rear view mirrors located and angled to give the driver adequate rear view vision. A motor vehicle, other than a trailer or semitrailer, manufactured after January 1, 1965 and registered in this State shall have an interior mirror and an exterior mirror on the driver's side, except that a commercial vehicle constructed or loaded to obstruct a rear view from an interior mirror shall be equipped with an exterior mirror on the side of the vehicle opposite the driver's side. A person convicted of operating a motor vehicle without the equipment prescribed by this section shall be fined as provided in 39:3-79.

c. A delivery van or truck registered in this State with a cube-style, walk-in cargo box up to 18-feet long used in the commercial delivery of goods and services shall be equipped with either an electronic rear backup monitoring device or a rear crossview mirror located at the top left rear corner of the cargo box. The mirror shall be convex and located to reflect to the vehicle operator an unobstructed, overall view of the lower six feet of the entire rear width of the van or truck body.

Source: 39:3-71; 39:3-71.1.

COMMENT

This section streamlines, consolidates and rearranges the provisions currently found in different sections of the statute. Subsection (a) was added to flag the fact that there is considerable federal regulation in this area which preempts much of the current State statutory language. To this time, the statutory language has not been modified or removed to reflect the federal preemption, but it seems to be appropriate to both remove the language containing standards that are plainly obsolete and to reference the appropriate federal law.

39A:13-E7. Windows

a. The requirements for windshield defrosting and defogging, windshield wiping and washing systems, and glazing materials are primarily contained in Federal Motor Vehicle Safety Standard Numbers 103, 104, and 205, found at 49 C.F.R. Sec. 571.103,

571.104, and 571.205 as amended. To the extent that they are not preempted by federal law, the following additional requirements apply.

b. A person shall not drive a motor vehicle with a sign, poster, sticker or other non-transparent material upon the front windshield, wings, deflectors, side shields, corner lights adjoining windshield or front side windows of the vehicle other than an article required to be displayed by statute or regulations.

c. A person shall not drive a vehicle constructed, equipped or loaded to unduly interfere with the driver's vision to the front or the sides.

Source: 39:3-74.

COMMENT

This section streamlines, consolidates and rearranges the provisions currently found in different sections of the statute. Subsection (a) was added to flag the fact that there is considerable federal regulation in this area which preempts much of the current State statutory language. To this time, the statutory language has not been modified or removed to reflect the federal preemption, but it seems to be appropriate to both remove the language containing standards that are plainly obsolete and to reference the appropriate federal law.

39A:13-E8. Safety glass and windshield treatment

a. The requirements for windshield defrosting and defogging, windshield wiping and washing systems, and glazing materials are primarily contained in Federal Motor Vehicle Safety Standard Numbers 103, 104, and 205, found at 49 C.F.R. Sec. 571.103, 571.104, and 571.205 as amended. To the extent that they are not preempted by federal law, the following additional requirements apply.

b. A person shall not drive a motor vehicle manufactured on or after July 1, 1935 and registered in this State unless it is equipped with approved safety glazing material. A person shall not drive a motor vehicle equipped with safety glazing material which causes unsafe distortion of visibility or which is fractured, discolored or deteriorated, and the Commissioner may revoke the registration of any such vehicle.

c. The owner or lessee of a motor vehicle driven by or used to regularly transport a person with a medical condition involving ophthalmic or dermatologic photosensitivity may apply to the Commissioner for permission to have the windshield and windows covered by or treated with a material that increases its light reflectance or reduces its light transmittance. The required application shall include a written certification by a certified ophthalmologist or a licensed physician in this State or a bordering state confirming that the applicant has the medical condition claimed. For the purposes of this chapter, medical conditions involving ophthalmic or dermatologic photosensitivity include:

(1) polymorphous light eruption;

(2) persistent light reactivity;

(3) actinic reticuloid;

(4) porphyrins;

(5) solar urticaria;

(6) lupus erythematosus; and

(7) such other photosensitive disorders or conditions as the Commissioner shall determine.

d. The Commissioner shall promulgate regulations including:

(1) Standards governing the types of materials that may be applied to a motor vehicle windshield and windows including: the color of the materials; the maximum allowable percentage of total light reflectance; the maximum allowable percentage of the light transmittance and ultraviolet transmittance; and such other matters as the Commissioner deems necessary. In establishing the standards, the Commissioner shall consider, to the greatest extent possible, the safety of law enforcement officers who may find it necessary to inspect or otherwise observe the interior of a motor vehicle having a windshield and windows to which an approved material is applied.

(2) The issuance of a certificate or card to each approved applicant authorizing the approved covering or treatment, valid for a period not to exceed 48 months, which shall be exhibited to a law enforcement officer on request and a designated motor vehicle examiner when the vehicle is inspected.

(3) Standards governing the installation and application of approved materials, including the affixation of an appropriate label on each windshield and window to which an approved material is applied. The label may identify the name and location of the installer and the name of the manufacturer of the material applied.

(4) The registration of persons in the business of installing or applying approved materials and products, including the establishment of a fee to cover the costs of that registration.

e. Violation of subsection (d)(2) is a class D offense. If a person charged with the violation can exhibit a certificate or card valid on the day of the charge to the municipal court judge, the judge may dismiss the charge but may impose court costs. A first violation of the regulations adopted pursuant to subsections (d)(3) or (4) is a class B offense and a subsequent violation of these regulations is a class A offense.

Source: 39:3-75; 39:3-75.1; 39:3-75.2; 39:3-75.3.

COMMENT

This section streamlines, consolidates and rearranges the provisions currently found in different sections of the statute. Subsection (a) was added to flag the fact that there is considerable federal regulation in this area which preempts much of the current State statutory language. To this time, the statutory language has not been modified or removed to reflect the federal preemption, but it seems to be appropriate to both remove the language containing standards that are plainly obsolete and to reference the appropriate federal law. The subsection (e) designates penalties according to the new penalty classification system contained in 39A:44-GP1.

39A:13-E9. Safety belts and restraint systems

a. The requirements for occupant crash protection, seat belt assemblies, seat belt assembly anchorages, child restraint systems, side impact protection and child restraint anchorage systems are primarily contained in Federal Motor Vehicle Safety Standard Numbers 208, 209, 210, 213, 214 and 225, found at 49 C.F.R. Sec. 571.208, 571.209, 571.210, 571.213, 571.214 and 571.225 as amended. To the extent that they are not preempted by federal law, the following additional requirements apply.

b. A person shall not sell or operate a passenger automobile manufactured after July 1, 1966, and registered in this State unless it is equipped with the passenger restraints required by law or regulation.

c. The Commission shall print materials to inform the public about the types of child passenger restraint systems meeting federal motor vehicle safety standards which may be made available to car dealers, parent groups, hospitals and the general public.

d. In no event shall failure to wear a child passenger restraint system or use a booster seat be considered as contributory negligence. The failure to wear the child

passenger restraint system shall not be admissible as evidence in the trial of any civil action.

e. Violation of this section is a class E offense. The court shall suspend a fine imposed for failure to use a child restraint system if the defendant demonstrates possession of a child restraint system that complies with the applicable federal standard and is using it according to the manufacturer's instructions.

Source: 39:3-76.2; 39:3-76.2a; 39:3-76.2c; 39:3-76.2d

COMMENT

This section streamlines, consolidates and rearranges the provisions currently found in different sections of the statute. Subsection (a) was added to flag the fact that there is considerable federal regulation in this area which preempts much of the current State statutory language. To this time, the statutory language has not been modified or removed to reflect the federal preemption, but it seems to be appropriate to both remove the language containing standards that are plainly obsolete and to reference the appropriate federal law. The section designates penalty according to the new penalty classification system contained in 39A:44-GP1.

39A:13-E10. Passenger Automobile Seat Belt Usage Act

a. The requirements for occupant crash protection, seat belt assemblies, seat belt assembly anchorages, child restraint systems, side impact protection and child restraint anchorage systems are primarily contained in Federal Motor Vehicle Safety Standard Numbers 208, 209, 210, 213, 214 and 225, found at 49 C.F.R. Sec. 571.208, 571.209, 571.210, 571.213, 571.214 and 571.225 as amended. To the extent that they are not preempted by federal law, the following additional requirements apply.

b. This section shall be known and may be cited as the "Passenger Automobile Seat Belt Usage Act." For the purposes of this section the term "passenger automobile" includes vans, pick-up trucks and utility vehicles.

c. Passengers under eight years of age and weighing more than 80 pounds, passengers who are at least eight years of age but less than 18 years of age, and each driver and front seat passenger of a passenger automobile operated on a highway in this State shall wear a properly adjusted and fastened safety seat belt system as defined by federal regulation.

d. The driver of a passenger automobile shall secure or cause to be secured in the required properly adjusted and fastened safety seat belt system any passenger who is at least eight but less than 18.

e. This chapter shall not apply to a driver or front seat passenger of a passenger automobile:

(1) Manufactured before July 1, 1966;

(2) In which the driver or passenger possesses a written verification from a licensed physician of an inability to wear a safety seat belt system for physical or medical reasons;

(3) Not required to be equipped with a safety seat belt system under federal law;

(4) Operated by a rural letter carrier of the United States Postal Service while performing the duties of a rural letter carrier; or

(5) Originally constructed with fewer safety seat belt systems than are necessary to allow the passenger to be buckled.

f. This section shall not be deemed to change existing laws, rules, or procedures pertaining to a trial of a civil action for damages for personal injuries or death sustained in a motor vehicle accident.

g. Violation of subsection (b) is a class E offense. In no case shall motor vehicle points or automobile insurance eligibility points pursuant to 17:33B-14 be assessed against any person for a violation of this section. A person fined under this section shall not be subject to a surcharge under the New Jersey Merit Rating Plan as provided in 17:29A-35.

h. The Commissioner shall develop a booklet containing information on the benefits of wearing safety seat belt systems which shall be made available upon request to the general public.

Source: 39:3-76.2e; 39:3-76.2f; 39:3-76.2g; 39:3-76.2h; 39:3-76.2j; 39:3-76.2k.

COMMENT

This section streamlines, consolidates and rearranges the provisions currently found in different sections of the statute. Subsection (a) was added to flag the fact that there is considerable federal regulation in this area which preempts much of the current State statutory language. To this time, the statutory language has not been modified or removed to reflect the federal preemption, but it seems to be appropriate to both remove the language containing standards that are plainly obsolete and to reference the appropriate federal law. The section designates penalty according to the new penalty classification system contained in 39A:44-GP1.

39A:13-E11. Tire equipment

a. The requirements for new pneumatic tires, tire selection and rims, retread pneumatic tires, new pneumatic tires for vehicles other than passenger cars, tire selection and rims for vehicles other than passenger cars, and new non-pneumatic tires for passenger cars are primarily contained in Federal Motor Vehicle Safety Standard Numbers 109, 110, 117, 119, 120 and 129, found at 49 C.F.R. Sec. 571.109, 571.110, 571.117, 571.119, 571.120 and 571.129 as amended. To the extent that they are not preempted by federal law, the following additional requirements apply.

b. A person may not drive or move a motor vehicle equipped with solid rubber tires unless every tire has rubber on its entire traction surface at least one inch thick above the edge of the flange of the entire periphery.

c. A person may not drive or move a motor vehicle or trailer upon a public highway unless it is equipped with tires in compliance with the applicable regulations.

d. The Commissioner shall promulgate regulations for use by law enforcement officers for visual inspection of tires mounted on vehicles including visual comparison with simple measuring gauges to assess effects of tread wear and depth of tread.

e. A tire is considered unsafe if it has:

1. A ply or cord exposed;

2. A bump, bulge or knot affecting its structure;

3. A break repaired with boot or patch; or

4. Tread wear indicators that contact the road in any two adjacent major grooves at three locations spaced approximately equally around its outside.

f. This section shall not apply to farm vehicles registered under section 39:3-24.

g. A law enforcement officer may, upon reasonable cause to believe that a vehicle is unsafe or equipped with tires violating the law or regulations, require the operator of the vehicle to submit the vehicle to an inspection. If the vehicle is in violation, the officer shall issue a summons.

Source: 39:3-72.

COMMENT

This section streamlines and rearranges the provisions currently found in the statute. Subsection (a) was added to flag the fact that there is considerable federal regulation in this area which preempts much of the current State statutory language. To this time, the statutory language has not been modified or removed to reflect the federal preemption, but it seems to be appropriate to both remove the language containing standards that are plainly obsolete and to reference the appropriate federal law.

39A:13-E12. Tires of approved material required

a. The requirements for new pneumatic tires, tire selection and rims, retread pneumatic tires, new pneumatic tires for vehicles other than passenger cars, tire selection and rims for vehicles other than passenger cars, and new non-pneumatic tires for passenger cars are primarily contained in Federal Motor Vehicle Safety Standard Numbers 109, 110, 117, 119, 120 and 129, found at 49 C.F.R. Sec. 571.109, 571.110, 571.117, 571.119, 571.120 and 571.129 as amended. To the extent that they are not preempted by federal law, the following additional requirements apply.

b. A person who operates a motor vehicle, commercial vehicle, trailer, semitrailer or tractor not equipped on all wheels with approved tires, or equipped with solid rubber tires impaired to an extent likely to cause damage to the public highways, shall be fined between $50 and $100 for the first offense, and between $100 and $200 for any subsequent offense.

c. Tractors used for agricultural purposes may be operated without rubber tires pursuant to applicable regulations.

d. Traction or tractor well-drill machines or well-drilling equipment may be operated on the highways as provided by 39:3-26.

Source: 39:3-80.

COMMENT

This section streamlines and rearranges the provisions currently found in the statute. Subsection (a) was added to flag the fact that there is considerable federal regulation in this area which preempts much of the current State statutory language. To this time, the statutory language has not been modified or removed to reflect the federal preemption, but it seems to be appropriate to both remove the language containing standards that are plainly obsolete and to reference the appropriate federal law.

39A:13-E13. Sale, possession or use of approved tire types

a. A person shall not sell, offer for sale or possess with intent to sell or use on a highway a motor vehicle tire fitted with blocks, hobs, studs or other projections unless it is of a type approved by the Commissioner. The Commissioner shall promulgate regulations concerning the design, construction and use of such tires and the procedure for submitting tires for approval.

b. Violation of this section is a class E offense. The fine paid shall be recoverable in a summary proceeding pursuant to 2A:58-1 et seq.

Source: 39:3-81.

COMMENT

This section contains the substance of the original. The section designates penalty according to the new penalty classification system contained in 39A:44-GP1.

39A:13-E14. Tires on commercial vehicles

a. The requirements for new pneumatic tires, tire selection and rims, retread pneumatic tires, new pneumatic tires for vehicles other than passenger cars, tire selection and rims for vehicles other than passenger cars, and new non-pneumatic tires for passenger cars are primarily contained in Federal Motor Vehicle Safety Standard Numbers 109, 110, 117, 119, 120 and 129, found at 49 C.F.R. Sec. 571.109, 571.110, 571.117, 571.119, 571.120 and 571.129 as amended. To the extent that they are not preempted by federal law, the following additional requirements apply.

b. A commercial motor vehicle or tractor which does not have pneumatic tires on all wheels may not be used on the public highways unless a metal plate is attached to its chassis, in plain view, stating the: maker's name, number, motor number, weight of vehicle in pounds, allowable load in pounds, gross weight in pounds and maximum speed in miles per hour.

c. The size of tires on all commercial motor vehicles shall be determined on the maximum width of rubber, and the load shall be distributed so that there is not more than 800 pounds per inch in width of tire on any one wheel.

d. Violation of this section is a class D offense.

Source: 39:3-82.

COMMENT

This section streamlines and rearranges the provisions currently found in the statute. Subsection (a) was added to flag the fact that there is considerable federal regulation in this area which preempts much of the current State statutory language. To this time, the statutory language has not been modified or removed to reflect the federal preemption, but it seems to be appropriate to both remove the language containing standards that are plainly obsolete and to reference the appropriate federal law. The section designates penalty according to the new penalty classification system contained in 39A:44-GP1.

39A:13-E15. Tire chains

Motor vehicle tires may be fitted with tire-chains of reasonable proportions when highways are slippery because of rain, snow, ice, oil, manner of construction or other reason. No tire-chains shall be used at any time on improved highways when conditions do not require them for the safety of life or property. A person shall not use any tire-chains likely to be thrown so as to endanger any person or property.

Source: 39:3-73.

COMMENT

This section contains the substance of the original.

39A:13-E16. Protectors or flaps on rear wheels

a. A person shall not operate or cause to be operated a bus, truck, full trailer or semitrailer of registered gross weight exceeding three tons on a public highway unless it is equipped with suitable metal protectors or substantial flexible flaps on the rearmost wheels. If the rear wheels are not covered at the top by fender, body or other parts of the vehicle, the rear wheels shall be covered at the top by approved protective means, of standard type or design which shall conform substantially to any requirements of the

Interstate Commerce Commission governing similar subject matter. The rear wheel coverage is intended to prevent those wheels from throwing dirt, water or other materials on the windshields of following vehicles.

b. This section shall not apply to pole trailers, dump trucks, tanks, or other vehicles where the construction is such that complete freedom around the wheel area is necessary to secure the designed use of the vehicle.

c. Violation of this section is a class E offense.

Source: 39:3-79.1; 39:3-79.2.

COMMENT

This section streamlines and rearranges the provisions currently found in the statute. The section designates penalty according to the new penalty classification system contained in 39A:44-GP1.

39A:13-E17. Selling or using unapproved devices or equipment

a. A person shall not have for sale, sell or offer for sale for use upon a motor vehicle or motor drawn vehicle:

(1) An unapproved device or equipment of a type required to be approved by the Commissioner.

(2) Any device or equipment of a type required to be approved unless it bears the trade-mark or name under which it is approved plainly visible when installed.

b. A person shall not have for sale, sell, offer for sale or use a device, part or accessory which changes or is intended to change the design or designed performance of a device or equipment required to be approved.

Source: 39:3-77.

COMMENT

This section contains the substance of the original.

39A:13-E18. “Press” sign

A person shall not operate a motor vehicle on which is affixed any sign with the word "Press" or any other word or words indicating that the motor vehicle is in use by a reporter for a newspaper or periodical except while the motor vehicle is in actual use by such a reporter while engaged in duties as a reporter.

Source: 39:3-76.1

COMMENT

This section contains the substance of the original.

CHAPTER 17. DIMENSIONS AND WEIGHT

39A:17-DW1. Definitions

a. "Combination of vehicles" includes vehicles which are the drawing or power unit of a combination of vehicles and motor-drawn vehicles, such as trailers, semi-trailers, or other vehicles.

b. "Combined gross weight imposed by all the wheels of any one axle of a vehicle" means the total gross weight of all wheels whose axle centers are spaced less than 40 inches apart.

c. "Maximum gross vehicle weight" includes load or contents unless otherwise specified.

d. "Recyclable material" means materials which would otherwise become solid waste, and which may be collected, separated or processed and returned to the economic mainstream in the form of raw materials or products.

e "Recycling vehicle" means a commercial motor vehicle used for the collection or transportation of recyclable material; or any truck, trailer or other vehicle approved by the New Jersey Office of Recycling for use by persons engaging in the business of recycling or providing recycling services in this State.

f. "Tandem axle" means two consecutive axles, where the distance between axle centers is 40 inches or more but no more than 96 inches.

g "Vehicle" includes commercial motor vehicles, trucks, truck tractors, tractors, road tractors, recreation vehicles, or omnibuses. The term as used in this chapter includes a combination of vehicles as well as the load or contents of any part or portion thereof.

Source: 39:3-84.

COMMENT

The definitions in this section are substantially the same as those in the source section. Rather than being consolidated, this section has been divided into smaller sections. The source section was ten pages long and included provisions that were more easily read, and more similar to the arrangement of other chapters, when divided into their component parts.

39A:17-DW2. Dimensional restrictions

a. The dimensional limits in this chapter apply to a vehicle located or operated on a public highway or public or quasi-public property in this State. The limits do not include safety and energy conservation devices necessary for vehicle operation except on vehicles with the capability to transport cargo.

b. Regulations shall be consistent with those promulgated by the United States Secretary of Transportation.

c. A vehicle shall not be operated in this State, unless by special permit, with a dimension which would disqualify the State or a subdivision from receiving federal highway funds.

d. For a vehicle, the maximum:

(1) Outside width may not exceed 102 inches, but the Commissioner of Transportation, after consultation with the Commissioner and the Superintendent of State

Police, may promulgate regulations for areas on which public safety requires a maximum outside width of no more than 96 inches.

(2) Height may not exceed 13 feet, 6 inches.

(3) Length shall not exceed 40 feet, but the length shall not exceed 50 feet when transporting poles, pilings, structural units or other items which cannot be dismembered, dismantled or divided. When a vehicle is the drawing unit of a combination, the length of the combination shall not exceed 62 feet. This paragraph shall not apply to buses or vehicles not designed or capable of carrying cargo or loads.

(4) Length of a single drawn vehicle shall not exceed 53 feet when drawn by a vehicle not designed or capable of carrying cargo or loads. On a drawn vehicle, the distance between the kingpin and the centerline of its rear axle may not exceed 41 feet on a vehicle between 48 feet and 53 feet in length. A drawn vehicle must be equipped with a continuous lateral beam protecting the rear which extends to within four inches of the outside width and is not more than 22 inches from a level surface measured with the vehicle empty. The trailer kingpin shall be no more than 3.5 feet from the front of the semitrailer. The rear overhang, from the center of the rear tandem axles to the rear of the semitrailer, shall not exceed 35% of the semitrailer's wheelbase. The semitrailer width and the distance between the outside edges of its tires shall be 102 inches. A drawn vehicle may not exceed 63 feet in length when transporting poles, pilings, structural units or other articles that cannot be dismembered, dismantled or divided. This paragraph shall not apply to any vehicle designed and utilized solely to transport other motor vehicles.

(5) Number of drawn vehicles in a combination shall not exceed two drawn vehicles and a drawing vehicle.

(6) Length of each drawn vehicle in a combination consisting of two drawn vehicles and a drawing vehicle not designed or capable of carrying cargo or loads may not exceed 28 feet. This paragraph shall not apply to any vehicle designed and utilized solely to transport other motor vehicles.

(7) The Commissioner of Transportation, after consulting with the Commissioner and the Superintendent of State Police, shall promulgate regulations specifying highways in this State where combinations of vehicles may lawfully operate.

(8) Length and outside width of a bus shall be established by regulations of the Commissioner of Transportation, after consulting with the Commissioner and the Superintendent of State Police. Maximum outside width shall be 102 inches. Any other limit for width shall be based upon a determination that a bus between 96 and 102 inches wide is required in the interest of public safety on specified highways, or that operation of a bus wider than 102 inches is not unsafe on those highways.

(9) Width and length of farm tractors, machinery, implements and traction equipment shall be established by regulation. The operation of such vehicles shall be subject to the provisions of R.S.39:3-24 and they may not be operated on any highway which is part of the National System of Interstate and Defense Highways or which has been designated a freeway or parkway.

(10) Outside width of the cargo or load of a vehicle, including farm trucks, may not exceed 105 1/2 inches. The Commissioner of Transportation, after consultation with the Commissioner and the Superintendent of State Police, may promulgate regulations establishing a maximum outside width of 102 inches for cargo or load on highways where a greater width is prohibited.

e. The above provisions pertaining to length shall not apply to a vehicle or equipment operated by a public utility, as defined in R.S.48:2-13, when used in the construction, reconstruction, repair or maintenance of its property or facilities.

f. Notwithstanding the above, the Commissioner may adopt regulations specifying maximum length for any vehicle or combination designed and utilized solely to transport other motor vehicles.

g The above provisions pertaining to width shall not apply to a recycling vehicle when used for the collection of recyclable material on a highway other than a highway in the National System of Interstate and Defense Highways or a freeway or parkway. The maximum outside width of any recycling vehicle so used shall not exceed 96 inches, except it may be up to 105 inches when the vehicle is operating at 15 miles per hour or less, the access steps are deployed and recyclable materials are being collected.

Source: 39:3-84.

COMMENT

The definitions in this section are substantially the same as those in the source section. Rather than being consolidated, this section has been divided into smaller sections. The source section was ten pages long and included provisions that were more easily read, and more similar to the arrangement of other chapters, when divided into their component parts. The section has been reorganized and streamlined. The information contained in subsection (d) may be more appropriate for inclusion in regulations, particularly since some of the provisions in that subsection specifically call for dimensional limits to be established by regulation.

39A:17-DW3. Weight restrictions

a. violations of this chapter will be enforced pursuant to C.39:3-84.3(j).

b. Where enforcement of a weight limit requires measurement, the distance between axle centers shall be measured to the nearest whole foot or whole inch as applicable. When the measurement includes a fractional part of a foot or inch equaling one-half or more, the next larger whole foot or inch shall be utilized.

c. A vehicle may not be operated in this State, unless by special permit, with a gross weight, axle weight, or gross weight of consecutive axles which would disqualify the State or a subdivision from receiving federal highway funds.

d. The maximum gross weight imposed on the highway or other surface by:

(1) The wheels of any one axle of a vehicle or combination shall not exceed 22,400 pounds.

(2) All the wheels of all consecutive axles of a vehicle shall not exceed 34,000 pounds where the distance between consecutive axle centers is between 40 and 96 inches apart.

(3) All the wheels of consecutive axles of a vehicle shall not exceed 22,400 pounds for each single axle where the distance between consecutive axle centers exceeds 96 inches; except that on any highway in this State which is designated as part of the National Interstate System, as provided at 23 U.S.C. s. 103(e), this single axle limitation shall not apply and the provisions in (e) below shall apply.

(4) A vehicle or combination shall not exceed 80,000 pounds.

e. On a highway in this State which is designated part of the National Interstate System, as provided at 23 U.S.C. s. 103(e), the total pounds of gross weight imposed on a surface by two or more consecutive axles shall not exceed that listed in the following Table. In addition to the Table, two consecutive sets of tandem axles may carry a gross weight of 34,000 pounds each if the distance between the first and last axles of the consecutive sets of tandem axles is 36 feet or more and the combined gross weight of two consecutive sets of tandem axles shall not exceed 68,000 pounds. In all cases the combined gross weight for a vehicle or the maximum gross weight for any axle or

combination shall not exceed the limits of this subsection or any other applicable subsection, whichever is less.

TABLE OF MAXIMUM GROSS WEIGHTS

Distance in feet between axle centers of first and last axles of a group of two or more consecutive axles	2 axles	3 axles	4 axles	5 axles	6 axles	7 axles
3	22400	22400	22400	22400	22400	22400
4-8	34000	34000	34000	34000	34000	34000
9	39000	42500	42500	42500	42500	42500
10	40000	43500	43500	43500	43500	43500
11	41000	44000	44000	44000	44000	44000
12	42000	45000	50000	50000	50000	50000
13	43000	45500	50500	50500	50500	50500
14	44000	46500	51500	51500	51500	51500
15	44800	47000	52000	52000	52000	52000
16	44800	48000	52500	58000	58000	58000
17	44800	48500	53500	58500	58500	58500
18	44800	49500	54000	59000	59000	59000
19	44800	50000	54500	60000	60000	60000
20	44800	51000	55500	60500	66000	66000
21	44800	51500	56000	61000	66500	66500
22	44800	52500	56500	61500	67000	67000
23	44800	53000	57500	62500	68000	68000
24	44800	54000	58000	63000	68500	74000
25	44800	54500	58500	63500	69000	74500
26	44800	55500	59500	64000	69500	75000
27	44800	56000	60000	65000	70000	75500
28	44800	57000	60500	65500	71000	76500
29	44800	57500	61500	66000	71500	77000
30	44800	58500	62000	66500	72000	77500
31	44800	59000	62500	67500	72500	78000
32	44800	60000	63500	68000	73000	78500
33	44800	60500	64000	68500	74000	79000
34	44800	61500	64500	69000	74500	80000

35	44800	62000	65500	70000	75000	80000
36	44800	63000	66000	70500	75500	80000
37	44800	63500	66500	71000	76000	80000
38	44800	64500	67500	71500	77000	80000
39	44800	65000	68000	72500	77500	80000
40	44800	66000	68500	73000	78000	80000
41	44800	66500	69500	73500	78500	80000
42	44800	67200	70000	74000	79000	80000
43	44800	67200	70500	75000	80000	80000
44	44800	67200	71500	75500	80000	80000
45	44800	67200	72000	76000	80000	80000
46	44800	67200	72500	76500	80000	80000
47	44800	67200	73500	77500	80000	80000
48	44800	67200	74000	78000	80000	80000
49	44800	67200	74500	78500	80000	80000
50	44800	67200	75500	79000	80000	80000
51	44800	67200	76000	80000	80000	80000
52	44800	67200	76500	80000	80000	80000
53	44800	67200	77500	80000	80000	80000
54	44800	67200	78000	80000	80000	80000
55	44800	67200	78500	80000	80000	80000
56	44800	67200	79500	80000	80000	80000
57-70	44800	67200	80000	80000	80000	80000

Source: 39:3-84.

COMMENT

The definitions in this section are substantially the same as those in the source section. Rather than being consolidated, this section has been divided into smaller sections. The source section was ten pages long and included provisions that were more easily read, and more similar to the arrangement of other chapters, when divided into their component parts. The section has been reorganized and streamlined. The information contained in subsection (d) and the table of maximum gross weights may be more appropriate for inclusion in regulations.

39A:17-DW4. Exceptions to dimensional and weight restrictions

a. The dimension and weight restrictions in this chapter do not apply to a combination which includes a disabled vehicle being removed from a highway, if the oversize or overweight combination does not travel on the highway more than 75 miles from the point of disablement. If the disablement occurred on a limited access highway, the distance to the nearest highway exit shall be added to the 75-mile limit.

b. A heavy-duty tow truck may, in combination with the towed unit(s), exceed the axle, dimension and weight limits for tow trucks and towed unit combinations but shall not exceed 150,000 pounds gross combined weight. This provision shall not affect C.39:3-84.4 concerning liability for damages and does not exempt the vehicle from the

height and weight restrictions marked or posted on a bridge or overpass. A heavy-duty tow truck in combination with towed unit(s) may not operate at more than 45 miles per hour when the combination weighs more than 80,000 pounds, one or more of its axles exceeds the limits prescribed in the Table above, or the combination exceeds the maximum length and width standards.

c. The Commissioner may promulgate regulations regarding the issuance, if good cause appears, of a special permit authorizing an exception to this chapter. The special written permit must be in the possession of the operator of the vehicle or equipment for which the permit was issued. The permit may allow the operation or movement of a vehicle or special mobile equipment:

(1) Transporting one piece loads that cannot be dismembered, dismantled or divided to comply with the weight limits;

(2) Transporting a load or cargo that cannot be dismembered, dismantled or divided in order to comply with the dimension limits; and

(3) Under emergency conditions, of a size or weight which exceeds the maximum size or weight limits.

d. If the Commissioner of Transportation has designated certain routes within the State for use by a combination with a maximum dimension, the combination may not be located or operated on any other public highway or public or quasi-public property in this State, unless permitted by regulations.

e. The axle weight limits set forth in this chapter apply to all vehicles registered in New Jersey.

f. The maximum gross axle weight limits do not apply to vehicles registered as "constructor" or "solid waste" vehicles or to a combination drawn by a "constructor" or "solid waste" vehicle, except that the limits apply to vehicles registered as "solid waste" when operated on a highway which is part of the National System of Interstate and Defense Highways, as provided at 23 U.S.C. § 103(e).

g. 39A:17-DW3(e) applies to vehicles registered as "constructor" or "solid waste" or to a combination drawn by a "constructor" or "solid waste" vehicle, except if the vehicle is operated 30 miles or less from the headquarters of the construction operation. Those vehicles are limited to the maximum gross vehicle weight shown on their registration certificate. The Commissioner of Transportation may adopt regulations providing for exemptions from the provisions of 39A:17-DW3(e) for vehicles registered as "solid waste", or combinations in which the "solid waste" vehicle is the drawing vehicle, and vehicles less than 73,280 pounds, and regulations regarding time limits, distinctions among classes of vehicles, or other conditions.

h. The Commissioner may adopt regulations providing for exemptions for a transitional period from the provisions of 39A:17-DW3(e) for the following:

(1) Tandem-axle dump trucks;

(2) Two-axle, three-axle and four-axle dump trucks;

(3) Five-axle dump trailers;

(4) Three-axle and four-axle ready-mix transit trucks;

(5) Four-axle and five-axle flatbed tractor trailers;

(6) Five-axle bulk carriers;

(7) Two-axle, three-axle, four-axle and five-axle liquid bulk carriers;

(8) Two-axle and three-axle emergency equipment wreckers;

(9) Solid waste front-end and rear-end loaders;

(10) Solid waste four-axle roll-offs;

(11) Four-axle and five-axle waste transfer tractor trailers;

(12) Two-axle, three-axle, four-axle and five-axle general freight carriers; and

(13) Intermodal ocean containers.

Source: 39:3-84; 39:3-84.1.

COMMENT

This information contained in this section is substantially the same as the source sections but has been streamlined and consolidated. Subsection (h) refers to exemptions adopted for a transitional period. That section was enacted in 1950 and last modified in 1983. There may no longer be a need for that "transitional period" language. This will be checked with the Motor Vehicle Commission.

39A:17-DW5. violations of permissible weights and measurements

a. For the purposes of this section, the term "driver" shall include the driver, operator, owner, lessee or bailee.

b. Officers have authority as follows to require the driver of a vehicle on a public highway or public or quasi-public property to facilitate and permit the measurement or weighing of the vehicle to determine if its size or weight is in excess of that permitted:

(1) State Police officers have exclusive authority to conduct random roadside examinations to determine whether size or weight exceeds the limits and may, with or without probable cause, require a driver to move a vehicle to a location for measurement or weighing or both;

(2) Municipal or county police officers, peace officers or inspectors have authority to require a driver to move to a location for measurement or weighing only if the officer has probable cause to believe the size or weight of the vehicle or combination exceeds the limits; and

(3) The State Police and the Commissioner have the exclusive authority to establish and operate locations for measurement and weighing of vehicles. All measuring and weighing devices at those locations must be certified by the State Superintendent of Weights and Measures. Documents displaying the Superintendent's seal or certification are prima facie evidence of the reliability and accuracy of the devices utilized.

c. When an officer or inspector determines that a vehicle's size or weight exceeds the limits permitted, the officer or inspector shall require the driver to stop the vehicle in a suitable place and remain there until a portion of the load or contents is removed by the driver or duly appointed agent, to reduce the size or weight to the limits permitted by this chapter or by the certificate of registration, whichever is lower. All materials unloaded or removed are the risk and responsibility of the driver of the vehicle or agent.

d. A vehicle shall not be deemed to be in violation of the weight limit if its dispatch papers show it is proceeding from its most recent freight pickup point within the State by a reasonably expeditious route to the nearest available scales or first available scales in the general direction in which it has been dispatched, or is returning from the scales after weighing-in to the most recent pickup point.

e. When an officer determines a vehicle is in violation of the maximum gross axle weight limits, but is within the permissible maximum gross vehicle weight, the driver or agent shall be permitted to redistribute the weight before proceeding so that no axle or combination thereof exceed the limits, in which event there is no violation.

f. When an officer determines a vehicle is in violation of the height, width or length limits, the driver or agent shall be permitted, before proceeding, to adjust, reduce or conform the vehicle so that the vehicle is not in excess of the height, width, or length limits, in which event there is no violation.

g. This section does not apply to a vehicle located or operated on any highway in this State which is designated part of the National Interstate System, as provided at 23 U.S.C. s. 103(e). No arrest shall be made or summons issued for a violation of the weight limitations provided in R.S.39:3-84(b) if the excess weight is no more than 5% of the weight permitted, if the gross weight of the vehicle or combination, does not exceed the maximum gross weight of 80,000 pounds.

h. A person who prepares, possesses, or presents to an officer dispatch papers which do not correspond to the cargo carried is guilty of a class C offense.

i. A driver of a vehicle who fails or refuses to stop and submit the vehicle to measurement or weighing or fails to comply with this section, is guilty of a class C offense.

j. The owner, lessee, bailee, or any one of them, of a vehicle located or operated on a public highway or a public or quasi-public property in this State in violation of the height, width or length limits, is guilty of a class C offense.

k. The owner, lessee, bailee, or any one of them, of a vehicle located or operated on a public highway or a public or quasi-public property in this State, with a gross weight in excess of the weight limits, is guilty of a class C offense. In the case of a vehicle carrying a sealed ocean container, the shipper, the consignee, or both, shall be liable for a violation of the maximum gross axle weight limitations.

l. When a vehicle is found to be in violation of two or more of the weight limits, the fine levied shall be only for the violation involving the greatest excess weight.

m. The driver, owner, lessee, bailee, or any one of them, of any combination vehicle located or operated on a public highway or a public or quasi-public property in the State in violation of the regulations of the Commissioner of Transportation regarding designated routes for combination vehicles, is guilty of a class C offense for the first violation and a subsequent violation is a class B offense. The officer may direct that the combination vehicle proceed by the most direct route to a permitted route or return to a permitted route by way of the route already traversed.

Source: 39:3-84.3.

COMMENT

This section is substantially same as the source section, but has been streamlined. The section designates penalty according to the new penalty classification system contained in 39A:44-GP1.

39A:17-DW6. Liability for damage by overweight vehicles

a. A person operating a vehicle or other object in excess of the gross weight limits on any highway or highway structure, whether temporary or permanent, is liable for all damage the highway or structure may sustain as a result of any such operation. The damage may be recovered in a civil action brought by the authorities in control of the highway or structure.

b. The fact that the vehicle or object causing the damage was operated or moved within the size and weight limitations in this chapter or permitted by a special permit, shall not be accepted as a defense to any action if damage is caused to highways or bridges posted for lower weight limits. When the driver is not the owner of such vehicle

or object, but is operating it with express or implied permission of the owner, the owner and driver shall be jointly and severally liable for damage.

Source: 39:3-84.4.

COMMENT

This section is substantially same as the source section, but has been streamlined.

PROVISIONS FOR SPECIFIC VECHILE TYPES

CHAPTER 14. MOTORCYCLES

39A:14-M1. Equipment

a. A person may not operate a motorcycle on a public highway if the handle bar grips are higher than the shoulder height of the seated operator.

b. In addition to the muffler requirements contained in section 39:3-70, motorcycles shall be equipped with an approved muffler system designed specifically for motorcycles.

c. A person who operates or rides on a motorcycle must wear an approved, properly sized and securely fitted protective helmet equipped with a neck or chin strap and reflectorized on both sides. No motor vehicle points shall be assessed for the failure to wear a protective helmet.

d. A person who operates a motorcycle must wear approved goggles or an approved face shield unless the motorcycle is equipped with an approved wind screen. The Commissioner shall establish and maintain a list of approved helmets, goggles, face shields and windscreens. No person shall sell, offer or distribute any protective helmets, goggles or face shields for use with motorcycles unless they appear on the Commissioner's list of approved devices.

Source: 39:3-76.3; 39:3-76.4; 39:3-76.7; 39:3-76.8; 39:3-76.9; 39:3-76.10.

COMMENT

This section contains the substance of the source sections, but has been consolidated.

39A:14-M2. Passengers

a. A person operating a motorcycle shall ride only upon its permanent and regular seat. A motorcycle shall not carry a passenger unless designed to carry more than one person, and the passenger may ride only upon the permanent and regular seat if designed for two persons, or another seat firmly attached behind or to the side of the operator.

b. A passenger on a motorcycle, whether riding astride or in a sidecar, shall wear a securely fitted helmet of a proper size as required under section C. 39:3-76.7.

c. Motorcycles designed to carry more than one person shall be equipped with adequate footrests for each person and the passenger's feet must rest firmly upon the footrests. Seats and footrests shall be of a type approved by the Commissioner. Handholds shall be required as necessary to comply with federal regulations.

d. A motorcycle operator who carries a passenger in violation of this subsection is guilty of a class D offense.

Source: 39:3-76.5

COMMENT

This section contains the substance of the source section, but has been streamlined. The section designates penalty according to the new penalty classification system contained in 39A:44-GP1.

CHAPTER 18. TOW TRUCKS

39A:18-TT1. Definitions

a. "Heavy-duty" means a gross weight of at least 32,000 pounds.

b. "Light-medium duty" means a gross weight of less than 32,000 pounds.

c. "Marker" means tow truck vehicle identification issued by the Commissioner.

d. "Towing company" means any person or entity owning or operating a tow truck service for compensation.

e. "Tow truck" means a motor vehicle equipped with a boom or booms, winches, slings, tilt beds or similar equipment designed for the towing or recovery of vehicles.

f. "Transporter" means equipment designed to transport more than one vehicle on a non-emergency basis.

Source: 39:3-84.6

COMMENT

This section contains the substance of the source section without including duplicative definitions for things like “Director” and “Division”. The definition of “garage keeper’s legal liability” was removed as an unclear definition of a concept that is sufficiently explained in the appropriate section of the statute. It is not clear what type of ‘vehicle identification’ a “marker” is, specifically whether it is a document or something affixed to the exterior of the vehicle and this should be clarified with the MVC.

39A:18-TT2. Issuance of distinctive markers

a. The Commissioner shall issue distinctive markers or license plates for tow trucks for an annual fee of $25 in addition to the fee for the registration of motor vehicles. The markers or license plates shall be available for tow trucks in two gross weight categories, light-medium duty and heavy-duty, and each weight category shall have distinctive features. The fee amount shall be appropriated to the Commission to defray costs incurred in issuing markers and implementing C.39:3-84.6 et al.

b. A towing company shall display tow truck license plates or markers on each tow truck and the name of the towing company, municipality and state where the business is located. Transporters are exempt from this chapter and the Commissioner may exempt tow trucks that meet the definition of an apportioned vehicle pursuant to C.39:3-6.11.

c. A person or entity knowingly displaying a false tow truck marker or license plate or using fraud or deception in securing tow truck registration is guilty of a class A offense. An individual or entity operating or offering to operate a tow truck to move a vehicle for any compensation without displaying a proper marker or license plate is guilty of:

(1) Light-medium duty truck: a class B offense; and

(2) Heavy-duty truck: a class A offense.

Source: 39:3-84.7; 39:3-84.11; 39:3-84.13.

COMMENT

This section contains the substance of the source provisions. It is not clear whether the vehicle identification tools are to be consistent - can the Commission issue some markers and some identification license plates, or is one method to be selected and used exclusively? This issue should be clarified with the MVC. The section designates penalty according to the new penalty classification system contained in 39A:44-GP1.

39A:18-TT3. Tow truck registration

a. An application for tow truck registration shall contain the:

(1) Name and address of the towing company's principal owner(s);

(2) Address of the principal business office of the towing company;

(3) Location of any garage, parking lot, or other storage area where motor vehicles or other objects moved by the towing company may be stored;

(4) Valid certificate of insurance and a schedule of insured vehicles used by the towing company from an insurer authorized to do business in the State. The insurance documentation shall include:

(A) The amounts of the garage keeper's legal liability coverage and any "on hook" coverage; and

(B) Liability insurance coverage, including motor vehicle liability insurance coverage for the death of, or injury to, persons and damage to property for each accident or occurrence in the amount of at least $750,000 single limit for each light-medium truck and $1,000,000 single limit for each heavy-duty truck; and

(5) Documentation of the manufacturer's gross vehicle weight rating for each tow truck.

(6) If a system for licensure of towing companies is established pursuant to C.39:3-84.9, a copy of the license issued to it pursuant to that section.

b. The Commissioner may suspend, revoke or refuse to issue or renew any tow truck registrations upon proof that the applicant:

(1) used fraud or deception in securing the registration;

(2) violated any provision of this act; or

(3) has been convicted of theft of a motor vehicle.

Source: 39:3-84.8; 39:3-84.10.

COMMENT

This section contains the substance of the source sections, but has been streamlined and consolidated. In the subsection describing the required insurance coverage, the language saying that the amounts of the liability and on hook coverage should be set forth "as an endorsement or contained in a separate schedule" was eliminated as unnecessary (and probably dictated by the insurance agency rather than the towing company), if there is a need, this language can be reinserted.

39A:18-TT4. Licensure

The Commissioner may establish a system for licensing towing companies. A towing company may be licensed by the Commissioner upon submission of an application and payment of the required fee, comparable to that required for similar licenses and sufficient to cover the cost of implementing this chapter. The Commissioner may require

annual renewal of applications for licensure and may stagger renewal dates and adjust the application fees accordingly.

Source: 39:3-84.9

COMMENT

This section is substantially the same as the source section. I do not yet know if the Commissioner established a system for licensing towing companies. If so, that language may be removed. If not, it would be helpful to know if the intention of the existing statutory language was to permit this to happen at any time, and, if so, whether the Commissioner was likely to do so. This will be checked with the MVC.

39A:18-TT5. Preemption of actions by political subdivisions

This chapter preempts a political subdivision from regulating, requiring or issuing any registration, license plate or marker or surety registration of any towing company. This section shall not limit the existing authority of a political subdivision to:

a. License and collect a general and nondiscriminatory tax upon all businesses;

b. License and collect a tax upon towing operations domiciled within its jurisdiction; or

c. Impose any additional requirements or conditions as part of any contract to perform towing and recovery services for that jurisdiction.

Source: 39:3-84.12.

COMMENT

This section is substantially identical to the source section.

CHAPTER 20. SCHOOL BUSES

39A:20-SB1. Definitions

a. "Conventional fuel" means gasoline or diesel fuel.

b. "In-terminal inspection" means an inspection conducted by the Department at the operator's terminal of a motor vehicle required to meet the safety regulations for school buses adopted by the Department of Transportation, and vehicle emissions standards established for the engine type.

c. "Liquefied petroleum gas" means LPG, butane, butylene, propane, or propylene, or similar compounds commonly regarded to be liquefied petroleum gases as prescribed by regulation adopted by the Department of Environmental Protection.

d. "Operator" means the owner or person responsible for the day to day operation and maintenance of school buses.

e. "School bus" means all Type I and Type II school buses as defined in R.S.39:1-1 and those retired pursuant to C.39:3B-5.4, under the jurisdiction of the Department.

f. "Seating reference point" shall be defined as in 49 CFR § 571.3.

g. "Van type II school vehicle" means a vehicle transporting pupils, under the jurisdiction of a local board of education, manufactured after April 1, 1977, and having a pupil capacity of not less than 10 or more than 16.

Source: 39:3B-8; 39:3B-10; 39:3B-13; 39:3B-20.

COMMENT

This section is substantially the same as the source sections. It consolidates definitions that appear in various sections throughout the chapter. The definition of "governmental entity" was removed although it may be appropriate to include (somewhere) that the definition included not only the State and political subdivisions but employees of these entities as well. The definitions of "Director" and "Division" were eliminated as repetitive of definitions included in Title 39 generally.

39A:20-SB2. General school bus requirements

a. Every bus, when used to transport children to and from school pursuant to sections 18A:39-1 through 18A:39-21, shall be equipped with electric identification and warning lamps which, when the bus has stopped for the purpose of receiving or discharging any child, exhibit a flashing red light plainly visible at a distance that will enable the driver of a vehicle approaching or overtaking the bus to see the red light in sufficient time to stop within 10 feet of the bus. The lamps shall meet requirements prescribed by the Commission consistent with this chapter or any applicable regulation.

b. In addition to owner identification, lettering shall be permitted on van type II school vehicles to identify them as school vehicles and all such vehicles shall be painted school bus yellow and equipped with warning lights. Any such vehicle transporting handicapped pupils may also be imprinted with the national symbol for the handicapped on the lower right side of the rear door.

c. There shall be displayed on every school bus signs which inform the driver of a vehicle concerning the duty imposed by law with respect to passing a school bus while it is loading or unloading. The signs shall be in the color, form and design that meet the Commission's requirements, which shall be consistent with this chapter and any applicable regulation.

d. Every school bus designed to carry 10 or more passengers and in operation transporting public and nonpublic school pupils and every such new or used bus purchased to transport pupils shall be equipped with a crossing control arm at the right front corner of the bus. The arm shall open and extend out from the front of the bus at least 5 1/2 feet each time the bus door is opened.

e. A type I school bus, when used to transport children to and from school or school-related activities, shall be equipped with emergency exits to conform with emergency evacuation standards prescribed by regulation of the Commission. The emergency exits shall at a minimum consist of a rear emergency door and two roof hatches.

f. Every bus subject to this chapter shall be equipped with a convex mirror or comparable device as the Commission may authorize or require, affixed to the bus in so that the seated driver may observe the condition of the road from the front bumper forward to the point where direct observation is possible. Such device, and its location on the bus, shall meet the requirements specified by the Commission, which shall be consistent with the provisions of this chapter and any applicable regulation.

g. Nothing in this section shall apply to any bus carrying passengers for hire over a highway and accepting and discharging the passengers along the route on which it is operated.

Source: 39:3B-1; 39:3B-1.1; 39:3B-2; 39:3B-4; 39:3B-9; 39:3B-12.

COMMENT

This section contains the substance of the source sections but it has been streamlined and consolidated.

39A:20-SB3. Child restraint systems

a. In addition to the requirements in Federal Motor Vehicle Safety Standard No. 222 (49 CFR § 571.222) concerning school bus passenger seating and crash protection, each school bus shall be equipped with seats of a minimum seat back height of 28 inches, or 24 inches as measured from the seating reference point, and seat belts of the lap belt type for each seating position on the bus or other child restraint systems in conformity with applicable federal standards.

b. The design and installation of federally compliant seat belts and other child restraint systems shall conform to the regulations promulgated by the Commission.

c. Each passenger on a school bus equipped with seat belts shall wear a properly adjusted and fastened seat belt or child restraint system in conformity with applicable federal standards at all times while the bus is in operation. Nothing in this section shall make the owner or operator of a school bus liable for failure to properly adjust and fasten a seat belt or child restraint system for a passenger who sustains injury as a direct result of the passenger's failure to comply with this section.

Source: 39:3B-10; 39:3B-11.

COMMENT

This section contains the substance of the source sections and has been consolidated.

39A:20-SB4. Duration of use

a. School buses manufactured before April 1, 1977, other than as described in (c), shall not be used for pupil transportation after the end of the 10th year from the date of manufacture, or the end of the school year in which that date falls, whichever is later.

b. School buses manufactured on or after April 1, 1977, other than as described in (c), shall not be used for pupil transportation beyond the end of the 12th year from the date of manufacture, or the end of the school year in which that date falls, whichever is later. These buses, when used beyond the 10th year, shall have annual in-depth inspections by the Commission prior to the beginning of the school year.

c. School buses of the transit type whose gross vehicle weight exceeds 25,000 pounds shall not be used for pupil transportation beyond the end of the 20th year from the date of manufacture, or the end of the school year in which that date falls, whichever is later.

Source: 39:3B-5.1; 39:3B-5.2; 39:3B-5.3.

COMMENT

This section contains the substance of the source sections and has been consolidated.

39A:20-SB5. Use of retired school buses

a. A vehicle retired from use as a school bus shall not be used to transport children or senior citizens to entertainment programs, recreational areas, sporting events, or camping activities unless the vehicle has met the safety regulations for school buses dealing with mechanical condition and body integrity with the exception of school bus chrome yellow color and amber and red warning lamp system regulations.

b. A vehicle retired from use as a school bus shall not be required to meet the safety regulations for school buses other than those in effect for the class of vehicle of which the bus was a member on the date upon which it was last inspected prior to its retirement as a school bus.

Source: 39:3B-5.4.

COMMENT

This section is substantially identical to the source section. The reference to adopting regulations in accordance with the Administrative Procedure Act was removed as self-explanatory.

39A:20-SB6. Liquified petroleum gas

a. Liquefied petroleum gas may be used as an alternative fuel for a school bus equipped or converted to operate with liquefied petroleum gas instead of, in addition to, or in combination with, a conventional fuel.

b. No school bus may be operated using liquefied petroleum gas as any part of its fuel, unless it is operated in accordance with:

(1) All applicable federal and State laws, regulations, codes, standards, and guidelines, including any adopted by the National Highway Traffic Safety Administration; and

(2) All applicable codes, standards, and guidelines established by the National Fire Protection Association for the storage, handling, and use of liquefied petroleum gas.

c. In an action brought for injury or damages caused either directly or indirectly by the use of liquefied petroleum gas as any part of the fuel to operate a school bus, or the equipping or converting of a school bus to use liquefied petroleum gas as any part of its fuel, neither the owner or operator of the school bus nor any governmental entity may be found negligent if the school bus was equipped or converted, and operated, as required in this section. The immunity provided by this subsection shall:

(1) Be in addition to any other immunity that may apply under the "New Jersey Tort Claims Act," or any other law or regulation; and

(2) Not apply if it is established that the act or omission causing the injury or damages constitutes gross negligence, recklessness, actual fraud, actual malice, willful misconduct, or criminal conduct.

d. The Department of Environmental Protection, in consultation with the Department of Transportation, the Commission, and the Department of Education, may adopt, regulations necessary to implement this chapter.

Source: 39:3B-14; 39:3B-15; 39:3B-16; 39:3B-17.

COMMENT

This section contains the substance of the source sections and has been consolidated.

39A:20-SB7. Inspection program

a. The Commissioner shall establish a school bus enhanced safety inspection program which includes the following elements:

(1) An in-terminal school bus inspection program which provides for the semi-annual or annual inspection of school buses by Commission inspection teams, and which shall include an emission inspection to determine whether a vehicle meets the State's emission specifications and standards;

(2) Standards and requirements pertaining to the equipment, maintenance, and repair of school buses subject to inspection; and

(3) Standards and requirements pertaining to the establishment and maintenance of:

(A) School bus maintenance, repair, and inspection records for all school buses in the operator's fleet; and

(B) Driver employment records, including those demonstrating compliance with all statutory and regulatory requirements for operating a school bus, and any other records and credentials deemed necessary by the Commissioner, which shall be made available to Commission inspectors during each in-terminal inspection.

b. If an operator does not have adequate terminal facilities to allow for a proper and thorough in-terminal inspection, the Commissioner shall designate an in-lieu-of terminal site and direct the operator to present the operator’s buses and records to that site for inspection.

c. The time and location of any inspection or reinspection pursuant to this section shall be determined by the Commissioner. Unless an owner agrees to a different time schedule, the Commissioner shall schedule a reinspection within three days of the date of the inspection that necessitated the reinspection.

Source: 39:3B-21.

COMMENT

This section is substantially the same as the source section but has been streamlined.

39A:20-SB8. Inspection violations

a. An operator who:

(1) violates the standards for driver employment records set forth in 39:3B-21(a);

(2) Fails to retain proper records for inspection as required;

(3) Fails to make available a record or document required at the time of inspection;

(4) Falsifies a record; or

(5) Fails to present or make available a school bus or buses due for inspection, as requested by an examiner, unless notification of the intent to withhold a bus or buses is made in writing at least 24 hours prior to the scheduled inspection;

shall be guilty of a class B offense. The Commissioner shall waive the requirement of notice of intent to withhold a vehicle upon a showing of good cause by an operator. A bus withheld from an examiner shall be inspected within 30 days of the date of the originally scheduled inspection, unless otherwise agreed by the operator and the Commissioner. The operator shall be responsible for all fines. Nothing in this subsection shall precludes other enforcement actions provided by law.

b. A fine imposed pursuant to this section may be collected, with costs, in a summary proceeding pursuant to N.J.S.2A:58-1 et seq. The Superior Court or municipal court of the municipality in which the violation occurs, or the operator resides or has a place of business or principal office in this State, has jurisdiction to enforce this chapter. The Commissioner may issue a summons and complaint for a violation of this chapter or a regulation adopted pursuant to this chapter and may institute an action for injunctive relief to prevent a violation of this chapter, or a regulation adopted or an administrative or judicial order issued pursuant to this chapter. A municipal, county, or State prosecutor may assist the Commissioner in enforcing this chapter.

c. An officer charged with the enforcement of laws may assist the Commissioner in enforcing this chapter, or a regulation adopted, or administrative or judicial order issued pursuant to this chapter.

d. A school bus that fails an inspection based on out-of-service criteria as established by the Commissioner shall be immediately removed from service.

Source: 39:3B-22; 39:3B-23.

COMMENT

This section is substantially the same as the source sections but has been streamlined and consolidated. The section designates penalty according to the new penalty classification system contained in 39A:44-GP1. The level of the offense had been changed from class C to class B by the Commission to bring the penalty in accord with penalties for similar offenses and in response to concerns raised by law enforcement officers.

39A:20-SB9. Cellular telephone use by driver of school bus

a. It shall be unlawful for the driver of a school bus to use a cellular or other wireless telephone while operating the school bus unless:

(1) The school bus is parked in a safe area off of a highway; or

(2) It is an emergency situation.

b. Violation of this section is a class C offense. No motor vehicle points or automobile insurance eligibility points pursuant to C.17:33B-14 shall be assessed for this offense.

Source: 39:3B-25.

COMMENT

This section is substantially the same as the source section. The section designates penalty according to the new penalty classification system contained in 39A:44-GP1.

39A:20-SB10. Certificates of approval

The Commissioner may cause to be displayed upon the back of each inspection sticker, information deemed practicable concerning the duty imposed by law upon the driver of a vehicle with respect to passing a bus while it is loading or unloading.

Source: 39:3B-3.

COMMENT

This section contains the substance of the source section. The term "certificate of approval designed for pasting upon the windshield of any motor vehicle pursuant to chapter 8 of this Title" has been replaced by "inspection sticker" as the more common usage.

39A:20-SB11. Violations

Willful violation of this chapter or an applicable regulation is a class E offense.

Source: 39:3B-6.

COMMENT

This section is substantially the same as the source section. The section designates penalty according to the new penalty classification system contained in 39A:44-GP1.

CHAPTER 21. SNOWMOBILES AND ATVS

39A:21-SM1. Definitions

a. "All terrain vehicle" or "ATV" means a motor vehicle which has between three and six rubber tires and a gasoline engine not exceeding 600 cubic centimeters, designed to travel over any terrain, but does not include golf carts.

b. "CEP" means the Commissioner of the Department of Environmental Protection and "Department" or "DEP" means the Department of Environmental Protection.

c. "Farm" means land at least five acres in area used for commercial raising and producing of any crop, livestock, or fur product not used in the business of buying farm products for resale.

d. "Snowmobile" means a motor vehicle designed primarily to travel over ice or snow, using sled type runners, skis, an endless belt tread, cleats or a combination of these or similar means of contact with the surface, but does not include any farm tractor, highway or other construction equipment, or any military vehicle.

e. "Special event" means an organized race, exhibition or demonstration of limited duration conducted according to a prearranged schedule.

Source: 39:3C-1.

COMMENT

This section contains the substance of the source section. Definitions of the words "Commissioner" (referring to the Commissioner of the Department Environmental Protection) and "Director" ("referring to the Director of the Division of Motor Vehicles") were deleted as confusing (in the case of "Commissioner" since the MVC is now a Commission) and unnecessarily repetitive (in the case of "Director"). The definitions pertaining to the Department of Environmental Protection and its Commissioner were added to eliminate repetition in the statutory sections of this chapter.

39A:21-SM2. Powers of Commissioner and Commission

a. The Commissioner shall enforce statutes and regulations regarding the operation of snowmobiles and ATVs on or across a public highways, lands or waters including the following:

(1) Registration, identification, numbering and classification;

(2) Equipment;

(3) Standards of safety; and

(4) Educational programs.

b. The CEP shall enforce statutes and regulations regarding snowmobiles and ATVs on public lands and waters under the jurisdiction of the DEP.

Source: 39:3C-2.

COMMENT

This section contains the substance of the source section. Language authorizing the promulgation of regulations was eliminated from this section as it will be included in a global section authorizing regulations to effectuate the provisions of Title 39.

39A:21-SM3. Registration

a. A snowmobile or ATV may not operate on or across New Jersey public highways, lands or waters unless registered by the owner. The Commissioner shall assign a registration number upon application and payment of a fee as follows:

(1) Resident annual registration: $5 per snowmobile, $10 per ATV;

(2) Nonresident annual registration: $7 per snowmobile, $12 per ATV;

(3) Replacement of a lost, mutilated or destroyed certificate, $5; and

(4) Duplicate or amended registration, $5.

b. All registrations shall be issued on or after September 1 and shall be valid through September 30 of the following year, except the Commissioner may suspend or revoke a registration for a violation of this chapter or the applicable regulations.

c. The Commissioner shall deposit moneys related to registrations, publications, and fees collected pursuant to this chapter to the General Treasury, except that $5 of each registration fee shall be allocated to the Commission to defray the cost of providing ATV safety education and training manuals or training programs, or both.

Source: 39:3C-3; 39:3C-29.

COMMENT

This section is substantially identical to the source sections, but it has been streamlined and consolidated.

39A:21-SM4. Duration and presentation of registration

a. An assigned registration number shall remain with a snowmobile or ATV until the vehicle is destroyed, abandoned or permanently removed from the State, or until changed or terminated by the Commissioner.

b. An authorized form of registration shall be issued by the Commissioner when a snowmobile or ATV is operated on or across public highways, lands or waters.

c. The registration certificate shall be on the vehicle at all times when in operation. A person operating a snowmobile or ATV shall, upon demand of an authorized official, produce the registration and furnish information necessary to identify the vehicle and its owner. Failure to do so is presumptive evidence of operating an unregistered vehicle. A person younger than 18 who operates an ATV registered in this State shall, upon demand of an authorized official, produce a certificate confirming successful completion of an approved ATV safety education and training course. Failure to do so is presumptive evidence of the operation of the ATV in violation of this chapter.

d. The registration number shall be the only number displayed on each side of the vehicle in the manner prescribed by the Commissioner, except that during a special event, racing numbers may be temporarily displayed on the cowling for the duration of the race.

e. Every owner shall notify the Commission, in writing, of any change of residence within ten days after the change occurs.

f. When ownership is transferred or the use of a snowmobile or ATV is discontinued, the old registration shall be executed by the owner, identifying the change, and returned to the Commissioner within ten days. If ownership is transferred, the new owner shall pay the required fee, apply for a registration certificate, and include in the application the original registration number and the old registration properly signed by the previous owner. The owner of any registration certificate may obtain a duplicate from the Commission upon application and payment of the fee.

g. Every owner of a registered snowmobile or ATV shall notify the Commission, in writing, of the destruction, theft or permanent removal of such from the State, within ten days; and, in the event of destruction or theft, surrender the registration.

Source: 39:3C-4; 39:3C-5; 39:3C-8; 39:3C-9; 39:3C-10; 39:3C-11; 39:3C-12.

COMMENT

This section contains the substance of the source sections, but has been streamlined and consolidated. In subsection (e), the number ten was inserted in place of the number seven as the required number of days within which to notify the Commissioner of a change in residence. This change was not made for a substantive reason, but only for consistency since the other deadlines in this section are 10 days.

39A:21-SM5. Registration exemptions

a. Registration is not required for a snowmobile or ATV operated on private property.

b. No registration fee shall be charged for a snowmobile or ATV owned by the federal government, the State, county or a municipal government or subdivision.

c. The registration requirements shall not apply to nonresident owners who comply with the registration and licensing laws of their jurisdiction of residence, if the snowmobile or ATV is identified in accordance with the laws of that jurisdiction and conspicuously displays that jurisdiction's registration number. Nothing in this subsection shall be construed to authorize the operation of any snowmobile or ATV contrary to the provisions of this chapter.

Source: 39:3C-6; 39:3C-7.

COMMENT

This section contains the substance of the source sections, but has been consolidated.

39A:21-SM6. Prohibition on additional licensing or registration requirements

No political subdivision of this State may require additional licensing or registration of vehicles covered by this chapter. Nothing shall prohibit the requirement of a permit by State or local parks for use of snowmobiles on park lands or affect the authority of the DEP, the CEP, or those responsible for the operation of a park from adopting regulations concerning the use of snowmobiles and ATVs.

Source: 39:3C-13.

COMMENT

This section is substantially identical to the source section.

39A:21-SM7. Inspection and testing

The Commissioner may adopt regulations regarding the inspection of snowmobiles and ATVs, including the testing of mufflers.

Source: 39:3C-25.

COMMENT

This section is substantially identical to the source section.

39A:21-SM8. Regulations

a. The CEP, to minimize detrimental effects on the environment, shall adopt regulations regarding the use of snowmobiles and ATVs:

(1) Insofar as fish, wildlife and plantlife resources are affected; and

(2) On public lands and waters under the jurisdiction of the DEP.

b. The Commission shall adopt regulations regarding:

(1) Specifications relating to equipment required for safety.

(2) A comprehensive snowmobile and ATV information and safety education and training program to be offered by the Commission or the certification of programs offered by public or private entities to satisfy the training requirements. A person younger than 16 participating in an approved ATV course shall operate an ATV with an engine capacity of 90 cubic centimeters or less during the course.

(3) Effective administration and enforcement of the insurance provisions of this chapter.

(4) Special events and the granting of permits for those events, except that for special events conducted on public lands and waters under the jurisdiction of the DEP, any regulations must be approved jointly by both the CEP and the Commissioner.

Source: 39:3C-14; 39:3C-15; 39:3C-20.

COMMENT

This section contains the substance of the source sections, but has been streamlined and consolidated.

39A:21-SM9. Minimum age to be an operator

a. A person younger than 14 shall not operate any snowmobile or ATV on public lands or waters or across a public highway.

b. A person younger than 16 shall not operate an ATV with an engine capacity greater than 90 cubic centimeters on public lands or waters or across a public highway of this State.

c. A person younger than 18 shall not operate an ATV registered in this State on public lands or waters or across a public highway of this State unless the person has completed an approved ATV safety education and training course.

Source: 39:3C-16.

COMMENT

This section is substantially identical to the source.

39A:21-SM10. Operation

a. A person shall not operate a snowmobile or ATV on or within the right-of-way limits of a limited access highway.

b. A person may not operate a snowmobile or ATV on the main traveled portion or plowed snowbanks of any public highway or within the right-of-way limits except:

(1) Properly registered snowmobiles or ATVs may cross public highways, except limited access highways, as directly as possible if the crossing can be made safely and does not interfere with the movement of traffic on the highway. Before crossing, the operator shall bring the vehicle to a complete stop and shall yield the right-of-way to all vehicular traffic on the highway.

(2) When loading or unloading a snowmobile or ATV to or from a transporting vehicle in the area in which the snowmobile or ATV may be operated could cause a hazard to traffic on a public highway, it may be operated adjacent and parallel to a public highway to gain access to that operating area. The loading or unloading shall be performed with due regard to safety, at the nearest possible point to the area of operation.

c. A person may operate a snowmobile or ATV on the property of another only with the consent of the owner of the property and the person who has a contractual right to its use and must cease if consent is withdrawn.

d. No owner of real property in this State, and no person having a contractual right to its use, shall assume responsibility or incur liability for injury or damage to an owner, operator or occupant of a snowmobile or ATV which occurs during, or arises out of, the operation or use of such vehicle unless the:

(1) Operation or use is with express consent of the owner and contractual user of the property; and provisions of 2A:42A-2 et seq. or 2A:42A-6 et seq. do not limit liability; or

(2) Liability is based on the willful or malicious creation of a hazardous condition.

e. The provisions of this chapter do not apply to ATV operation and use on golf courses in this State, except subsections 39:3C-16(b) and 39:3C-26(b).

f. 39:3C-9(b) and 39:3C-16(c) do not apply to a person younger than 18 when the person operates an ATV on public lands, waters or highways incident to, or in the performance of, the operations of a farm adjacent to the area on which the vehicle is operated.

g. Owners and operators of snowmobiles and ATVs shall, when operating across a public highway or on public lands or waters, comply with the following provisions: 39:4-48 through 39:4-51; 39:4-64; 39:4-72; 39:4-80; 39:4-81; 39:4-92; 39:4-96 through 39:4-98;

39:4-99; 39:4-100; 39:4-104; 39:4-129 through 39:4-134; 39:4-203. The penalty for a violation of these provisions shall be as provided in 39:3C-28, not the penalty provided in those sections.

Source: 39:3C-17; 39:3C-18; 39:3C-30; 39:3C-30.1.

COMMENT

This section contains the substance of the source sections. In subsection (b)(2), it was not clear from the language of the original statute whether the existing language is supposed to be limited to the situation specified (driving the ATV to a location where it may be ridden), or whether snowmobiles or ATVs may permissibly be driven some distance along a highway, if, for example, the rider lived several miles from the area in which s/he wished to ride an ATV. This will be clarified. The string of citations in subsection (g) is not particularly helpful since it lacks any reference to the substance of the cited sections. Including descriptive language would make the section longer, but might be useful.

39A:21-SM11. Liability insurance

a. No snowmobile or ATV shall be operated unless the owner has a policy of insurance acceptable to the Department of Insurance from an authorized insurance carrier. The terms of the policy shall indemnify, for damages arising out of the negligent operation of the vehicle with a limit, exclusive of interest and costs, of at least:

(1) $15,000 for the injury to, or death of, one person, in any one accident;

(2) $30,000 for the injury to or death of, more than one person, in any one accident; and

(3) $5,000 for damage to property in any one accident.

b. The Commissioner may, upon application of the State or a municipality with at least one snowmobile or ATV registered in its name, waive the requirement of a private insurance carrier and issue a certificate of self-insurance if satisfied of the financial ability to respond to judgments arising out of ownership or operation of the vehicle.

c. Proof of insurance shall be produced by the owner or operator of a snowmobile or ATV upon request of a law enforcement officer or a person who claims to have suffered either personal injury or property damage as a result of its operation.

d. An owner of a snowmobile or ATV who operates or permits its operation without the required liability insurance coverage, and any person who operates a vehicle with the knowledge that the owner does not have such insurance coverage is guilty of a class D offense.

Source: 39:3C-20.

COMMENT

This section is substantially identical to the source but is has been streamlined and reordered. The section designates penalty according to the new penalty classification system contained in 39A:44-GP1.

39A:21-SM12. Report of accidents

The operator of any snowmobile or ATV involved in an accident resulting in injuries or death to any person or in property damage shall comply with the procedures in 39:4-129 and 39:4-130.

Source: 39:3C-21.

COMMENT

This section is substantially identical to the source.

39A:21-SM13. Equipment

All snowmobiles and ATVs operating within this State shall be equipped with:

a. At least one white or amber headlamp of sufficient intensity to reveal persons and vehicles at a distance of at least 100 feet ahead during the hours of darkness under normal atmospheric conditions.

b. At least one red tail lamp with sufficient intensity to exhibit a red light plainly visible from a distance of 500 feet to the rear during the hours of darkness under normal atmospheric conditions.

c. A brake system in good mechanical condition.

d. Reflector material of a minimum area of 16 square inches mounted on each side of the cowling. Registration numbers or other decorative material may be included in computing the required 16-square-inch area.

e. An adequate muffler system in good working condition.

Source: 39:3C-24.

COMMENT

This section is substantially identical to the source. In subsections (a) and (b) the words "having a minimum candlepower" were eliminated. They appeared before the words "of sufficient intensity" and it appeared that they were surplusage, but this will be confirmed.

39A:21-SM14. Unlawful acts; enforcement

a. It shall be unlawful for any person to operate a snowmobile or ATV:

(1) Or ride as a passenger on one without wearing an approved protective helmet of a type acceptable for use in conjunction with motorcycles as provided in 39:3-76.7 through 39:3-76.10.

(2) Not equipped with working headlights, taillights, brakes and a proper and unmodified muffler system as supplied by the motor manufacturer for the particular model.

(3) In such a manner as to cause an objectionable or unreasonable noise.

(4) In any manner intended or reasonably to be expected to harass, drive or pursue any wildlife.

(5) During the hours from one-half hour before sunset to one-half hour after sunrise without lighted headlights and taillights.

(6) Upon a railroad or right-of-way of an operating railroad, except railroad personnel in the performance of their duties.

(7) In violation of any provision of this chapter or any applicable regulation.

b. Violation of any provision of this chapter or applicable regulation is a class C offense if no other penalty is specifically provided.

c. Every law enforcement officer in the State, including authorized officers of the Commission, DEP, forest rangers and State park police shall enforce this chapter within their respective jurisdictions.

Source: 39:3C-19; 39:3C-27; 39:3C-28.

COMMENT

This section contains the substance of the source. The section designates penalty according to the new penalty classification system contained in 39A:44-GP1.

39A:21-SM15. Special events

a. The Commissioner may authorize the holding of organized special events, shall adopt regulations determining which special events are subject to Commission permit, and shall designate the equipment and facilities necessary for the safe operation of snowmobiles and ATVs and the safety of operators, participants, and observers. Copies of the pertinent regulations shall be furnished by the Commission upon request.

b. When a special event requiring permit of the Commission is to be held in this State, the person in charge shall file an approved application with the Commissioner at least 20 days before the proposed event. The event may not be held without prior written authorization of the Commissioner and, if the event is to be held upon public lands or waters, an additional written authorization of the CEP.

c. Any person sponsoring an event who violates this section or an applicable regulation is guilty of a class C offense.

d. Snowmobiles and ATVs operated at special events are exempt from the provisions of this chapter concerning registration and lights during the event, including all prerace practice at the location of the event. ATVs operated at special events are exempt from the provisions of 39:3C-16(c) and 39:3C-9(b); however, 39:3C-16(b) shall apply to persons operating ATVs at special events and prerace practices.

Source: 39:3C-22; 39:3C-23.

COMMENT

This section contains the substance of the source sections but has been consolidated. The section designates penalty according to the new penalty classification system contained in 39A:44-GP1.

39A:21-SM16. Prohibition on sale of vehicle not in compliance with law

a. No person shall offer for sale or sell in this State a snowmobile or ATV which fails to comply with the provisions of this chapter or the regulations containing specifications for equipment.

b. A person shall not knowingly sell or offer to sell an ATV with an engine capacity of greater than 90 cubic centimeters for use by a person younger than 16.

c. Retail dealers and distributors of ATVs shall comply with the requirements of the consent decree entered into by ATV distributors and the United States Consumer Product Safety Commission on April 28, 1988 which require the providing of safety information on ATVs to either the purchasers or retail dealers of such vehicles, as appropriate.

Source: 39:3C-26.

COMMENT

This section is substantially identical to the source.

CHAPTER 21A. LIMOUSINES

39A:21A-L1. Limousine ownership and operation penalties

a. A person who owns or operates a limousine on any highway in this State in violation of the provisions of Title 39 or article 2 of chapter 16 of Title 48 shall be subject to the following penalties:

(1). The following violations are class A offenses:

(A) Operating a limousine without a license issued by a municipality pursuant to 48:16-17;

(B) Knowingly permitting a driver to operate a limousine without a validly issued driver's license or a validly issued commercial driver license if required pursuant to N.J.A.C.13:21-23.1;

(C) Failure to have filed an insurance policy in the amount of $1,500,000 which is currently in force as provided in 48:16-14 or in the amounts required by 48:16-22.4; or

(D) Operating a limousine in which the number of passengers exceeds the maximum seating capacity as provided in 48:16-13 or 48:16-13.1.

(E) Operating a limousine without:

i. The special registration plates required by 39:3-19.5; or

ii. The proper inspection as provided in 39:8-1.

(2) The following violations are class C offenses:

(A) Operating a limousine without the attached sideboards required by 48:16-22.1;

(B) Failure to have within the limousine appropriate proof of insurance; or

(C) Failure to execute and deliver to the Director of the Division of Motor Vehicles the power of attorney required pursuant to 48:16-16.

(3) The following violations are class E offenses for the first-time violation, and class D offenses for each subsequent violation:

(A) Failure to be equipped with a two-way communications system, a removable first-aid kit or an operable fire extinguisher as required by 48:16-22.1; or

(B) Any other violation of the provisions of article 2 of chapter 16 of Title 48 of the Revised Statutes other than those enumerated in this subsection.

b. violations of this section shall be enforced and penalties collected in a summary proceeding pursuant to 2A:58-10 et seq. The Superior Court or a municipal court in the jurisdiction where the violation was detected, or the defendant was apprehended, shall have jurisdiction to enforce this section. Penalties imposed pursuant to this section shall be in addition to those otherwise imposed according to law. All penalties collected

pursuant to the provisions of this section shall be forwarded as provided in 39:5-40 and 39:5-41(b).

Source: 39:5G-1.

COMMENT

This section is substantially similar to the source, but it has been streamlined and slightly reordered. In subsection (a), the words "owns or operates" were "owns and operates" in the original. The original language may be too limited, this will be confirmed. The section designates penalty according to the new penalty classification system contained in 39A:44-GP1.

FUEL AND VECHILE THEFT

CHAPTER 15. COMPRESSED OR LIQUIFIED GASEOUS FUEL

39A:15-LGF1. Motor vehicle powered by compressed or liquefied gaseous fuel

a. A person shall not operate on a public highway a motor vehicle registered or principally garaged in this State that uses compressed or liquefied gaseous fuel unless the vehicle is identified with an approved, weather resistant, diamond shaped label.

b. A fee established by the Commissioner may be charged for the label and shall not exceed the reasonable cost of preparation and distribution.

c. The Commissioner may promulgate regulations governing the label in addition to the following requirements:

(1) The label shall be placed on an exterior vertical or near vertical surface on the lower right rear of the vehicle toward the center and away from any other markings, but not on the bumper.

(2) The label shall contain a border and one inch minimum height letters centered in the diamond.

(3) The markings shall be of a silver or white reflective luminous material on a black background and the letters shall indicate the type of compressed or liquefied gas used as fuel for the vehicle.

d. The label shall be inspected for compliance at the time of a vehicle inspection. Any person who fails to comply with this section following an inspection shall be subject to the penalties of 39:8-9.

Source: 39:3-79.4; 39:3-79.5; 39:3-79.6; 39:3-79.7; 39:3-79.9.

COMMENT

This section contains the substance of the source sections, but has been consolidated.

39A:15-LGF3. Prohibition on supplying fuel to vehicle without label

A person shall not supply compressed or liquefied gaseous fuel for any vehicle unless the vehicle displays the required label. Violation of this section is a class E offense.

Source: 39:3-79.8.

COMMENT

This section contains the substance of the source. 39:3-79.9, which called for periodic publication of the requirements of this act after its enactment, was eliminated as no longer necessary since it was originally enacted in 1984, it will be confirmed that deletion of this provision is acceptable. The section designates penalty according to the new penalty classification system contained in 39A:44-GP1.

CHAPTER 19. MOTOR VEHICLE THEFT

39A:19-RT1. Notification of theft or loss; records

a. A person whose motor vehicle is stolen, or whose license plates are lost or stolen, shall immediately notify the police within whose jurisdiction the theft or loss occurred. Upon recovery, the person shall notify the police to whom the original report was made.

b. After receiving reliable information that a motor vehicle has been stolen or license plates have been lost or stolen, a New Jersey officer shall report the information to the Superintendent of State Police and the Commission within 24 hours and shall report any recovery within 24 hours.

c. After notified of a theft or loss pursuant to subsection (b), the Superintendent of State Police and the Commission shall index and file the information so the motor vehicle or license plates can be properly identified, and shall cooperate with officers and agencies in tracing or examining automobiles to determine ownership. These records shall be available to police officers and other interested agencies.

Source: 39:3-85.1; 39:3-85.2; 39:3-85.3.

COMMENT

This section contains the substance of the source sections. The term “license plates” has been substituted for “registration plates” as the more common usage. Subsection (a) originally called for the notification of recovery to be made to the same officer to whom the report of the theft was made - this was modified as impractical (and, in light of the changes in record-keeping methods since 1938, unnecessary). Since the original statutory sections were enacted in 1938, the procedures will be checked with police officers to make sure that they are still applicable.

39A:19-RT2. Program to combat theft

a. To participate in a voluntary program to combat the theft of motor vehicles in this State, the registered owner of a vehicle shall, in the presence of a designated law enforcement officer, sign an informed consent agreement indicating the vehicle is not normally operated between 1:00 a.m. and 5:00 a.m. and shall be issued a decal to be affixed in a conspicuous place on the vehicle.

b. If an officer sees a vehicle displaying the decal being operated on a public highway between 1:00 a.m. and 5:00 a.m., the officer may stop the vehicle and request a valid driver's license, motor vehicle registration card, and insurance identification card. If the driver cannot provide the documents, the officer shall investigate to determine if that person is an authorized operator.

c. The chief municipal law enforcement officer may charge a fee for the consent forms and the decals, which shall not exceed the actual costs of providing them and administering the program.

d. The Superintendent shall maintain a record of the individuals who participate in this program which shall be available to law enforcement departments, agencies and

forces. The Superintendent shall cooperate with all officers and agencies in tracing or examining questionable motor vehicles to determine ownership.

Source: 39:3-85.5; 39:3-85.6; 39:3-85.7; 39:3-85.8; 39:3-85.9.

COMMENT

This section contains the substance of the source sections, but has been consolidated. It is my understanding that this program (effective since January 1991) does, in fact, still exist, but the procedures outlined above will be checked to make sure they match the currently accepted procedures.

GENERAL PROHIBITIONS

CHAPTER 10. GENERAL PROHIBITIONS

39A:10-GP1. Definitions

A "motor vehicle moving violation" means any violation of the motor vehicle laws of this State for which motor vehicle points are assessed.

Source: 39:3-40.

COMMENT

This section contains a definition contained in the source section.

39A:10-GP2. No application for registration or license during suspension, revocation or prohibition

a. A person whose registration or driving privilege, including commercial motor vehicles, is suspended or revoked, or who has been prohibited from obtaining a driver's license or registration, may not apply for a registration, license, or learner's permit during the period of the suspension, revocation, or prohibition.

b. Violation of this section is a class C offense.

Source: 39:3-34.

COMMENT

This section contains the substance of the source section. The section designates penalty according to the new penalty classification system contained in 39A:44-GP1.

39A:10-GP3. No lending or use of registration or license plates for other vehicle

a. A person may not use or lend a registration certificate or license plates for use on a motor vehicle other than the vehicle for which issued.

b. Violation of this section is a class D offense.

Source: 39:3-35.

COMMENT

This section is substantially identical to the source section. The section designates penalty according to the new penalty classification system contained in 39A:44-GP1. The level of the offense had been changed from class E to class D by the Commission to bring the penalty in accord with penalties for similar offenses and in response to concerns raised by law enforcement officers.

39A:10-GP4. Notice of change of address

a. A registered owner or licensed operator of a motor vehicle shall, using the approved form, notify the Commissioner of a change in residence within one week after the change is made. Upon notification, and payment of a fee of $5 for the registration certificate or license, the Commissioner shall provide the new documentation. Applicants seeking a new license must also pay the digitized picture fee.

b. Violation of this section is a class E offense.

Source: 39:3-36.

COMMENT

This section is substantially identical to the source section. The section designates penalty according to the new penalty classification system contained in 39A:44-GP1.

39A:10-GP5. Falsifying documentation

a. A person is guilty of a class C offense if that person:

(1) Gives a fictitious name or address or makes any other intentional misstatement of a material fact in an application for:

(A) Registration of a motor vehicle;

(B) A waiver pursuant to 39:8-55 of the emission standards requirement;

(C) A driver's license or preliminary application, examination or proceeding; or

(2) Knowingly provides an identification document to another person for the purpose of aiding that person to obtain a driver's license, registration certificate or waiver certificate for which that person is not qualified.

b. The Commissioner shall, upon proper evidence not limited to a conviction, revoke the registration or driver's license of a person who violates this section for a period between six months and two years.

Source: 39:3-37.

COMMENT

This section is substantially identical to the source section. The section designates penalty according to the new penalty classification system contained in 39A:44-GP1.

39A:10-GP6. Counterfeiting or using other license plate

a. A person who counterfeits a license plate, or makes a substitute or temporary license plate, is guilty of a class C offense, and subject to driver’s license revocation for up to six months.

b. A person who improperly uses a license plate other than one issued to that person by the Commissioner is guilty of a class D offense.

c. A person who causes a forged or counterfeit license plate to be placed on any motor vehicle is guilty of a class C offense, and subject to driver’s license revocation for up to six months.

Source: 39:3-38.

COMMENT

This section is substantially identical to the source section. The section designates penalty according to the new penalty classification system contained in 39A:44-GP1. The level of the offense had been changed from class E to class D in the subsection (b), and from class D to class C in subsections (a) and (c) by the Commission to bring the penalty in accord with penalties for similar offenses and in response to concerns raised by law enforcement officers.

39A:10-GP7. Revocation of license; driving while license suspended, revoked or prohibited

a. A person whose driver's license or reciprocity privilege has been refused, suspended or revoked, or who has been prohibited from obtaining a driver's license, may not operate a motor vehicle during the period of refusal, suspension, revocation, or prohibition. A person whose motor vehicle registration has been revoked may not operate or permit the operation of that motor vehicle during the period of revocation.

b. A person violating this section is subject to the following penalties:

(1) Conviction for a first offense is a class C offense, and if the offense involves operation of a motor vehicle while the driver's license is suspended for a violation of 39:4-50 or 39:4-50.4a, revocation of the registration in accordance with 39:3-40.1 through 39:3-40.5;

(2) Conviction for a subsequent offense is a class B offense, and if the subsequent offense involves operation of a motor vehicle while the driver's license is suspended, and this offense occurs within five years of a conviction for the same offense, revocation of the motor vehicle registration in accordance with 39:3-40.1 through 39:3-40.5.

c. If a person is involved in an accident resulting in bodily injury to another person while in violation of this section, the court shall impose a period of imprisonment for between 45 and 180 days.

d. Upon conviction for a violation of this section, the court shall impose or extend a driver’s license suspension for a period not to exceed six months.

e. Notwithstanding subsections (a) through (d), any person violating this section while under suspension issued pursuant to:

(1) 39:6B-2, is guilty of a class B offense, and shall receive a driver’s license suspension for an additional period of between one and two years, and may be imprisoned in the county jail for up to 90 days; or

(2) 39:4-50, 39:4-50.4a or 39:5-30a et seq., is guilty of a class B offense, and shall receive a driver’s license suspension for an additional period of between one and two years, and shall be imprisoned in the county jail for between 10 and 90 days.

f. Notwithstanding the other provisions of this section, a person who operates a motor vehicle in violation of (e)(2) of this subsection while:

(1) On any property used for school purposes owned by or leased to any elementary or secondary school or school board, or within 1,000 feet of such school property;

(2) Driving through a municipally designated school crossing; or

(3) Driving through an undesignated school crossing knowing that juveniles are present;

shall receive a driver’s license suspension for an additional period of between one and two years commencing on the completion of any prison sentence imposed; and be

imprisoned for between 60 and 90 days for a first offense, 120 and 150 days for a second offense, and 180 days for a third or subsequent offense. A map depicting the location and boundaries of the area in question produced pursuant to 2C:35-7 may be used in a prosecution under this subsection. It is not relevant that the defendant was unaware the prohibited conduct took place while within 1,000 feet of any school property or while driving through a school crossing, or that no juveniles were present at the time of the offense or that the school was not in session.

g. In addition to the other applicable penalties, a person violating this section whose license has been suspended pursuant to 17:29A-35 or the applicable regulations, is guilty of a class A offense. The court shall waive the fine upon proof that the person has paid the total surcharge imposed pursuant to the statute or applicable regulations. The fine imposed by this subsection shall be collected by the Commission, distributed as provided in section 17:29A-35, and the court shall file a copy of the judgment of conviction with the Commissioner and the Clerk of the Superior Court who shall enter the following upon the record of docketed judgments: the name of the judgment debtor; the Commission as judgment creditor; the amount of the fine; and the date of the order. These entries shall have the same force and effect as a civil judgment docketed in the Superior Court.

h. If a person is convicted for a second or subsequent violation of this section that involves a motor vehicle moving violation, the term of imprisonment for the second or subsequent offense shall be 10 days longer than the term of imprisonment imposed for the previous offense.

Source: 39:3-40.

COMMENT

This section contains the substance of most of the source section but has been streamlined and reorganized. The section designates penalty according to the new penalty classification system contained in 39A:44-GP1.

39A:10-GP8. Permitting driver with suspended license to operate vehicle

A person who owns or leases a motor vehicle and permits another to operate that motor vehicle is subject to driver's license suspension and revocation of registration if the person:

a. Knows the operator's driver's license is suspended for a violation of 39:4-50 or 39:4-50.4a; or

b. Knows the operator's driver's license is suspended and the operator has been convicted, within the past five years, of operating a vehicle with a suspended or revoked driver's license.

Source: 39:3-40.

COMMENT

This section contains the substance of part of the source section. The source section was more than three pages long and it seemed that a separation of several of the sections was appropriate.

39A:10-GP9. Suspension resulting from failure to pay parking tickets

A person whose driver's license is suspended pursuant to C.39:4-139.10 is guilty of a class D offense and must present proof of satisfaction of the parking ticket(s) that caused the suspension.

Source: 39:3-40.

COMMENT

This section contains the substance of part of the source section. The source section was more than three pages long and it seemed that a separation of several of the sections was appropriate. The section designates penalty according to the new penalty classification system contained in 39A:44-GP1.

39A:10-GP10. Revocation of registration certificate and license plates

a. A motor vehicle registration and license plates shall be revoked if a person is convicted of violating the provisions of:

(1) 39:3-40(a) for operating a motor vehicle with a driver's license suspended for a violation of 39:4-50;

(2) 39:3-40(b) or (c) for operating a motor vehicle with a driver's license that has been suspended within a five-year period; or

(3) 39:4-50 for a second or subsequent offense, if such revocation is ordered by the court.

b. The revocation of the registration and license plates shall apply to all passenger automobiles, motorcycles and noncommercial trucks owned or leased and registered by the violator, including any such vehicles registered or leased jointly in the name of the violator and anther owner of record.

c. At the time of conviction, the court shall notify a violator that the person's passenger automobile, motorcycle, and noncommercial truck registrations are revoked. The violator shall surrender the registration certificate and license plates of all motor vehicles subject to revocation within 48 hours. The court shall notify the violator that failure to surrender those items shall result in vehicle impoundment and the seizure of the items. The revocation authorized under this subsection shall remain in effect while the violator's driver’s license is suspended and shall be enforced to prohibit the violator from registering or leasing any other vehicle, however acquired, during that period.

d. If a violator subject to penalties for violating 39:3-40 was operating a motor vehicle owned or leased by another who permitted the operation with knowledge that the violator's driver's license was suspended, the court shall suspend the owner or lessee’s driver’s license and revoke the registration certificate and license plates for that vehicle for a period not exceeding six months. The owner or lessee shall surrender the registration certificate and license plates of that vehicle as set forth in subsection (c). Nothing in this subsection limits the court from finding that owner or lessee guilty of violating any other statute concerning the operation of a motor vehicle by an unlicensed driver.

e. A motor vehicle subject to the registration restrictions set forth in this section may not be registered, sold or its ownership transferred during the restriction period unless the motor vehicle is sold or transferred for a fair market value.

Source: 39:3-40.1; 39:3-40.4.

COMMENT

This section contains the substance of the source sections. In this section, as in others, the term "license plate" was substituted for "registration plate" to use the most common language.

39A:10-GP11. Issuance of temporary registration regarding violator

a. The Commissioner may issue a temporary registration certificate and temporary license plates for a motor vehicle for which they have been revoked if the applicant for temporary registration:

(1) Appeared on the revoked registration as a joint owner or joint lessee; or

(2) Is the spouse, child, dependent, parent or legal guardian of the violator or owner and properly certifies that the operation of the motor vehicle is necessary for specified employment, educational, health or medical purposes.

b. The application form prescribed by the Commissioner shall include a signed certification that: the applicant will not knowingly permit the violator to operate the motor vehicle until the violator's driver's license and privileges are restored; any violation of this provision will result in the revocation of the temporary registration; the motor vehicle is ineligible for temporary registration; and the motor vehicle may be impounded pursuant to 39:3-40.3 and the temporary registration and license plates seized.

c. The Commissioner shall issue a temporary registration and license plates for a motor vehicle registered under the provisions of this section. The temporary license plates shall bear a special series of numbers or letters to be readily identifiable by law enforcement officers. The temporary registration shall expire on the last day of the sixth month following the calendar month in which it was issued but may be renewed, upon application, by the Commissioner.

d. The Commissioner may issue a new registration to a lessor of a vehicle for which the registration was revoked if the vehicle is not leased to the same lessee.

e. The temporary registration fee shall be prescribed by the Commissioner and may differ based upon the manufacturer's shipping weight and the model year of the motor vehicle but shall not exceed $75. A non-recurring $25 fee shall be charged for temporary registration plates.

Source: 39:3-40.2.

COMMENT

This section contains the substance of the source section.

39A:10-GP12. Impoundment of motor vehicle subject to registration restriction

a. A motor vehicle may be impounded by any law enforcement officer if the registrant:

(1) Knowingly permits an unlicensed driver to operate that motor vehicle;

(2) Operates or permits the operation of that motor vehicle without a valid temporary registration or temporary license plates; or

(3) Fails to surrender a registration certificate and license plates in accordance with the provisions of 39.3-40.1(b) or (c).

b. A motor vehicle impounded pursuant to this section shall be removed to storage space and its registration certificate and license plates seized. The registrant is responsible for the cost of the removal and storage of the impounded motor vehicle.

c. If the registrant fails to claim the motor vehicle and pay the reasonable costs of removal and storage by midnight of the 30th day following impoundment, along with a fine of $50 to cover the municipal administrative costs, the municipality may sell the motor vehicle at public auction. The municipality shall give notice of the sale by certified mail to the registrant of the motor vehicle and to the holder of any security interest filed with the Director, and by publication, at least five days before the date of the sale, in one or more newspapers published in this State and circulating in the municipality in which the motor vehicle has been impounded. At any time prior to the sale, the registrant or other person entitled to the motor vehicle may reclaim possession of it upon payment of the reasonable costs of removal and storage of the motor vehicle and any outstanding fines or penalties; provided, however, if the other person entitled to the motor vehicle is a lessor or the holder of a lien on the motor vehicle, that person may reclaim the motor vehicle without payment. In such cases, the violator shall be liable for all outstanding costs, fines and penalties, and the municipality shall have a lien against the property and income of that violator for the total amount of those outstanding costs, fines and penalties. Any proceeds obtained from the sale of a motor vehicle at public auction in excess of the amount owed to the municipality for the reasonable costs of removal and storage of the motor vehicle and any outstanding fines or penalties shall be returned to the registrant of the vehicle.

Source: 39:3-40.3.

COMMENT

This section contains the substance of the source section. The italicized language, and the language following it in the last paragraph of this section, detailing the procedure for the public sale of a vehicle, may be unnecessary as there are other sections of the statute that explain the procedure and a reference to those sections may be sufficient.

39A:10-GP13. Release of impounded vehicle

No motor vehicle impounded pursuant to New Jersey law shall be released unless proof of valid motor vehicle insurance for that vehicle is presented to the law enforcement authority which impounded the vehicle. The recovery or salvage of an impounded motor vehicle on behalf of an insurer, financial institution or other lending entity shall not require proof of valid motor vehicle insurance for that vehicle.

Source: 39:3-40.6.

COMMENT

This section is substantially identical to the source section.

39A:10-GP14. Use of national school bus chrome paint on motor vehicle

No motor vehicle with a capacity of more than 16 passengers shall be painted National School Bus Chrome, unless it is used to transport children to or from a school, a summer day camp, or any school connected activity. When a motor vehicle is no longer used for these purposes, it shall be repainted a color distinctly different from National School Bus Chrome.

Source: 39:3-77.1

COMMENT

This section contains the substance of the source section.

39A:10-GP15. Vehicles to which persons admitted for purchasing or exhibition

Every motor vehicle, including a van or trailer, which admits persons to purchase merchandise, including books, or view any exhibit, shall be equipped with a separate exit door in addition to an entrance door. The exit shall be plainly identified and kept unobstructed at all times.

Source: 39:3-77.2

COMMENT

This section is substantially identical to the source section.

39A:10-GP16. No television with screen visible to driver

a. It shall be unlawful to operate upon any public highway in this State a motor vehicle in which a television set placed so that the viewing screen is visible to the driver while operating the vehicle.

b. Violation of this section is a class E offense.

Source: 39:3A-1; 39:3A-2.

COMMENT

This section contains the substance of the source sections. The language banning television sets visible to the driver was enacted in 1951. With the increasingly common use of dashboard GPS devices, and vehicle DVD systems, it may be appropriate to remove or revise this section to clarify what type of "viewing screen" is acceptable. The section designates penalty according to the new penalty classification system contained in 39A:44-GP1.

39A:10-GP17. General penalty

Violation of a provision of chapter three of Title 39 for which no specific penalty is provided is a class C offense.

Source: 39:3-86.

COMMENT

This section is substantially identical to the source. The range of $25 to $500, reflecting the initial enactment in 1941 and a revision in 1999, may be appropriate for revision. The section designates penalty according to the new penalty classification system contained in 39A:44-GP1.

Volume II

APPLICATION, POWERS AND DUTIES

SIGNS, SIGNALS, ACCIDENTS AND REPORTS

DUI

LAW OF ROAD, OPERATION AND MOVING VIOLATIONS

TURNS, SIGNALS AND PARKING

STREET CARS, BICYCLES, EPMADS AND HORSES

PEDESTRIANS AND HANDICAPPED MOTORISTS

VEHICLES OF UNUSUAL DIMENSIONS AND LOADS

ENFORCEMENT

COMPACTS

APPLICATION, POWERS AND DUTIES

CHAPTER 22. APPLICATION

39A:22-A1. Application of *Title 39A Volume 2*

a. The provisions of this *chapter* applicable to the drivers of vehicles on the highways shall also apply to the drivers of all vehicles owned or operated by this State, the United States, any territorial or Federal district, any other State or any county, municipality or any other political subdivision thereof, subject to such specific exceptions as are set forth in this *chapter*.

b. The provisions of this *chapter* shall apply to the owners and drivers of vehicles on highways, roadways, driveways, parking areas or upon any grounds owned and maintained by the State of New Jersey, or any State department or agency, the counties, the municipalities and the school district boards of education of this State.

c. This *chapter* shall not apply to persons, teams, motor vehicles and other equipment while actually engaged in work on the surface of a highway, but shall apply to such persons and vehicles when traveling to or from the work.

Source: 39:4-1.

COMMENT

This section…

CHAPTER 23. POWERS AND DUTIES OF COMMISSIONER

39A:23-PDC1. Definitions

a. "Public highways" means public highways as defined in 27:1B-3.

b. "Transportation system" means transportation system as defined in 27:1B-3.

c. "Under the jurisdiction of the commissioner" means that which has been taken over, or is owned, controlled, or maintained by the Department of Transportation.

Source: 39:4-8.2.

COMMENT

This section…

39A:23-PDC2. Powers of Commissioner

a. All the powers and duties previously exercised and performed by the Commission created by an act approved April 15, 1930, (L.1930, c. 148, p. 564), and its amendments and supplements, which powers and duties were transferred to and vested in the Commissioner by an act approved June 12, 1932, (L.1932, c. 179, § 1, p. 306), and which powers and duties were transferred to and vested in the Director by an act

approved October 15, 1948 (P.L.1948, c. 439), [FN3] shall continue to be vested in the Director.

b. Notwithstanding the provisions of any other law to the contrary, the Commissioner of Transportation may by written order provide for the regulation of traffic and parking on public highways or transportation systems under the jurisdiction of the Commissioner and for the establishment, operation, control and maintenance of official traffic control devices thereon where *chapter 4 of this Title* authorizes the Commissioner to regulate traffic and parking by rule or regulation. *An order issued pursuant to this act shall conform to the same requirements of this Title concerning examination, investigation or study as apply in the case of the rule or regulation in place of which the order is being issued.* An order issued pursuant to this section shall be binding and enforceable in accordance with the provisions of this act and any official traffic control device established thereby shall conform to the "Manual on Uniform Traffic Control Devices."

c. An order issued by the Commissioner shall cite the public highway or transportation system to which it is to be applicable; provide an explanation in plain language as to why the order is needed at the location in question; provide a description in plain language of what the order requires; identify the individual or public body who or which requested the order or initiated a request leading to the order; name the date on which the order became final and the effective date of the order; and contain any other information the Commissioner deems necessary.

d. A copy of a proposed order shall be mailed to the governing body and chief uniformed law enforcement official of each county and municipality in which that portion of the public highway or transportation system under the jurisdiction of the Commissioner affected by the order is located. On or after the date of mailing, the Commissioner shall cause an informational notice of the proposed order, including a summary of its provisions, to be published in a newspaper or newspapers having general circulation in the municipalities affected by the order. The notice shall provide a telephone number or address which a member of the public may use to receive a copy of the complete text of the proposed order and shall provide for a 30-day period from the date of publication for public comment. The order shall be final on the 31st day after publication of the informational notice or on a later date determined by the Commissioner, except that if comments are received during the 30-day period the order shall be final after the Commissioner reviews and responds in writing to the comments received but in no event shall the order be final earlier than the 31st day after publication. The Commissioner may extend the comment period or modify or withdraw the proposed order as a result of the review of public comment.

e. Notwithstanding the provisions of subsection (d) to the contrary, an order may be made final immediately or at a later date and without the requirement of mailing or publication by the Commissioner if it is issued in response to a resolution from the governing body of a municipality and if the order pertains exclusively to a public highway or transportation system located within the boundaries of that municipality. Such a resolution shall be adopted by the governing body and shall memorialize the Commissioner to issue an order regulating traffic or parking on a public highway or transportation system located within the boundaries of the municipality. The governing

body shall cause an informational notice of the proposed resolution to be published in the official newspaper if there be one or, if that is not the case, in a newspaper of general circulation in the municipality, in advance of a meeting at which the resolution is to be considered. A copy of the final order shall be mailed to the governing body and the chief uniformed law enforcement official of the county and municipality in which that portion of the public highway or transportation system under the jurisdiction of the Commissioner affected by the order is located.

f. Notwithstanding provisions of this section to the contrary, upon a finding by the Commissioner that an emergent condition exists with respect to a public highway or transportation system under the jurisdiction of the Commissioner, an order may be made final immediately. In such an event, a copy of the final order issued pursuant to this subsection shall be provided within 24 hours of issuance to the governing body and the chief uniformed law enforcement official of the county and municipality in which that portion of the public highway or transportation system affected by the order is located. Nothing in this section shall be construed to supersede, limit or alter the authority and powers of the Attorney General pursuant to 39:4-213 et seq. to control traffic during emergency conditions. The exercise of the Attorney General's authority and powers pursuant to 39:4-213 et seq. shall supersede an order issued by the Commissioner pursuant to this act.

g. A final order shall be effective upon compliance with the notice and briefing provisions of 39:4-198 and shall be binding and enforceable on that date.

h. The provisions of this act shall not apply to public highways or transportation systems under the jurisdiction of a county or municipality.

i. The Commissioner shall maintain an official permanent record of orders issued pursuant to this act and of any rule or regulation removed from the New Jersey Administrative Code pursuant to this act, which shall be made available upon request, pursuant to 47:1A-1 et seq. In addition, an informational record concerning those public highways, or portions thereof, and transportation systems affected by the orders issued pursuant to this act shall be accessible in electronic form by members of the public without fee or charge.

j. Rules or regulations in effect before September 1998 and dealing with the regulation of traffic or parking on public highways or transportation systems under the jurisdiction of the Commissioner shall be included in an order adopted by the Commissioner which shall be final and effective on the date of issuance, and shall supercede all the rules and regulations included in substance therein. After that is done, the Office of Administrative Law may remove from the New Jersey Administrative Code any rule or regulation which has been superseded by order of the Commissioner. Thereafter, any provision authorizing or requiring the Commissioner to regulate traffic or parking on public highways or transportation systems by means of rule or regulation shall be construed as authorizing or requiring the Commissioner to proceed by order. Such an order, however, shall not be considered a rule or regulation pursuant to the provisions of the "Administrative Procedure Act".

k. Nothing in this act shall be construed as expanding or diminishing the authority of the Commissioner to regulate traffic and parking on public highways or transportation

systems and to establish, operate, control and maintain official traffic control devices thereon. Nothing in this act shall be construed as superseding any provision or expending or diminishing the authority of the commissioner in regard to the "State Highway Access Management Act" 27:7-89 et al.

Source: 39:4-2; 39:4-8.3; 39:4-8.4; 39:4-8.5; 39:4-8.6; 39:4-8.7; 39:4-8.8.

COMMENT

This section…

39A:23-PDC3. Commissioner's duties

a. The Commissioner shall investigate traffic conditions, means for their improvement and the enforcement of laws and regulations relating to traffic, including pedestrian travel on the public streets and highways. The Commissioner may determine, regulate and control the character, type, location, placing of and operation of all official traffic control devices on the highways and public places in the State, or cause the removal of such devices determined to be unnecessary. The Commissioner shall see that the laws relating to such devices are enforced, investigate the manner of enforcing the laws regarding the parking of vehicles on public highways, the use of streets by pedestrians, investigate the location of "stop" signs and cause the removal of those which the Commissioner deems installed in violation of this chapter, and cause the removal of all colored lights so located as to be confused with traffic signals. The Commissioner shall also enforce the provisions of this chapter and promulgate regulations for the enforcement of the Commissioner's duties hereunder.

b. This section shall not be construed to in any way curtail the powers of actual enforcement vested by law in the local authorities.

c. Whenever another State has a law providing for reciprocal exchange, the Commissioner, upon receiving a certificate of conviction of a nonresident operator or chauffeur of a violation of 39:4-50, 39:4-96, 39:4-98 and 39:4-129, or of notice of the forfeiture of any bond or collateral given for such violation, shall immediately transmit a certified copy of the record to the motor vehicle administrator of the State in which the violator resides.

Source: 39:4-6; 39:4-9.1.

COMMENT

This section…

39A:23-PDC4. Commissioner's hearings

The Commissioner shall hold hearings when the Commissioner deems them necessary and may issue subpoenas to compel the attendance of witnesses and the production of books, papers and records applicable to the provisions of this chapter.

Source: 39:4-7.

COMMENT

This section…

39A:23-PDC5. Authority of local governments and approval of Commissioner

a. Except as otherwise provided in this section, no ordinance or resolution concerning, regulating or governing traffic or traffic conditions, adopted or enacted by a board or body having jurisdiction over highways, shall be valid unless it is approved by the Commissioner of Transportation, according to law. The Commissioner of Transportation shall not be required to approve any ordinance, resolution or regulation, unless, after investigation, it appears to be in the interest of safety and the expedition of traffic on the public highways.

b. In the case of totally self-contained streets under municipal jurisdiction with no direct connection with any street in any other municipality, or in the case of totally self-contained streets under county jurisdiction with no direct connection with any street in any other county, the municipality or county may, by ordinance or resolution, as appropriate, and without the approval of the Commissioner of Transportation, designate parking restrictions, no passing zones, mid-block crosswalks and crosswalks at intersections.

c. In the case of any streets under municipal jurisdiction, the municipality may, by ordinance, designate reasonable and safe speed limits and in the case of totally self-contained streets under county jurisdiction with no direct connection with any street in any other county, the county may, by ordinance or resolution, as appropriate, designate reasonable and safe speed limits and erect appropriate signs, designate any intersection as a stop or yield intersection and erect appropriate signs and place longitudinal pavement markings delineating the separation of traffic flows and the edge of the pavement. These designations may be made if the municipal or county engineer shall, under seal as a licensed professional engineer, certify to the municipal or county governing body, as appropriate, that any designation or erection of signs or placement of markings: (1) has been approved by the engineer after investigation of the circumstances, (2) appears to be in the interest of safety and the expedition of traffic on the public highways and (3) conforms to the current standards prescribed by the Manual of Uniform Traffic Control Devices for Streets and Highways, as adopted by the Commissioner of Transportation.

d. In the event of municipal or county action as described in this section, a certified copy of the adopted ordinance or resolution shall be transmitted by the clerk of the municipality or county to the Commissioner of Transportation within 30 days of adoption, together with a copy of the engineer's certification; a statement of the reasons for the engineer's decision; detailed information as to the location of streets, intersections and signs affected by any designation or erection of signs or placement of markings; and traffic count, accident and speed sampling data, when appropriate. The Commissioner of Transportation may invalidate the provisions of the ordinance or resolution within 90 days of receipt of the certified copy if the Commissioner finds the provisions of the ordinance or resolution are: inconsistent with the Manual of Uniform Traffic Control Devices for Streets or Highways; inconsistent with accepted engineering standards; not based on the results of an accurate traffic and engineering survey; or place an undue traffic burden or impact on streets in an adjoining municipality or negatively affect the flow of traffic on the State highway system.

e. Nothing in this section shall allow municipalities to designate any intersection with any highway under State or county jurisdiction as a stop or yield intersection or counties to designate any intersection with any highway under State or municipal jurisdiction as a stop or yield intersection.

f. Subject to the provisions of 39:4-138, in the case of any street under municipal or county jurisdiction, a municipality or county may, without the approval of the Commissioner of Transportation:

(1) By ordinance or resolution:

(A) Prohibit or restrict general parking;

(B) Designate restricted parking under 39:4-197.6;

(C) Designate time limit parking;

(D) Install parking meters.

(2) By ordinance, resolution or regulation:

(A) Designate loading and unloading zones and taxi stands;

(B) Approve street closings for periods up to 48 continuous hours; and

(C) Designate restricted parking under 39:4-197.5.

g. Nothing in this section shall allow municipalities or counties to establish angle parking or to reinstate or add parking on any street, or approve the closure of streets for more than 48 continuous hours, without the approval of the Commissioner of Transportation.

h. A municipality or county may, by ordinance or resolution, as appropriate, in any street under its jurisdiction, install or place an in-street pedestrian crossing right-of-way sign at a marked crosswalk or unmarked crosswalk at an intersection. The installation is subject to guidelines that issued by the Commissioner of Transportation after consultation with the Director of the Office of Highway Traffic Safety in the Department of Law and Public Safety. The guidelines shall be aimed at ensuring safety to both pedestrians and motorists including, but not limited to, the proper method of sign installation, dimensions, composition of material, proper placement points and maintenance. A certified copy of the adopted ordinance or resolution shall be transmitted to the Commissioner of Transportation within 30 days of adoption. The Commissioner may invalidate its provisions within 90 days of receipt of the certified copy if the Commissioner deems them inconsistent with the guidelines issued pursuant to this section. A claim against the State or a municipality or county for damage or injury under this subsection for a wrongful act or omission shall be dismissed if the municipality or county is deemed to have conformed to the guidelines required hereunder.

i. A municipality or county may, by resolution, in any street under its jurisdiction, designate stops, stations or stands for buses. The designation is subject to guidelines issued by the Commissioner of Transportation. The guidelines shall be aimed at ensuring safety to both pedestrians and motorists including, but not limited to, the proper method of sign installation, dimensions, composition of material, proper placement points and

maintenance. A certified copy of the adopted resolution shall be transmitted to the Commissioner of Transportation within 30 days of adoption. The Commissioner may invalidate its provisions within 90 days of receipt of the certified copy if the Commissioner deems them inconsistent with the guidelines issued pursuant to this section. A claim against the State or a municipality or county for damage or injury under this subsection for a wrongful act or omission shall be dismissed if the municipality or county is deemed to have conformed to the guidelines required hereunder.

Source: 39:4-8.

COMMENT

This section…

CHAPTER 24. POWERS OF MUNICIPALITIES, COUNTIES AND HIGHWAY COMMISSIONER

39A:24-MCC1. Permissible municipal ordinances or resolutions

Except as otherwise provided in 39:4-8, a municipality shall not pass an ordinance or resolution on a matter covered by, or which alters or nullifies the provisions of, this chapter or a supplement to this chapter. A municipality may pass ordinances or resolutions, or properly authorize the adoption of regulations by the official or entity with control of traffic in the public streets to regulate special conditions within the following limitations:

a. Ordinance:

(1) Altering speed limitations as provided in 39:4-98;

(2) Limiting use of streets to certain class of vehicles;

(3) Designating one-way streets;

(4) Regulating the stopping or starting of street cars at special places, such as railroad stations, public squares or in front of certain public buildings;

(5) Regulating the passage or stopping of traffic at congested street corners or other designated points;

(6) Regulating the parking of vehicles on streets and portions thereof, including angle parking as provided in 39:4-135;

(7) Regulating the parking of vehicles upon land owned or leased and maintained by the municipality, a parking authority or a school board of education, including lands devoted to the public parking of vehicles, and the entrances and exits to and from such land;

(8) Regulating the entrances to and exits from parking yards and parking places open to the public or to which the public is invited, except entrances or exits to and from State highways;

(9) Designating highways upon which buses and trucks over four tons gross weight may not exceed special speed limits based on engineering and traffic investigation and may be required to use a lower gear when descending areas with a grade in excess of 5%, fixing the special speed limits and selecting the gear to be used thereon.

b. Ordinance or resolution:

(1) Designating through streets, as provided in 39:4-140;

(2) Designating and maintaining as "no passing" zones portions of highways where overtaking and passing or driving to the left of the highway is deemed especially hazardous.

c. Ordinance, resolution or regulation:

(1) Designating stops, stations or stands for buses and taxis;

(2) Designating curb loading zones;

(3) Designating restricted parking spaces for use by persons issued special vehicle identification cards by the Commission pursuant to 39:4-204 and 39:4-197.5. A person parking a motor vehicle in a restricted parking space without a special vehicle identification card shall be liable to a fine of $100 for the first offense and, for subsequent offenses, a fine of at least $100 and up to 90 days community service on such terms and in such form as the court shall deem appropriate, or any combination thereof.

Source: 39:4-197;

COMMENT

This section…

39A:24-MCC2. Regulation of traffic on county or state highways

a. A municipality with a paid police force may, by ordinance, resolution, or regulation, pursuant to 39:4-197 and with the consent of the governing body of the county, regulate traffic and parking along any part of a county road within its corporate limits, in the same manner and to the same extent that it is authorized by law to regulate these things upon municipal roads and streets.

b. A municipality, in the exercise of its power to regulate parades, processions or assemblages, shall not prohibit normal traffic on a county or State highway without the consent of the Board of Chosen Freeholders or the State Highway Commissioner, as applicable.

c. The governing body of a municipality may, after adopting a resolution declaring that an emergent or temporary condition dictates adoption of special traffic regulations within the scope of any of the items listed in subparagraphs (1)(b) through (h), (2) and (3) of 39:4-197, provide by resolution for special traffic regulation for a period not to exceed three months from its effective date. Notice of special regulations shall be given as provided in 39:4-198.

Source: 39:4-197.1; 39:4-197.2; 39:4-197.3

COMMENT

This section…

39A:24-MCC3. Regulation of angle parking

An ordinance adopted by a municipality designating any street under its jurisdiction for angle parking shall not require the approval of any State officer or employee. The ordinance shall be of full force and effect from the date of its adoption or any effective date if the street designated in the ordinance has been marked for angle parking by the municipality for a period of not less than 10 consecutive years prior to the adoption of the ordinance or for a period not less than any 20 years during which such street has been under the jurisdiction of the municipality.

Source: 39:4-197.4.

COMMENT

This section…

39A:24-MCC4. "No passing" zones

a. The Commissioner may establish and maintain, by regulation, "no passing" zones on portions of highways under the Commissioner's jurisdiction where overtaking and passing, or driving to the left of the highway, are deemed especially hazardous. Notice to the public of the "no-passing" zones shall be given as provided in 39:4-198.

b. No resolution, ordinance or regulation passed, enacted or established under authority of this section shall be effective until submitted to and approved by the Commissioner of Transportation, as provided in 39:4-8.

Source: 39:4-201.1; 39:4-202.

COMMENT

This section…

39A:24-MCC5. Designation of highways

a. The Commissioner of Transportation, for State highways, may by regulation and the local authorities, for any highway under their jurisdiction, may by ordinance or resolution, subject to the approval of the Commissioner, except as otherwise provided in R.S. 39:4-8, designate through highways and erect "stop" signs or "yield" signs at specified entrances thereto, or may designate any intersection as a stop intersection or as a yield intersection and may erect "stop" signs or "yield" signs at one or more entrances to such intersections.

b. The Commissioner of Transportation may designate through streets, stop intersections and yield intersections, and upon the designation shall give notice thereof to the board or body charged with the maintenance of such streets or intersections. The board or body shall then comply with subsection (c). The Commissioner may by appropriate order withdraw the designation of through streets, stop intersections or yield intersections and thereafter cause the removal of "stop" signs or "yield" signs indicating such streets or intersections.

c. The official, board or body charged with the maintenance of a highway or section designated as a through street, or of an intersection designated as a stop intersection or a yield intersection, as provided in subsection (b) shall place "stop" signs or "yield right of way" signs, as in the designation provided, on the near right side of each highway intersecting the through street or of each entrance to the intersection where such sign is deemed necessary; except that on one-way streets, signs may be placed on either or both near sides of the intersecting street or entrance, if approved by the Commissioner.

d. When through streets intersect each other the Commissioner shall determine the highway to be known as the through street and cause the board or body having control of the highways to post only one of them.

e. The driver of a vehicle shall not enter upon or cross an intersecting street marked with a "stop" sign unless the driver first brings the vehicle to a complete stop at a

point within five feet of the nearest crosswalk or stop line marked upon the pavement at the near side of the intersecting street and shall proceed only after yielding the right of way to all traffic on the intersecting street which is so close as to constitute an immediate hazard. The driver of a vehicle shall not enter upon or cross an intersecting street marked with a "yield right of way" sign without first slowing to a reasonable speed for existing conditions and visibility, stopping if necessary, and yielding the right of way to all traffic on the intersecting street which is so close as to constitute an immediate hazard. A driver need not comply with this subsection if otherwise directed to proceed by a traffic or police officer or traffic control signal, or as provided in subsection (f).

f. One or more vehicles following directly in line with another vehicle and coming to a complete stop, caused by the first vehicle nearest the intersection complying with subsection (e), may proceed into or across the intersecting street without again coming to a complete stop. A driver of a vehicle approaching the intersection on the intersecting street shall not fail to yield to the vehicle so proceeding into or across the intersecting street.

Source: 39:4-140; 39:4-141; 39:4-143; 39:4-144; 39:4-145.

COMMENT

This section…

39A:24-MCC5. Signs required for local regulation of traffic

a. No ordinance, resolution or regulation of local authorities nor any regulation adopted by the Commissioner of Transportation pursuant to this chapter shall be effective unless notice is given to the public by placing a sign at the places where the ordinance, resolution or regulation is effective, and briefing its provisions on signs according to specifications contained in this chapter or specified by the current federal national standard.

b. These signs shall be so placed as to be easily read by pedestrians or operators of vehicles. Except in the case of "No Passing" zones, in lieu of or in addition to signs, notice shall be given to the public highway pavement markings which conform to the current federal national standard.

c. In addition to the requirements of the current federal national standard, a sign erected after the effective date of this chapter to notify the public that parking in a space is reserved for the *handicapped* shall also state the penalties which may be imposed for a violation. Signs erected prior to the effective date shall be modified within 12 months of the effective date to include the penalty information.

Source: 39:4-198.

COMMENT

This section…

39A:24-MCC6. Official signs

Local, county and State authorities may, on highways under their jurisdiction, erect and maintain appropriate official traffic signs not inconsistent with the provisions of

39:4-1 on a highway or at an intersection where the movements of traffic are regulated by traffic islands, traffic circles, channelizing islands, divisional islands, safety zones, grade separations or other physical structures erected by such authority. The authorities may also erect and maintain railroad advance warning signs and other appropriate official traffic signs where a highway crosses a railroad at grade.

Source: 39:4-199.1.

COMMENT

This section…

39A:24-MCC7. Safety zones

No safety zones or platforms ("safety isles"), traffic signal devices, guideposts or any other structures shall be erected, constructed, operated or maintained in, over or upon a state highway, without the prior permission of the state highway commission.

Source: 39:4-199.

COMMENT

This section…

39A:24-MCC8. Regulation of restricted parking for use of handicapped persons

a. Any municipality may, by ordinance, resolution or regulation, establish restricted parking spaces in front of residences, schools, hospitals and other public buildings and in shopping and business districts for use by persons who have been issued special vehicle identification cards pursuant to C. 39:4-205, when using a motor vehicle which displays a certificate *issued pursuant to C. 39:4-206*.

b. A municipality may, by ordinance, establish a restricted parking zone in front of a residence occupied by a handicapped person if a windshield placard or wheelchair symbol license plates have been issued for a vehicle owned by the handicapped person or by another occupant of the residence who is a member of the immediate family of the handicapped person, pursuant to C. 39:4-204, if such parking is not otherwise prohibited and would not interfere with the normal flow of traffic.

c. A municipality enacting an ordinance pursuant to subsection (b) shall provide for the issuance of permits which identify a specific motor vehicle and the location where it is to be parked. Permits shall only be issued to persons who can prove ownership and operation of the motor vehicle and residency at the location specified. The permit shall: be 5 ½ inches by 8 ½ inches in size, bear an appropriate certification of authenticity and be displayed prominently within the vehicle when parked so it may be seen from the middle of the street. Only a motor vehicle for which a valid permit has been issued and which has the permit properly displayed may park in the restricted parking zone indicated on the permit. A municipality may, by ordinance, establish a fee for such permits.

Source: 39:4-197.5; 39:4-197.6; 39:4-197.7;

COMMENT

This section…

39A:24-MCC8.5. Approval of restricted parking for handicapped persons

a. A municipality, which pursuant to the provisions of *39:4-8, 39:4-197, 39:4-197.5 or 39:4-197.6* designates restricted parking spaces for use by handicapped persons, may, in lieu of having the Department of Transportation inspect those parking spaces and any signs erected in association with them, designate the municipal engineer to determine whether or not those parking spaces and signs conform to the current standards prescribed by the Manual of Uniform Traffic Control Devices for Streets and Highways, adopted by the Commissioner of Transportation, and any other Department of Transportation rules and regulations governing such parking spaces and signs.

b. Any such parking spaces and signs shall be deemed approved and operational, and in need of no additional inspection by the Department of Transportation, when the municipal engineer, under his seal as a licensed professional engineer, shall certify to the commissioner that the parking spaces and signs:

(1) Have been approved by him after investigation; and

(2) Conform to the current standards prescribed by the Manual of Uniform Traffic Control Devices for Streets and Highways, as adopted by the commissioner, and any other Department of Transportation rules and regulations governing such parking spaces and signs.

c. The municipal engineer shall submit to the Commissioner, together with his certification, detailed information as to the location and number of parking spaces, a certified copy of the ordinance, resolution or regulation designating the restricted parking spaces, and such other information as the Commissioner shall deem necessary.

Source: 39:4-8.1.

COMMENT

This section…

39A:24-MCC9. Regulation of traffic on county roads

a. Except as provided in 39:4-8, the governing body of a county may not adopt resolutions or ordinances on a matter covered by or which alters or nullifies the provisions of this chapter, but ordinances or resolutions may be passed for the supervision and regulation of traffic on county roads within the limitations prescribed in 39:4-197, and the governing body may prescribe penalties for violations of the resolutions or ordinances. A fine of not less than $50 may be imposed upon the violator of an ordinance, resolution, or regulation establishing parking spaces for the handicapped.

b. Matters pertaining to the supervision and regulation of traffic, to be established by ordinance or resolution shall, in counties operating under 40:41A-1 et seq., be established by ordinance.

c. No ordinance or resolution adopted pursuant to this section shall be effective unless due notice to the public is given as provided in 39:4-198.

d. The penalties may be enforced before *a magistrate*. In default of the payment of the penalty, *the magistrate* may commit the offender to the *county jail* for a period not to exceed five days.

Source: 39:4-201;

COMMENT

The penalty in the subsection (a) has not yet been included in the classification system. If, after further research, it is determined that it is appropriate to do so, it will be included.

39A:24-MCC10. Municipal handicapped parking enforcement

a. *To implement the enforcement of 39:4-197.5 subject to 39:4-138, and 52:32-11 and spaces established pursuant to 52:27D-119 within its jurisdiction*, a municipality may establish a handicapped parking enforcement unit under the supervision of the municipality's chief law enforcement officer. The municipality may, by ordinance or resolution, provide procedures the program consistent with this chapter which may give persons selected and trained for the unit the authority to issue warnings or summonses for violations of any provision of any law, regulation, ordinance or resolution pertaining to illegal parking in restricted parking spaces for the handicapped. The unit shall concentrate its enforcement activity at shopping centers or malls in the municipality.

b. No person shall be appointed to or continue to be eligible for participation in the handicapped parking enforcement unit unless that person:

(1) Evidences no criminal record after a State criminal history record background check through the Division of State Police;

(2) Is a resident of the municipality in which the unit is established; and

(3) Is at least 18 years of age.

c. Preference for participation in this program may be given to persons who are handicapped as defined in 39:4-204 et seq.

d. Any person appointed to the municipality's handicapped parking enforcement unit shall be reimbursed for actual expenses of transportation incurred in the course of work at a rate at least equal to the rate established by the State and adjusted pursuant to 52:14- 17.1a.

e. The municipality shall require a person who fulfills the requirements for appointment in 39:4-197.10 to take a course of instruction designed to prepare the person to properly fulfill the responsibilities under the law. The curriculum shall include appropriate information concerning public relations, the laws, regulations, resolutions, ordinances and other guidelines concerning restricted parking enforcement and court proceedings. Before commencing enforcement activity with the unit, the person shall satisfactorily complete the prescribed course of instruction.

f. The governing body of a municipality, by ordinance, may appropriate annually sums of money for the purpose of compensating members of the handicapped parking enforcement unit for their services. The governing body of a municipality may provide

the members of the enforcement unit with coverage under New Jersey's Workers' Compensation law or may appropriate annually sums of money necessary to compensate such persons for any losses otherwise be compensable under that law. Neither the municipality nor the State shall be required to provide any benefits to members of the enforcement unit.

g. A person selected for the handicapped parking enforcement unit shall be provided, at the expense of the municipality, with a distinctive uniform on which is affixed a special patch identifying the individual's function and shall be provided with reasonable maintenance thereof.

Source: 39:4-197.9; 39:4-197.10; 39:4-197.11; 39:4-197.12; 39:4-197.13; 39:4-197.14; 39:4-197.15.

COMMENT

This section…

39A:24-MCC11. State highway Route 94 in Sussex and Warren counties

The Commissioner of Transportation may adopt regulations limiting the operation of commercial motor vehicles, tractors, trailers or semi-trailers upon that portion of State Highway Route No. 94 located in Sussex and Warren counties. The Commissioner shall give consideration to normal traffic volume in the municipalities of the respective counties so that residents and business establishments of these counties are not penalized.

Source: 39:4-197.8

COMMENT

This section…

39A:24-MCC12. State highway Route 29

a. Except for:

(1) Emergency vehicles;

(2) Government owned or leased vehicles;

(3) Vehicles which have an origin or final destination on or within three miles of the prohibited sections of State Highway Route 29; or

(4) Vehicles making an actual pickup, delivery or providing services at a location on or within three miles of the prohibited sections,

truck and truck-trailer combinations which exceed 26,000 pounds in gross registered vehicle weight, gross vehicle weight rating, or gross combination weight rating regardless of their dimensions, are prohibited from using State Highway Route 29, in either the northbound or southbound travel lanes, from its intersection with Interstate Route 95 to its northern terminus at State Highway Route 12.

b. Notwithstanding the provisions of section (a) above, the Commissioner of Transportation in accordance with C.39:4-8.3 may, after the holding of a public meeting, by written order provide for the use of the prohibited portions of State Route 29 by

vehicles engaged in the commercial transportation of certain rapidly setting concrete mixtures under circumstances in which adherence to the prohibitions set forth in this section makes delivery impossible or economically impracticable.

c. The driver, owner, lessee, bailee or any one of the foregoing of any truck or truck-trailer combination found or operated in violation of the provisions of this act shall be guilty of a class C offense for the first violation, and a class B offense for each subsequent violation.

Source: 39:4-197.16; 39:4-197.17; 39:4-197.18; 39:4-197.19; 39:4-197.20; 39:4-197.21.

COMMENT

Subsection (c) designates penalties according to the new penalty classification system contained in 39A:44-GP1.

CHAPTER 46. HIGHWAYS OWNED BY PUBLIC OR SEMI-PUBLIC ENTITIES

39A:46-PSP1. Provisions made applicable

a. Upon the filing of a written request by a person, the board of directors of a corporation, or the board of trustees of any corporation or other institution of a public or semipublic character not for pecuniary profit, incorporated under Title 15, with the clerk of any municipality of this State within which the property of such person or entity is situate, that the provisions of subtitle one, Title 39 shall be made applicable to the semipublic or private roads, streets, driveways, trails, terraces, bridle paths, parkways, parking areas, or other highways open to or used by the public, tenants, employees, and the members of such institutions for purposes of vehicular travel by permission of such person or entities and not as matter of public right, the provisions of subtitle 1, Title 39, of the Revised Statutes, shall, in the discretion of the municipal authorities vested with the police powers in the locality, and with the approval of the Commissioner of Transportation of this State, be made applicable thereto.

b. A written request shall contain the name and post office address of the person, corporation or institution and shall designate with reasonable accuracy the semipublic or private roads, streets, driveways, trails, terraces, bridle paths, parkways, parking areas, or other highway open to or used by vehicular traffic, to be affected.

c. Any individual or entity may rescind any request filed by it in conformity with subsections (a) and (b) by filing with the clerk of the municipality in which the original request was filed, a written rescission of the request. Upon the filing of a rescission, subtitle one, Title 39 shall cease to be applicable to the road, street, driveway, trail, terrace, bridle-path, parkway or other highway, used by vehicular traffic, set forth in such written rescission, effective as of the first day of January in the year next after the filing of the rescission. No rescission may be filed in the same year in which a request has been filed pursuant to subsection (a).

d. The filing of a written request, pursuant to subsection (a) shall not be deemed a dedication to public use of any such roads, streets, driveways, trails, terraces, bridle paths, parkways, parking areas, or other highways open to or used by vehicular traffic. The filing of a written request shall not be construed to prevent a persons or entity who owns the property, from prohibiting the use of the property set forth in subsection (a) or from requiring other or different or additional conditions than those specified in subtitle one, Title 39, or from regulating such use as may seem best to such persons, corporations or institutions.

e. The provisions of subtitle one of Title 39 shall be applicable to the semipublic or private roads, streets, driveways, trails, terraces, bridle paths, parkways or other highways open to or used by the public for purposes of vehicular traffic, either as a matter of right or otherwise, within any park maintained in whole or in part by any municipality.

Source: 39:5A-1; 39:5A-2; 39:5C-3; 39:5C-4.

COMMENT

This section…

CHAPTER 25. SPECIALIZED TRAFFIC REGULATION

39A:25-STR1. Regulation of traffic and parking on State property

a. The Division of State Police in the Department of Law and Public Safety is authorized to regulate traffic and the parking of motor vehicles on the grounds, and highways therein, owned by the State of New Jersey *at Trenton*, and the board, body or officer in charge of any State institution may likewise regulate traffic and the parking of motor vehicles on the grounds of such institution and highways on such grounds, and for such purpose may promulgate and enforce regulations to prevent traffic congestion and insure a proper, reasonable, and safe use of said grounds and highways.

b. Violation of any regulations described by this section is a class E offense.

c. Every magistrate and court having jurisdiction of criminal offenses and the violations of public laws committed in the municipality in which State grounds are located has jurisdiction to hear and determine violations of the regulations described in this section and to fix, impose and enforce payment of fines. All such fines shall be for the use and benefit of the State of New Jersey.

d. The State Police, the State Capitol Police, the city police of the city of Trenton, and other police officers of this State, including those specially appointed or designated to police the grounds of any State institution, have the authority to enforce the provisions of this chapter and the regulations upon the public highways located on the said grounds of the State of New Jersey within their respective jurisdictions.

e. The State Police and any board, body or officer in charge of any State institution are authorized to consult and co-operate with the Commissioner, and the county and municipal officials having jurisdiction over the highways and traffic regulations and enforcement in the city of Trenton, or in the municipality in which a State institution is located, as the case may be, in making and enforcing the regulations.

Source: 39:4-208; 39:4-209; 39:4-210; 39:4-211; 39:4-212.

COMMENT

Subsection (b) designates the penalty according to the new penalty classification system contained in 39A:44-GP1.

39A:25-STR2. Attorney General's powers during emergency

a. When the Attorney General determines that an emergency condition exists with regard to the flow of vehicular traffic in this State, the Attorney General may, through police agencies, determine and control the direction of the flow of such traffic on any State highway, municipal or county road, including the right to detour, reroute or divert any or all traffic necessary to remove the emergency. The traffic may be detoured, rerouted or diverted to other State highways, or municipal or county roads. The Attorney General shall also determine the type of vehicle or vehicles permitted to be operated on the State highway, or municipal or county road.

b. For the purpose of this chapter, the Attorney General may erect directional signals or signs, and assign police personnel as necessary for the manual direction of traffic during the emergency.

c. A person who fails to obey the directions of a police officer or fails to obey the directional signals or signs provided hereunder commits a class D offense.

Source: 39:4-213; 39:4-214; 39:4-215.

COMMENT

Subsection (c) designates the penalty according to the new penalty classification system contained in 39A:44-GP1.

39A:25-STR3. Regulation of commercial activity and solicitation on State or interstate highways

a. A person shall not sell or offer for sale goods or merchandise of any kind, engage in any other commercial activity, or solicit contributions for any cause, on any portion of the right of way of a State or interstate highway, including rest areas located on such right of way.

b. Nothing in this section shall be construed to inhibit the operation of commercial traffic, the rendering of emergency services to vehicles or travelers on the State or interstate highway system nor the installation and use of public telephones at locations on the rights of way approved by the State Department of Transportation.

Source: 39:4-216.

COMMENT

This section…

SIGNS, SIGNALS, ACCIDENTS AND REPORTS

CHAPTER 26. TRAFFIC SIGNS AND SIGNALS

39A:26-TSS1. Official traffic control signals and signs

a. The Commissioner may determine the character, type, location, placement and operation of all traffic control signal devices on the highways of this State. The Commissioner may determine the character, type, location, wording or symbol, and use of all traffic signs on the highways of this State. The Commissioner may adopt a manual and specifications for a uniform system of traffic control signals and signs consistent with this chapter for use upon public highways in the State. The uniform system shall conform to the then-current system as specified in the "Manual on Uniform Traffic Control Devices for Streets and Highways" adopted by the Federal Highway Administrator as a national standard.

b. Official traffic control signals shall be placed only by the authority of a public body or official having jurisdiction and only for the purpose of regulating traffic.

c. Traffic signs shall be placed only by the authority of a public body or official having jurisdiction and only for the purpose of regulating, warning or guiding traffic. This subsection shall not prohibit public utility companies or other authorized persons or companies from erecting temporary “MEN WORKING” signs to protect construction, maintenance or repair work on or within a public highway, provided such signs conform reasonably to the specifications in this chapter.

d. The Commissioner of Transportation shall promulgate regulations concerning the placement, specifications, location and maintenance of highway and traffic signs and markings guided by the current federal national standard.

e. A person may not place or maintain on or in view of a highway, an unauthorized traffic sign, device or contrivance which:

(1) *Purports to be* or is of a nature as to be mistaken for an official traffic sign;

(2) Attempts to direct the movement of traffic; or

(3) Hides from view or interferes with the effectiveness of an official traffic sign.

f. A person shall not place or maintain, nor shall a public authority permit, on any highway, a traffic sign or signal or its support on which appears any commercial advertising.

g. Subsections (e) and (f) shall not be deemed to prohibit the erection of signs, on private property adjacent to highways, giving useful directional information and of a type not likely to be mistaken for official signs.

h. A sign, device or contrivance prohibited by subsection (e) or (f) is a public and private nuisance and a citizen may maintain a *civil* action for its removal. The sole

question of law and fact shall be whether it is in imitation of or *likely* to be mistaken for an official traffic sign.

i. All signals and signs, whether initial installations or replacements, erected after the effective date of this chapter, must conform to this chapter.

Source: 39:4-120; 39:4-120.1; 39:4-183.1; 39:4-183.2; 39:4-183.3; 39:4-183.4; 39:4-183.6; 39:4-183.27.

COMMENT

This section…

39A:26-TSS2. Traffic lights

a. The colors red, amber and green shall be used for traffic signal lights. The colors shall be shown in the following sequence: green displayed for a predetermined number of seconds followed by amber for a reasonable time necessary for the clearance of traffic, followed by red, followed by green. The timing and cycle of signal lights shall be determined by the volume of traffic, counts of turning and through traffic and study of turns, special intersections, distance between intersections and speeds permitted.

(1) Green means permission for traffic to go, subject to the safety of others or the specific directions of an officer, official sign or special signal.

(2) Red means traffic must stop before entering the intersection or crosswalk and remain standing until green is shown alone, unless otherwise specifically directed to go by an officer, official sign or special signal. *(right on red?)*

(3) Amber when shown following green means traffic must stop before entering the intersection or nearest crosswalk, unless when the amber appears the vehicle is so close to the intersection that it cannot be stopped safely. *A distance of 50 feet from the intersection is considered a safe stopping distance for a speed of 20 m.p.h.* Vehicles within that distance which cannot be stopped safely, may proceed across the intersection or make a right or left turn unless the turning movement is specifically limited.

b. When a vertical arrangement of lights is used, red shall be placed at the top, amber in the middle and green at the bottom. When the lights are placed horizontally, red shall be at the left, amber in the middle and green at the right.

c. All other uses of green, red, amber or yellow lights located so as to be confused with traffic signals shall be discontinued.

Source: 39:4-105; 39:4-106; 39:4-107; 39:4-109.

COMMENT

This section…

39A:26-TSS3. Height and visibility of traffic lights

a. Traffic lights shall be plainly visible to approaching traffic at a distance of at least 150 feet from the intersection. If within the curb line, they shall be placed at a height between eight and 10 feet above the pavement. If on a bracket, mast arm or cable, the light shall clear the pavement by 14½ feet.

b. A traffic light shall be of such power as to be visible for at least 300 feet.

c. Traffic control signals shall be plainly visible to all traffic to be regulated and shall provide at least two indications for each approach at the intersection. At least one signal face shall be to the right of, or over, the traffic it is intended to control to give an unmistakable indication to traffic approaching and passing through the intersection area. This shall be accomplished by means of posts, brackets, mast arms or cables.

d. A traffic signal shall not obstruct the paved width of the highway, nor shall poles carrying signal supports be placed in pedestrian crosswalk lanes. A fixed raised safety zone shall not be construed to be included in the paved width of the highway.

e. Each intersection on a continuously controlled highway shall be controlled by signals or suitable signs. If traffic signals are not erected at every intersection the highway shall not be deemed a continuously controlled highway.

Source: 39:4-110; 39:4-111; 39:4-112; 39:4-113; 39:4-114.

COMMENT

This section…

39A:26-TSS4. Right or left turns; pedestrian intervals

a. The operator of a motor vehicle intending to turn:

(1) Right or left at an intersection where traffic is controlled by traffic control signals or by an officer, shall proceed to make either turn with proper care to avoid accidents and, except as provided in (2) below, only upon the "Go" signal unless otherwise directed by an officer, an official sign or special signal; or

(2) Right at an intersection where traffic is controlled by a traffic control signal shall, unless an official sign prohibits the same, proceed to make the turn upon a "Stop" or "Caution" signal with proper care to avoid accidents after coming to a full stop, observing traffic in all directions and yielding to all pedestrians and other traffic traveling in a direction in which the turn will be made. Both the approach and the turn shall be made as close as practicable to the right-hand curb or edge of the highway, unless the intersection is otherwise posted.

b. When approved by the Commissioner at intersections where traffic is controlled by traffic control signals:

(1) Special right or left turn movements may be provided by incorporating an additional green arrow lens in the signal which designates the special right or left turn movement by the direction of the arrow. When a green arrow lens is incorporated in a traffic control signal and the signal is operating to control traffic at an intersection, vehicles shall make turning movements in the direction of the arrow only when the lens is illuminated.

(2) A special pedestrian interval may be provided by incorporating an approved identification in the operation of a traffic control signal and pedestrians shall cross the highway only when the indication is illuminated, while vehicles and street cars shall stop and remain standing until the green is shown alone.

Source: 39:4-115; 39:4-116; 39:4-117.

COMMENT

This section…

39A:26-TSS5. Beacon or flashing signal

a. Beacon or flashing signals may be erected on pedestals or posts or suspended by means of mast arms or cables over the intersection, but the signal shall not be erected within the travelable portion of a highway, except as provided in 39:4-114.

b. Traffic control signals and beacon or flashing signals when operating as flashing mechanisms illuminated with rapid intermittent flashes shall conform to the following:

(1) Flashing red shall require drivers to come to a complete stop before entering or crossing the intersection. The driver shall proceed only after yielding the right of way to all traffic on the intersecting street which is so close as to constitute an immediate hazard.

(2) Flashing amber shall indicate the presence of danger and require drivers to proceed only with caution.

Source: 39:4-118; 39:4-119.

COMMENT

This section…

39A:26-TSS6. Form of traffic control signs

a. Permanent traffic signs should be made of metal or comparable durable material; wood may be used for large signs and for temporary and seasonal signs; heavy cardboard may be used for special occasions or emergencies.

b. The design of traffic signs shall conform to specifications adopted by the Commissioner, unless otherwise approved by the Commissioner. Where conditions require greater visibility necessitating a larger sign, standard shapes and colors shall be used, and standard proportions retained, so far as practicable. This shall not be deemed to prohibit the erection of enlarged bridge type signs or narrow longitudinal type signs suspended from mast arms over the highway.

c. Wording and arrangement for each type of traffic sign shall be as specified in this chapter with symbols on the sign taking the place of a word message wherever indicated. When messages or symbols other than those provided for are required, the signs shall be the same shape and color as standard signs of the same functional type.

d. Signs, other than temporary signs in the highway, shall be placed on the right side of the highway or over the highway, except traffic signs erected on or within traffic circles, islands and safety zones. All signs shall be mounted approximately at right angles to the direction of, and facing the traffic that they are intended to serve.

e. All traffic signs shall be kept in good order and clearly legible at all times. Signs damaged or destroyed shall be replaced promptly and signs no longer applicable shall be removed immediately.

Source: 39:4-183.8; 39:4-183.9; 39:4-183.10; 39:4-183.12; 39:4-183.15.

COMMENT

This section…

39A:26-TSS7. Illumination and reflectorization of traffic signs

a. All warning and regulatory signs, except pedestrian signs, urban parking signs and signs having significance only during daylight hours, shall be illuminated or reflectorized to be visible during hours of darkness from distances up to 500 feet. Other traffic signs may be illuminated or reflectorized if desirable.

b. All illumination shall be by white light, except that a flashing light incorporated in a sign installation shall be yellow when displayed with a warning sign or red when displayed with a stop sign, and shall be provided by means of:

(1) A light, within or behind the sign, illuminating the main message or symbol, or luminous tubing shaped to the lettering or symbol; or

(2) An attached or independently mounted flood light or flood lights, directed on the face of the sign.

c. Reflectorization of traffic signs shall reflect white light, except that if a reflecting coating is used as a background of a yellow sign it shall reflect yellow light, and shall be provided by means of:

(1) Reflector buttons or units set into the symbol or message;

(2) Reflecting coatings, either on the sign background or, where a black background or panel is used, in the symbol or message.

Source: 39:4-183.11

COMMENT

This section…

39A:26-TSS8. Use of flashing signals by municipalities

a. Subject to 39:4-8 and 27:1A-43 et seq., a municipality may determine the operation of any approved traffic control device as a flashing mechanism on municipally-owned and maintained streets and roads during the off-peak hours between 10 p.m. to 6 a.m. of any day of the week.

b. A municipality seeking to enact an ordinance, regulation or resolution under this section shall first submit written information to the Commissioner of Transportation indicating the location of the traffic control device where the use of flashing signals is requested, the intended hours of operation, data as to the traffic volume at, and the site distances from, each intersection, each location, and any other information requested by the Commissioner.

c. Any ordinance, regulation or resolution adopted hereunder shall become effective on the 90th day following enactment unless disapproved before that time by the Commissioner; provided that the Commissioner received a certified copy of the ordinance, regulation or resolution, as the case may be, within five days of its enactment.

Source: 39:4-120.2; 39:4-120.3; 39:4-120.4.

COMMENT

This section…

39A:26-TSS9. Public-private intersections

a. "Private road open to the public" means a private road leading from an establishment open to the public including a shopping center, restaurant, movie theater or arena. "Public-private intersection" means the intersection of a private road open to the public with a highway.

b. The owner of a private road open to the public which forms a public-private intersection may erect an official traffic control device at the public-private intersection after obtaining the required approval. All official traffic control devices shall conform to the same specifications as those regulating intersections.

c. Where the public-private intersection contains a State highway, the Commissioner of Transportation by regulation shall approve the erection of an official traffic control device. Where the public-private intersection contains a highway under the jurisdiction of local authorities, the local authorities by ordinance or resolution shall approve the erection of an official traffic control device, subject to the approval of the Commissioner. The Commissioner by appropriate order may withdraw an official traffic control device from a public-private intersection.

d. The owner of a private road open to the public shall obtain, install and maintain any official traffic control device at a public-private intersection.

e. The driver of a motor vehicle shall observe and obey an official traffic control device erected at a public-private intersection in the same manner as those erected at any other intersection. For a violation of this section, the offender shall be subject to the same penalties as exist in connection with violations at public intersections.

f. The Commissioner of Transportation may promulgate regulations to effectuate the purposes of this section.

Source: 39:4-120.5; 39:4-120.6; 39:4-120.7; 39:4-120.8; 39:4-120.9; 39:4-120.10; 39:4-120.11.

COMMENT

This section…

39A:26-TSS10. Traffic lights at the location of suburban fire engine houses

The State Highway Commissioner, after proper investigation and survey, subject to the approval of the Commissioner, may install and maintain traffic lights on State roads in suburban districts wherever a fire engine house is located on or within 1000 feet

of such road. The investigation and survey must clearly indicate a special hazard existing because of heavy traffic congestion or traffic speed on the road at the locality in question.

Source: 39:4-121.

COMMENT

This section…

39A:26-TSS11. Traffic control devices at intersections in counties or municipalities

a. A county or municipality in which a dangerous intersection has been established by reason of the construction of a State highway within its territorial limits may apply to the State Highway Commissioner for installation and maintenance of traffic lights at such intersection. After an application is made, the Commissioner shall *cause* a proper investigation and survey concerning the traffic hazards at the intersection and may install and maintain traffic lights at an appropriate intersection. The installation of traffic lights pursuant to this section shall receive the approval of the Commissioner.

b. The State Highway Commissioner may expend such money as necessary to install and maintain traffic lights at the places mentioned in (a) above, which money is to be withdrawn from funds appropriated to the Commissioner from the state highway fund.

c. Upon approval by the Department of Transportation of a request by a county or municipality for the installation, alteration or maintenance of a traffic control device on a county or municipal street or highway, the county or municipality may enter into an agreement with the Commissioner of Transportation for the Department to perform the work or contract for the installation, alteration or maintenance at the expense of the county or municipality.

Source: 39:4-121.1; 39:4-121.2; 39:4-121.3.

COMMENT

This section…

39A:26-TSS12. Traffic signals at school crossing intersections

a. A municipality may, upon the request of a board of education or the governing body of a private school, provide by resolution for the installation of a traffic control device or sign consistent with the current federal national standards to regulate motor vehicle traffic at an intersection located within 300 feet of a public or private school.

b. Before installation, the municipal or county engineer shall, *under seal as a licensed professional engineer*, certify to the governing body that the traffic control or device has been approved by the engineer after an investigation of the circumstances.

c. Before a resolution takes effect, the governing body shall submit a copy to the Commissioner of Transportation for review and approval with detailed information as to the location of streets, intersections and signs affected by any installation, and traffic court, accident and speed sampling data when appropriate, the municipal or county engineer's certification as described in subsection (b) above, and any other information as the Commissioner may require.

d. If the Commissioner disapproves the resolution, the Commissioner shall file with the governing body a written disapproval with a statement of reasons within 90 days following receipt of the resolution. If the Commissioner approves the resolution or fails to file a written disapproval within the 90-day review period, the resolution shall take effect immediately.

e. For the purposes of this section, the term "public or private school" has the meaning that term is given in 18A:1-1.

Source: 39:4-183.1a.

COMMENT

This section…

39A:26-TSS13. Older and mobility impaired persons crossing areas

The Commissioner of Transportation, regarding State highways, may by regulation and the local authorities, regarding any highway under their jurisdiction may, by ordinance or resolution, subject to the approval of the Commissioner, designate "Older and Mobility Impaired Persons Crossing" areas and erect appropriate signs.

Source: 39:4-183.1b.

COMMENT

This section…

39A:26-TSS14. Specific traffic signs

a. Railroad: The Commissioner shall, upon receiving notice from a railroad company that it has abandoned a particular line and the grade crossings thereon, order the removal of any advance warning signs for those crossings.

b. Construction: The design and location of standard construction warning signs shall:

(1) Be rectangular with longer dimension horizontal;

(2) Have a white background and black letters;

(3) Be four feet by six feet, or larger for higher approach speeds;

(4) Include the words “Construction Ahead” or other appropriate wording, the distance over which the warning applies, and the approved speed limit;

(5) Where construction work is in progress within the highway area, be located on each side of the highway, facing approaching traffic, 500 feet to 1,000 feet in advance of the beginning of the construction area, the distance depending on the approach speeds on that highway.

c. Location and information: Location and information signs shall conform to the design and specifications adopted by the Commissioner.

Source: 39:4-183.21; 39:4-183.22a; 39:4-183.24.

COMMENT

This section…

39A:26-TSS15. Curb and pavement markings

a. Markings shall be placed only by authority of a public body or official having jurisdiction, and only for the purpose of regulating, warning or guiding traffic. Markings shall be uniform in design, position and application. The Commissioner may adopt a uniform system of markings consistent with this chapter for use upon public highways within the State that shall correlate with and so far as possible conform to the current federal national standard.

b. Markings shall be of the following types:

(1) Pavement: including lines and word markings on the pavement;

(2) Curb: markings for parking prohibitions;

(3) Object: including objects within and adjacent to the highway; and

(4) Reflector: including reflector buttons, panels, delineators or similar devices, within or adjacent to the highway.

c. Markings may be reflectorized, and all obstructions within the highway shall be properly illuminated or reflectorized. The following markings shall normally be reflectorized:

(1) Center lines on pavement;

(2) "No Passing" lines;

(3) Striping or checkerboard squares on vertical surfaces of obstructions in or adjacent to the highway; and

(4) Reflector markers.

d. The use of words painted on the pavement shall be limited to very brief warning messages expressed in the shortest possible words. Regulatory messages may be used, but only in support of standard signs. All letters should be greatly elongated in the direction of traffic movement.

Source: 39:4-191.1; 39:4-191.2; 39:4-191.6; 39:4-191.7.

COMMENT

This section…

39A:26-TSS16. Safety zones and traffic islands

a. Safety zones and traffic islands shall be established and installed only by authority of a public body or official having jurisdiction, and for the purpose of regulating, segregating or guiding traffic.

b. Safety zones shall include loading and refuge islands and traffic islands shall include divisional and channelization islands.

c. The location, design and protection of safety zones and traffic islands shall conform to the specifications adopted by the Director.

Source: 39:4-196.1; 39:4-196.2; 39:4-196.3.

COMMENT

This section…

CHAPTER 40. ACCIDENTS AND REPORTS

39A:40-AR1. Application

The duties and responsibilities imposed by this chapter shall apply to accidents occurring upon highways and elsewhere throughout the State.

Source: 39:4-134.1

COMMENT

This section contains the substance of the original.

39A:40-AR2. Actions in event of accident

a. The driver of a vehicle knowingly involved in an accident resulting in injury or death to any person shall immediately stop the vehicle at the scene of the accident or as close as possible. If the driver does not stop at the scene, the driver shall immediately return to the scene. The driver shall remain at the scene until all requirements of subsections (e) and (f) are fulfilled. The stop at or near the scene shall be made without obstructing traffic more than is necessary. Violation of this subsection is a class A offense. The term of imprisonment shall be imposed only if the accident resulted in death or injury to a person other than the driver convicted of violating this section.

b. A person convicted under subsection (a) shall also forfeit the right to operate a motor vehicle in New Jersey for a period of one year from the date of the conviction for a first offense, and for a subsequent offense shall permanently forfeit the right to operate a motor vehicle in New Jersey.

c. The driver of a vehicle knowingly involved in an accident resulting only in damage to a vehicle, including the driver's own vehicle, or other property which is attended by any person, shall immediately stop the vehicle at the scene of the accident or as close as possible. If the driver does not stop at the scene, the driver shall immediately return to the scene. The driver shall remain at the scene until all requirements of subsections (e) and (f) are fulfilled. The stop at or near the scene shall be made without obstructing traffic more than is necessary. First violation of this subsection is a class C offense. Subsequent violation of this subsection is a class B offense.

d. A person convicted under subsection (c) shall, for a first offense, forfeit the right to operate a motor vehicle in New Jersey for a period of six months from the date of conviction, and for a period of one year from the date of conviction for any subsequent offense.

e. The driver of a vehicle knowingly involved in an accident resulting in injury or death to any person or damage to any vehicle or property shall give his or her name and address and exhibit his or her driver's license and registration certificate to:

(1) The person injured or whose vehicle or property was damaged;

(2) Any police officer;

(3) Any witness of the accident; and

(4) The driver or occupants of the vehicle collided with.

In the event that none of the persons specified are in condition to receive the information, and no police officer is present, the driver of the vehicle involved in the accident, after fulfilling all other requirements of this section insofar as possible to be performed, shall immediately report the accident to the nearest office of the local police, county police or State Police and submit the information specified in this subsection.

f. The driver of a vehicle knowingly involved in an accident resulting in injury or death to any person or damage to any vehicle or property shall render to a person injured in the accident reasonable assistance, including the carrying of that person to a hospital or a physician for medical or surgical treatment, if it is apparent that the treatment is necessary or it is requested by the injured person.

g. The driver of a vehicle which is knowingly involved in an accident with any vehicle or other property which is unattended, resulting in damage to such vehicle or other property, shall immediately stop, locate and notify the operator or owner of the vehicle or other property of the name and address of the driver and owner of the vehicle striking the unattended vehicle or other property. In the event an unattended vehicle is struck and its driver or owner cannot be immediately located, the driver of the striking vehicle shall securely attach, in a conspicuous place in or on such vehicle, a written notice giving the name and address of the driver and owner of the vehicle doing the striking. In the event property other than a vehicle is struck and its owner cannot be immediately located, the driver of the striking vehicle shall notify the nearest office of the local police department, county police or State Police and shall notify the owner of the property as soon as the owner can be identified and located. A person who violates this subsection shall be punished as provided in subsection (c).

h. The driver of a motor vehicle involved in an accident resulting in injury or death to a person or damage in the amount of $500 or more to a vehicle or property shall be presumed to have knowledge of such accident. The presumption is rebuttable. For purposes of this section, it shall not be a defense that the driver was unaware of the existence or extent of personal injury or property damage caused by the accident as long as the driver was aware that he or she was involved in an accident.

Source: 39:4-129.

COMMENT

This section contains the substance of the original but re-letters and renumbers the various subsections to make use of and reference to the section easier and clearer. Subsections (a) and (c) designate penalties according to the new penalty classification system contained in 39A:44-GP1. The level of the subsequent offense in subsection (c)

had been changed from class C to class B by the Commission to address concerns raised by law enforcement officers. The monetary limit in subsection (h) dealing with the presumption of knowledge has been increased from $250 to $500 to reflect the reality that even minor damage to a vehicle or property that may or may not be visible on brief inspection could exceed $500.

39A:40-AR3. Report of accident

a. The driver of a vehicle involved in an accident resulting in injury to or death of a person, or damage to property of any one person in excess of $1,000, shall by the quickest means of communication give notice of such accident to the local police department, the nearest office of the county police, or the State Police. In addition, the drive shall within 10 days after the accident forward a written report of the accident to the Commission on forms furnished by it.

b. A written report shall contain sufficiently detailed information with reference to the accident, including the cause, the conditions then existing, the persons and vehicles involved and such information as may be necessary to enable the Commissioner to determine whether the requirements for the deposit of security required by law are inapplicable by reason of the existence of insurance or other circumstances. The Commissioner may rely upon the accuracy of the information contained in a report, unless the Commissioner has reason to believe that the report is erroneous. The Commission may require operators involved in accidents to file supplemental reports of the accidents upon forms furnished by the Commission when the Commissioner deems the original report insufficient.

c. The reports described in this section shall be without prejudice, shall be for the information of the Commission, and shall not be open to public inspection. The fact that the reports have been made shall be admissible in evidence solely to prove compliance with this section, but no report or any part thereof shall be admissible in evidence for any other purpose in any proceeding or action arising out of the accident.

d. When the driver of a vehicle is physically incapable of giving immediate notice or making a written report of an accident as required, and there was another occupant in the vehicle at the time of the accident capable of giving notice or making a report, such occupant shall make or cause to be made the notice or report not made by the driver. When the driver is physically incapable of making a written report of an accident and the driver is not the owner of the vehicle, then the owner of the vehicle involved in the accident shall make the report.

e. A written report of an accident shall not be required by this section if a law enforcement officer submits a written report of the accident to the Commission pursuant to 39:4-131.

f. Violation of this section is a class D offense, if the accident resulted in damage to property only. Violation of this section when the accident resulted in personal injury or death is a class B offense. In both instances, the Commissioner may also revoke or suspend the driver's license and registration privileges of a person who violates this section.

g. For purposes of this section, it shall not be a defense that the driver of the motor vehicle was unaware of the existence or extent of personal injury or property damage caused by the accident as long as the driver was aware that the driver was involved in an accident.

Source: 39:4-130.

COMMENT

This section contains the substance of the original, but the lettered subsections are new and were added for ease of use and reference. The Commission increased the monetary limit of damage to property requiring reporting was increased from $500 to $1,000 to reflect the reality that even a minor incident could cause damage in excess of $500. Subsection (f) designates penalties according to the new penalty classification system contained in 39A:44-GP1. The level of the offense when personal injury or death occurred had been changed from class D to class B by the Commission to address concerns raised by law enforcement officers.

39A:40-AR4. Reports

a. The Commission shall prepare and supply to police departments and other suitable agencies, forms for accident reports calling for sufficiently detailed information with reference to a motor vehicle accident, including:

(1) The cause;

(2) The conditions then existing;

(3) The persons and vehicles involved;

(4) The compliance with 39:3-76.2e et seq. by the operators and passengers of the vehicles involved in the accident;

(5) Whether the operator of the vehicle was using a cellular telephone when the accident occurred; and

(6) Such other information as the Commissioner may require.

b. Every law enforcement officer who investigates a vehicle accident of which report must be made, or who otherwise prepares a written report as a result of an accident or thereafter by interviewing the participants or witnesses, shall forward a written report of such accident to the Commission, on forms furnished by it, within five days after the investigation of the accident.

c. Written reports required to be forwarded by law enforcement officers shall not be privileged or held confidential. Every citizen of this State shall have the right, during regular business hours and under supervision, to inspect and copy such reports and the right in person to purchase copies of the reports at the fee established by 47:1A-2. If copies of reports are requested other than in person, an additional fee of up to $5 for the first three pages and $1 per page thereafter may be added to cover the administrative costs of the report. Any rule, regulation, resolution or ordinance inconsistent with this chapter or establishing a fee in excess of the fee permitted by 47:1A-2 is superseded insofar as it is inconsistent or to the extent that it exceeds the fee so established.

d. The provisions of any other law or regulation to the contrary notwithstanding, reports obtained pursuant to this chapter shall not be subject to confidentiality requirements except as provided by 2A:84A-28.

Source: 39:4-131; 39:4-131.1.

COMMENT

This section contains the substance of the original sections, but consolidates two sections of the current statute. Lettering was added to the subsections for ease of use and reference.

39A:40-AR5. Reports by repairpersons

a. The person in charge of a garage or repair shop to which a motor vehicle is brought which shows evidence of having been involved in an accident for which a report must be made by the driver pursuant to 39:4-130 or of having been struck by a bullet shall report to the nearest office of the local police department, the county police, or the State Police within 24 hours after the motor vehicle is received. The reporting individual shall give the serial number, registration number and, if known, the name and address of the owner or operator of the vehicle.

b. Violation of this section is a class B offense.

Source: 39:4-132.

COMMENT

This section contains the substance of the original. Subsection b designates penalty according to the new penalty classification system contained in 39A:44-GP1. The level of the offense had been changed from class C to class B by the Commission to bring the penalty in accord with penalties for similar offenses and to address concerns raised by law enforcement officers.

39A:40-AR6. Report of death

Every county prosecutor, county medical examiner, or other official performing similar functions shall make a report to the Commissioner with respect to a death found to have been the result of a motor vehicle accident.

Source: 39:4-134.

COMMENT

This section is substantially identical to the original.

DUI

CHAPTER 41. OPERATION OF VEHICLE UNDER THE INFLUENCE

39A:41-DUI2. Operating motor vehicle with controlled dangerous substance or prescription legend drug in possession or in vehicle

a. A person shall not operate a motor vehicle on a highway while knowingly having in possession or in the motor vehicle a controlled dangerous substance as classified in Schedules I, II, III, IV and V of the "New Jersey Controlled Dangerous Substances Act," 24:21-1 et seq. or any prescription legend drug, unless the person has obtained the substance or drug from, or on a valid written prescription of, a duly licensed physician, veterinarian, dentist or other medical practitioner licensed to write prescriptions intended for the treatment or prevention of disease in man or animals or unless the person possesses a controlled dangerous substance pursuant to a lawful order of a practitioner or lawfully possesses a Schedule V substance.

b. Violation of this section is a class C offense. A person convicted of this violation shall forfeit the right to operate a motor vehicle for a period of two years from the date of conviction.

c. This section shall not apply to a duly licensed physician, dentist, registered pharmacist, veterinarian, nurse, podiatrist, intern or resident physician of a hospital, sanitarium or other medical institution; or to a hospital, sanitarium, clinical laboratory or any other medical institution; or to a State or governmental agency; or to any manufacturer, wholesaler, retailer or regular dealer in drugs.

d. This section shall not apply to common carriers or warehousemen while engaged in lawfully transporting or storing such drugs or to any employee acting within the scope of employment; or to public officers or employees in the performance of their official duties requiring possession or control of these drugs; or to temporary incidental possession by employees or agents of persons lawfully entitled to possession; or to persons whose possession is for the purpose of aiding public officers in performing their official duties.

Source: 39:4-49.1; 39:4-49.2; 39:4-49.3.

COMMENT

This section contains the substance of the source sections, but consolidates three of those sections. Subsection b designates penalty according to the new penalty classification system contained in 39A:44-GP1. The level of the offense had been changed from class D to class C by the Commission to bring the penalty in accord with penalties for similar offenses and to address concerns raised by law enforcement officers.

39A:41-DUI3. Driving while intoxicated

a. Except as provided in subsection (q), a person shall be subject to the consequences set forth in this section if that person:

(1) Operates a motor vehicle under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug, or

(2) Operates a motor vehicle with a blood alcohol concentration of 0.08% or more by weight of alcohol in the defendant's blood, or

(3) Permits another person under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug to operate a motor vehicle owned by or in custody or control of the first person or

(4) Permits another to operate a motor vehicle with a blood alcohol concentration of 0.08% or more.

b. As used in this section, "narcotic, hallucinogenic or habit- producing drug" includes an inhalant or other substance containing a chemical capable of releasing toxic vapors or fumes for the purpose of inducing a condition of intoxication, such as glue, cement or any other substance containing one or more of the following: acetone and acetate; amyl nitrite or amyl nitrate or their isomers; benzene; butyl alcohol; butyl nitrite, butyl nitrate or their isomers; ethyl acetate; ethyl alcohol; ethyl nitrite or ethyl nitrate; ethylene dichloride; isobutyl alcohol or isopropyl alcohol; methyl alcohol; methyl ethyl ketone; nitrous oxide; n-propyl alcohol; pentachlorophenol; petroleum ether; propyl nitrite or propyl nitrate or their isomers; toluene, toluol; or xylene or any chemical substance capable of causing intoxication, inebriation, excitement, stupefaction or the dulling of the brain or nervous system as a result of the inhalation of the fumes or vapors of the chemical substance.

c. When the operator of a motor vehicle is involved in an accident resulting in death, bodily injury or property damage, a police officer shall consider that fact along with all other facts and circumstances in determining whether there are reasonable grounds to believe that person was operating a motor vehicle in violation of this section.

d. For a first offense a person is subject to:

(1) A fine between $250 and $400, shall forfeit the privilege to operate a motor vehicle on the highways of this State for three months and is subject to a period of detainment between 12 and 48 hours during two consecutive days of not less than six hours each day and served according to the program requirements of the Intoxicated Driver Resource Centers (“IDRCs”) and, in the discretion of the court, a term of imprisonment not exceeding 30 days. These consequences apply if: the person's blood alcohol concentration is at least 0.08% but less than 0.10%; or the person operates a motor vehicle while under the influence of intoxicating liquor; or the person permits another person under the influence of intoxicating liquor to operate a motor vehicle owned by *him or in his* custody or control or permits another person with a blood alcohol concentration of at least 0.08% but less than 0.10% to operate a motor vehicle;

(2) A fine between $300 and $500, shall forfeit the privilege to operate a motor vehicle on the highways of this State for between seven months and one year and is subject to a period of detainment between 12 and 48 hours during two consecutive days of not less than six hours each day and served according to the program requirements of the IDRCs and, in the discretion of the court, a term of imprisonment of not more than 30 days. These consequences apply if: the person's blood alcohol concentration is 0.10% or higher; or the person operates a motor vehicle while under the influence of narcotic, hallucinogenic or habit-producing drug; or the person permits another person who is under the influence of narcotic, hallucinogenic or habit-producing drug to operate a motor vehicle owned by, or in the first person’*s* custody or control; or permits another person with a blood alcohol concentration of 0.10% or more to operate a motor vehicle,

(3) The provisions of 39:4-50.16 et al.

e. For a second offense, a person is subject to:

(1) A fine between $500 and $1,000, shall forfeit the privilege to operate a motor vehicle on the highways of this State for a period of two years, and, after the expiration of that period, may make application to the Commissioner for a driver's license, which may be granted at the discretion of the Commissioner, and shall be ordered by the court to perform community service for 30 days, the form and terms of which are in the discretion of court, and shall be sentenced to imprisonment for a term between 48 consecutive hours and 90 days, which shall not be suspended or served on probation.

(2) The requirement to install an ignition interlock device under 39:4-50.16 et al. or shall have the registration certificate and license plates revoked for two years under 39:3-40.1.

f. For a third or subsequent offense, a person is subject to:

(1) A fine of $1,000, shall forfeit the privilege to operate a motor vehicle on the highways of this State for 10 years beginning at the conclusion of any term of imprisonment, and shall be sentenced to imprisonment for not less than 180 days in a county jail or workhouse, except that the court may lower the term for each day, not exceeding 90 days, served participating in a drug or alcohol inpatient rehabilitation program approved by the IDRC.

(2) The requirement to install an ignition interlock device under 39:4-50.16 et al. or revocation of the registration certificate and license plates for 10 years under 39:3-40.1.

g. A conviction of a violation of a law of a substantially similar nature in another jurisdiction, regardless of whether that jurisdiction is a signatory to the Interstate Driver License Compact, shall constitute a prior conviction under this subsection unless the defendant can demonstrate by clear and convincing evidence that the conviction in the other jurisdiction was based exclusively upon a violation of a proscribed blood alcohol concentration of less than 0.08%.

h. If the driving privilege of a person is under revocation or suspension in New Jersey for a violation of any provision of Title 39 or Title 2C at the time of a conviction for a violation of this section, the revocation or suspension period imposed under this section shall commence on the date the existing revocation or suspension period concludes. If a person is less than 17 at the time of the imposition of sentence, the forfeiture, suspension or revocation imposed by this section shall commence immediately, run through the offender's 17th birthday and continue for the period set by this section. A court that imposes a term of imprisonment for a first or second offense under this section may sentence the defendant to: the county jail, the county workhouse, an inpatient rehabilitation program, an IDRC or to another facility approved by the Chief of the Intoxicated Driving Program Unit. For a third or subsequent offense a person may not serve a term of imprisonment at an IDRC.

i. A person convicted of a previous violation of this section need not be charged as a second or subsequent offender in the complaint in order to render that person liable to the punishment imposed on a second or subsequent offender, but if the second offense

occurs more than 10 years after the first offense, the court shall treat the second conviction as a first offense for sentencing purposes and if a third offense occurs more than 10 years after the second offense, the court shall treat the third conviction as a second offense for sentencing purposes.

j. A person convicted under this section must satisfy the screening, evaluation, referral, program and fee requirements of the Division of Alcoholism and Drug Abuse's Intoxicated Driving Program Unit, and of the IDRCs and a program of alcohol and drug education and highway safety, as prescribed by the *Chief Administrator*. The sentencing court shall inform a person convicted that failure to satisfy the requirements shall result in a mandatory two-day term of imprisonment in a county jail and a driver license revocation or suspension and continuation of revocation or suspension until the requirements are satisfied, unless stayed by court order pursuant to the Court Rules or 39:5-22. Upon sentencing, the court shall forward to the Intoxicated Driving Program Unit a copy of a person's conviction record. A fee of $100 shall be payable to the Alcohol Education, Rehabilitation and Enforcement Fund established pursuant to 26:2B-32 to support the Intoxicated Driving Program Unit.

k. Upon conviction of a violation of this section, the court shall immediately collect the New Jersey driver's license(s) of the person convicted and forward them to the Commissioner. The court shall inform the person convicted, orally and in writing, that if that person is convicted of personally operating a motor vehicle during a period of license suspension imposed pursuant to this section, the person shall be subject to the penalties established in 39:3-40. The person shall be required to acknowledge receipt of the written notification in writing. Failure to receive a written notice, or to acknowledge the receipt of a written notice, shall not be a defense to a subsequent charge of a violation of 39:3-40. If a person convicted under this section holds an out-of-State driver's license, the court shall not collect that license but shall notify the Commissioner, who shall notify appropriate officials in the licensing jurisdiction. The court shall, however, revoke the nonresident's privilege to operate a motor vehicle in this State.

l. Upon conviction of a violation of this section, the court shall notify the person convicted, orally and in writing, of the penalties for a second, third or subsequent violation. The person shall be required to acknowledge receipt of the written notice in writing. Failure to receive a written notice, or to acknowledge receipt of a written notice, shall not be a defense to a subsequent charge of a violation of this section.

m. The Commissioner shall promulgate regulations pursuant to the "Administrative Procedure Act," to establish a program of alcohol education and highway safety.

n. A person accused of a violation of this section liable to punishment as a second or subsequent offender is entitled to the same rights of discovery as allowed defendants pursuant to the Court Rules.

o. The counties, in cooperation with the Division of Alcoholism and Drug Abuse ("DADA") and the Commission, and subject to the approval of the DADA, shall designate and establish, on a county or regional basis, IDRCs. These Centers shall have the capability of serving as community treatment referral centers and monitors of a person's compliance with court ordered treatment, service alternative or community

service. Centers shall be administered by a counselor certified by the Alcohol and Drug Counselor Certification Board of New Jersey or other professional with a minimum of five years' experience in the treatment of alcoholism. Centers shall develop individualized treatment plans for all persons attending. The duration of any ordered treatment or referral shall not exceed one year. Centers shall establish networks with community alcohol and drug education, treatment and rehabilitation resources and receive monthly reports from the referral agencies regarding a person's participation and compliance with the program. Nothing shall bar Centers from developing their own education and treatment programs which must be approved by the DADA.

p. Upon a person's failure to report to the initial screening or any subsequent ordered referral, the IDRC shall promptly notify the sentencing court of the person's failure to comply. Required detention periods at the IDRCs shall be determined by the individual treatment classification assigned by the Intoxicated Driving Program Unit. Upon attendance at an IDRC, a person shall be required to pay a per diem fee of $75 for the first offender program or $100 for the second offender program. Any increases in the per diem fees shall be determined pursuant to regulations adopted by the Commissioner of Health and Senior Services in consultation with the Governor's Council on Alcoholism and Drug Abuse pursuant to the "Administrative Procedure Act". Centers shall conduct a program of alcohol and drug education and highway safety, as prescribed by the Commissioner. The Commissioner of Health and Senior Services shall adopt regulations pursuant to the "Administrative Procedure Act" to effectuate this subsection.

q. When a violation of this section occurs while:

(1) On property used for school purposes owned by or leased to an elementary or secondary school or school board, or within 1,000 feet of such property;

(2) Driving through a school crossing as defined in 39:1-1 if the municipality, by ordinance or resolution, has designated the school crossing as such; or

(3) Driving through a school crossing as defined in 39:1-1 knowing that juveniles are present if the municipality has not designated the school crossing as such by ordinance or resolution,

The convicted person shall be subject to the following penalties and a period of license suspension shall commence upon the completion of any prison sentence imposed:

(1) For a first offense, be fined between $500 and $800, be imprisoned for not more than 60 days and have the person’s driver’s license suspended for a period between one and two years;

(2) For a second offense, be fined between $1,000 and $2,000, perform community service for 60 days, be imprisoned between 96 consecutive hours, which shall not be suspended or served on probation, and 180 days, except that the court may lower the term for each day, up to 90 days, served performing community service as the court deems appropriate, and have the person’s driver’s license suspended for a period of four years; and,

(3) For a third offense, be fined $2,000, imprisoned for 180 days in a county jail or workhouse, except that the court may lower the term for each day, up to 90

days, served participating in a drug or alcohol inpatient rehabilitation program approved by the IDRC, and have the person's driver's license suspended for a period of 20 years.

r. A map or true copy of a map depicting the location and boundaries of the area on or within 1,000 feet of any property used for school purposes owned by or leased to any elementary or secondary school or school board produced pursuant to C. 2C:35-7 may be used in a prosecution under subsection (q). It shall not be relevant to the imposition of sentence pursuant to subsection (q) that the defendant was unaware that the prohibited conduct took place while on or within 1,000 feet of any school property or while driving through a school crossing, nor shall it be relevant that no juveniles were present on the school property or crossing zone at the time of the offense or that the school was not in session.

s. A court also may order a person convicted pursuant to subsection (a) to participate in a supervised visitation program as either a condition of probation or a form of community service, giving preference to those under the age of 21 at the time of the offense. Prior to ordering a person to participate in such a program, the court may consult with any person who may provide useful information on the defendant's physical, emotional and mental suitability for the visit to ensure that it will not cause any injury to the defendant. The court also may order that the defendant participate in a counseling session under the supervision of the IDRC prior to participating in the supervised visitation program. The supervised visitation program shall be at one or more of the following facilities which have agreed to participate in the program under the supervision of the facility's personnel and the probation department:

(1) A trauma center, critical care center or acute care hospital having basic emergency services, which receives victims of motor vehicle accidents for the purpose of observing appropriate victims of drunk drivers and victims who are, themselves, drunk drivers;

(2) A facility which cares for advanced alcoholics or drug abusers, to observe persons in the advanced stages of alcoholism or drug abuse; or

(3) If approved by a county medical examiner, the office of the county medical examiner or a public morgue to observe appropriate victims of vehicle accidents involving drunk drivers.

t. As used in subsection (s), "appropriate victim" means a victim whose condition is determined by the facility's supervisory personnel and the probation officer to be appropriate for demonstrating the results of accidents involving drunk drivers without being unnecessarily gruesome or traumatic to the defendant. If at any time before or during a visitation the facility's supervisory personnel and the probation officer determine that the visitation may be or is traumatic or otherwise inappropriate for that defendant, the visitation shall be terminated without prejudice to the defendant. The program may include a personal conference after the visitation, which may include the sentencing judge or the judge who coordinates the program for the court, the defendant, defendant's counsel, and, if available, the defendant's parents, to discuss the visitation and its effect on the defendant's future conduct. If a personal conference is not practicable because of the defendant's absence from the jurisdiction, conflicting time schedules, or any other reason, the court shall require the defendant to submit a written report concerning the

visitation experience and its impact on the defendant. The county, a court, any facility visited pursuant to the program, any agents, employees, or independent contractors of the court, county, or facility visited pursuant to the program, and any person supervising a defendant during the visitation, are not liable for any civil damages resulting from injury to the defendant, or for civil damages associated with the visitation which are caused by the defendant, except for willful or grossly negligent acts intended to, or reasonably expected to result in, that injury or damage. The Supreme Court may adopt court rules or directives to effectuate the purposes of this subsection.

u. In addition to any other fine, fee, or other charge imposed pursuant to law, the court shall assess a person convicted of a violation of the provisions of this section a surcharge of $100, of which amount $50 shall be payable to the municipality in which the conviction was obtained and $50 to the Treasurer of the State of New Jersey for deposit into the General Fund.

v. A parent or guardian who is convicted of a violation of this section and who, at the time of the violation, has a minor as a passenger in the motor vehicle is guilty of a disorderly persons offense. "Parent or guardian", means a natural parent, adoptive parent, resource family parent, stepparent, or any person temporarily responsible for the care, custody or control of a minor or upon whom there is a legal duty for such care, custody or control. "Minor" means a person who is 17 years of age or younger. In addition to the penalties otherwise prescribed by law, a person who is convicted under this subsection shall forfeit the privilege to operate a motor vehicle over the highways of this State for a period not exceeding six months and shall be ordered to perform community service for a period of not more than five days.

w. A person convicted of a first or second violation of this section and imprisoned in a county jail or workhouse in the county in which the offense was committed, shall not, after commitment, be released until the term of imprisonment imposed has been served. A person imprisoned in the county jail or workhouse may in the discretion of the court, be released on a work release program. No warden or officer having custody of the county jail or workhouse shall release a person so committed, unless the person has been released by the court on a work release program, until the sentence has been served. A person sentenced to an inpatient rehabilitation program may, upon petition by the treating agency, be released by the court to an outpatient rehabilitation program for the duration of the original sentence. Nothing in this subsection shall be construed to interfere in any way with the operation of a writ of habeas corpus, a proceeding in lieu of the prerogative writs, or an appeal. The Commissioner shall adopt regulations deemed necessary to effectuate the provisions of this subsection.

Source: 39:4-50; 39:4-50.15; 39:4-51.

COMMENT

This section contains the substance of the original sections. Original section 39:4-50 contains the bulk of the provisions pertaining to driving while intoxicated. The original section is approximately seven pages long and does not contain letters or numbers for all of the paragraphs that it contains, making it unnecessarily confusing to use and to reference. No substantive changes were made to the text of that section, but the language was rearranged to include numbers or letters for each paragraph, unlike the

source section. The text of the original section 39:4-50.15, which contained additional definitions, was included as subsection (v). The text of the original section 39:4-51, which dealt with sentencing, was included here as subsection (w).

39A:41-DUI4. Samples of breath

a. A person who operates a motor vehicle on any public highway or quasi-public area in this State shall be deemed to have given consent to the taking of samples of that person's breath for the purpose of making chemical tests to determine the content of alcohol in that person's blood if the taking of samples is made in accordance with the provisions of this chapter and at the request of a police officer with reasonable grounds to believe that the person has been operating a motor vehicle in violation of the provisions of 39:4-50.

b. A record of the taking of any such sample, disclosing the date, time and result of any chemical test, shall be made and a copy furnished or made available to the person so tested on request of that person.

c. In addition to the samples taken and tests made at the direction of a police officer, a person tested shall be permitted to have such samples taken and chemical tests of that person's breath, urine or blood made by a person or physician selected by the person tested.

d. A police officer shall inform the person tested of his or her rights under subsections (b) and (c).

e. No chemical test or specimen necessary thereto, may be made or taken forcibly and against physical resistance by the person sought to be tested. A police officer shall inform a person arrested of the consequences of refusing to submit to such test. A standard statement, prepared by the Commissioner, shall be read by the police officer to the person under arrest.

Source: 39:4-50.2.

COMMENT

This section contains the substance of the original.

39A:41-DUI5. Refusal to submit to chemical test

a. Except as provided in subsection (b), a municipal court shall revoke the driver's license of any individual who, after being arrested for a violation of 39:4-50, refuses to submit to a test provided for in 39:4-50.2 when requested to do so. The revocation shall be for a period of:

(1) Between seven months and one year for a first offense;

(2) Two years for a second offense; and

(3) Ten years for a third or subsequent offense.

b. A conviction or administrative determination of a violation of a law of a substantially similar nature in another jurisdiction, regardless of whether that jurisdiction

is a signatory to the Interstate Driver License Compact pursuant to 39:5D-1 et seq., shall constitute a prior conviction under this section.

c. A municipal court shall determine by a preponderance of the evidence whether:

(1) The arresting officer had probable cause to believe that the person had been driving or was in actual physical control of a motor vehicle on the public highways or quasi-public areas of this State while under the influence of intoxicating liquor or a narcotic, hallucinogenic, or habit-producing drug or marijuana;

(2) The person was placed under arrest, if appropriate; and

(3) The person refused to submit to the test upon request of the officer.

d. If the elements of the violation set forth in subsection (c) are not established, no conviction shall issue.

e. In addition to any other requirements provided by law, a person whose driver's license is revoked for refusing to submit to a test shall be referred to an IDRC and shall satisfy the Center's requirements for refusal to submit to a test as provided for in 39:4-50.2 or be subject to the penalties imposed for failure to do so. For a first offense, the revocation may be concurrent with or consecutive to any revocation imposed for a conviction under 39:4-50 arising out of the same incident. For a second or subsequent offense, the revocation shall be consecutive to any revocation imposed for a conviction under 39:4-50. In addition to issuing a revocation, except as provided in subsection (f), the municipal court shall fine a person convicted under this section between $300 and $500 for a first offense, between $500 and $1,000 for a second offense; and a fine of $1,000 for a third or subsequent offense.

f. If a violation occurs under the following circumstances, the penalty for a first offense shall be a fine between $600 and $1,000 and a license suspension between one and two years; for a second offense, a fine between $1,000 and $2,000 and a license suspension for four years; and for a third or subsequent offense, a fine of $2,000 and a license suspension for a period of 20 years:

(1) A violation on any property used for school purposes owned by or leased to an elementary or secondary school or school board, or within 1,000 feet of such school property;

(2) A violation while driving through a school crossing as defined in 39:1-1 if the municipality, by ordinance or resolution, designated the school crossing as such; or

(3) A violation while driving through a school crossing as defined in 39:1-1 knowing that juveniles are present if the municipality has not designated the school crossing as such by ordinance or resolution.

g. A map or true copy of a map depicting the location and boundaries of the area on or within 1,000 feet of any property used for school purposes owned by or leased to an elementary or secondary school or school board produced pursuant to 2C:35-7 may be used in a prosecution under this section. It shall not be relevant to the imposition of sentence pursuant to subsection (f) that the defendant was unaware that the prohibited conduct took place while on or within 1,000 feet of any school property or while driving

through a school crossing, nor shall it be relevant that no juveniles were present on the school property or crossing zone at the time of the offense or that the school was not in session.

Source: 39:4-50.4a.

COMMENT

This section contains the substance of the original.

39A:41-DUI6. Surcharges

a. Upon a conviction of a violation of 39:4-50 or 39:4-50.4a, the court shall collect from the defendant a surcharge of $100 in addition to any fine imposed on that defendant. The court shall forward the surcharge to the Commissioner of the Division of Motor Vehicles who shall deposit $95 of the surcharge into a "Drunk Driving Enforcement Fund" ("Fund"). This Fund shall be used to establish a statewide drunk driving enforcement program supervised by the Commissioner. The remaining $5 shall be deposited by the Commissioner into a separate fund for administrative expenses.

b. A municipality shall be entitled to periodic grants from the Fund in amounts representing its proportionate contribution to the fund. A municipality shall be deemed to have contributed the portion of the surcharge allocated to the Fund if the violation occurred within the municipality and the arrest resulting in conviction was made by the member of a municipal police force. The Division of State Police, interstate law enforcement agencies and county law enforcement agencies shall be entitled to periodic grants from the Fund in amounts representing their proportionate contributions to the Fund. Those entities shall be deemed to have contributed to the fund the portion of the surcharge allocated to the Fund if the arrest resulting in a conviction was made by a member of the particular enforcement agency. Grants from the Fund shall be used by law enforcement entities to increase enforcement of 39:4-50 by subsidizing additional law enforcement patrols and through other measures approved by the Commissioner.

c. The surcharge described herein shall not be considered a fine, penalty or forfeiture to be distributed pursuant to 39:5-41.

Source: 39:4-50.8.

COMMENT

This section contains the substance of the original.

39A:41-DUI7. Uniform enforcement and analysis

a. To promote the uniform enforcement of 39:4-50 and 39:4-50.2, the Attorney General shall promulgate guidelines concerning the prosecution of such violations, which shall be disseminated to county and municipal prosecutors.

b. To be considered valid under this chapter, chemical analyses of an arrested person's breath shall be performed according to methods approved by the Attorney General, and by a person certified for this purpose by the Attorney General. The Attorney General is authorized to approve satisfactory methods, to ascertain the qualifications of individuals to conduct such analyses, and to make certifications of such

individuals, which certifications are subject to termination or revocation at the discretion of the Attorney General.

c. The Attorney General shall prescribe a uniform form for reports of chemical analysis of breath to be used by law enforcement officers and others acting in accordance with the provisions of this chapter. The forms shall be sequentially numbered. Each individual or entity having control of a police department, in the case of forms distributed in a municipality, and the Commissioner and the Superintendent of State Police, in the case of forms distributed to law enforcement officers and other personnel in their divisions, shall be responsible for the furnishing and disposition of the forms. Each responsible party shall cause to be prepared records and reports relating to the forms and their disposition in such manner and at such times as the Attorney General shall prescribe.

d. If any provision or application of this chapter is found invalid, the invalid portion shall be deemed severable and such invalidity shall not affect other provisions or applications.

Source: 39:4-50.2a; 39:4-50.3; 39:4-50.5.

COMMENT

This section contains the substance of the original sections, but consolidates them.

39A:41-DUI8. Drunk Driving Victim's Bill of Rights

a. For purposes of this section, "victim" means, unless otherwise indicated, a person who suffers personal physical or psychological injury or death, or incurs loss of or injury to personal or real property, as a result of a motor vehicle accident involving another person driving while under the influence of drugs or alcohol. In the event of a death, "victim" means the surviving spouse, a child or the next of kin.

b. Victims shall have the right to:

(1) Make statements to law enforcement officers regarding the facts of the motor vehicle accident;

(2) Reasonable use of a telephone;

(3) Receive medical assistance for injuries resulting from the accident;

(4) Contact the investigating officer and see copies of the accident and autopsy reports;

(5) Be provided by the court, upon the written request of the victim, with:

(A) Information about their role in the court process;

(B) Timely advance notice of the date, time and place of the defendant's initial appearance before a judicial officer, submission to the court of any plea agreement, the trial and sentencing;

(C) Timely notification of the case disposition, including the trial and sentencing;

(D) Prompt notification of any decision or action in the case which results in the defendant's provisional or final release from custody; and

(E) Information about the status of the case at any time from the commission of the offense to final disposition or release of the defendant;

(6) Receive, when requested from any law enforcement agency involved with the offense, assistance in obtaining employer cooperation in minimizing loss of pay and other benefits resulting from their participation in the court process;

(7) A secure waiting area, after the motor vehicle accident, during investigations, and prior to a court appearance;

(8) Submit to the court adjudicating the offense a written or oral statement to be considered in deciding upon sentencing and probation terms. This statement may include the nature and extent of any physical, psychological or emotional harm or trauma suffered by the victim, the extent of any loss of earnings or ability to work suffered by the victim and the effect of the offense upon the victim's family.

(9) Consult with the prosecutor prior to dismissal of the case or the filing of a proposed plea negotiation with the court, if the victim sustained bodily injury or serious bodily injury as defined in 2C:11-1. This subsection shall not alter or limit the authority or discretion of the prosecutor to enter into any plea agreement which the prosecutor deems appropriate.

(10) When a need is demonstrated, the information in this section shall be provided in Spanish as well as English.

c. Nothing contained in this section shall mitigate any right a victim may have pursuant to the "New Jersey Tort Claims Act", 59:1-1 et seq.

Source: 39:4-50.10; 39:4-50.11; 39:4-50.12; 39:4-50.13.

COMMENT

This section contains the substance of the original sections, but consolidates them.

39A:41-DUI9. Operation of vehicle by person who has consumed alcohol but is under age to drink

a. A person under the legal age to purchase alcoholic beverages who operates a motor vehicle with a blood alcohol concentration of 0.01% or more, but less than 0.08%, by weight of alcohol in the person’s blood, shall forfeit the driving privilege in this State or be prohibited from obtaining a New Jersey driver’s license for a period between 30 and 90 days beginning on the date the person becomes eligible to obtain a license or on the day of conviction, whichever is later, and shall perform community service for between 15 and 30 days. In addition, the person shall satisfy the program and fee requirements of an IDRC or participate in a program of alcohol education and highway safety as prescribed by the Commissioner.

b. The penalties provided under this section shall be in addition to the penalties the court may impose under 2C:33-15, 33:1-81, 39:4-50 or any other law.

Source: 39:4-50.14.

COMMENT

This section contains the substance of the original.

39A:41-DUI10. Ignition interlock devices as alternative penalties

a. In sentencing an offender under 39:4-50, the court may order, in addition to any other penalty imposed by that section, the installation of an interlock device in every motor vehicle owned, leased or regularly operated by the offender following the expiration of the period of license suspension imposed under that section. The device shall remain installed for a period commencing immediately upon the return of the offender's driver's license after the required period of suspension has been served as follows:

(1) For a first offender, a period between six months and one year; and

(2) For a second or subsequent offender, a period between one and three years.

b. The court shall require that, for the duration of its order, an offender shall drive no vehicle other than one in which an interlock device has been installed pursuant to the order.

c. As used in this section, "ignition interlock device" or " device" means a blood alcohol equivalence measuring device which will prevent a motor vehicle from starting if the operator's blood alcohol content exceeds a predetermined level when the operator blows into the device.

d. The court shall notify the Director of the Division of Motor Vehicles when a person has been ordered to install an interlock device in a vehicle owned, leased or regularly operated by the person. The Division shall require that the device be installed before reinstatement of the person's driver's license that has been suspended pursuant to 39:4-50. The Division shall imprint a notation on the driver's license stating that the person shall not operate a motor vehicle unless it is equipped with an interlock device and shall enter this requirement in the person's driving record.

e. A person who fails to install an interlock device ordered by the court in a motor vehicle owned, leased or regularly operated by him shall have that person’s driver's license suspended for one year, in addition to any other suspension or revocation imposed under 39:4-50, unless the court determines a valid reason exists for the failure to comply. A person in whose vehicle an interlock device is installed pursuant to a court order who drives that vehicle after it has been started by any means other than that person’s own blowing into the device or who drives a vehicle not equipped with a device shall have that person’s driver's license suspended for one year, in addition to any other penalty applicable by law.

f. A person is a disorderly person who:

(1) Blows into an interlock device or otherwise starts a motor vehicle equipped with such a device for the purpose of providing an operable motor vehicle to a person who has been ordered by the court to install the device in the vehicle.

(2) Tampers or in any way circumvents the operation of an interlock device.

(3) Knowingly rents, leases or lends a motor vehicle not equipped with an interlock device to a person who has been ordered by the court to install an interlock device in a vehicle he owns, leases or regularly operates.

g. The Director shall certify or cause to be certified ignition interlock devices required by this act and shall publish a list of approved devices. A device shall not be certified unless the manufacturer enters into an agreement with the Division for the provision of devices to indigent offenders, as determined by the Director, at a reduced cost. The Director shall provide a copy of this list along with information on the purpose and proper use of interlock devices to persons who have been ordered by the court to install such a device in their vehicles.

h. Pursuant to the "Administrative Procedure Act", the Division shall promulgate regulations for the installation and use of ignition interlock devices. These regulations shall be consistent with the federal model specifications for ignition interlock devices issued by the National Highway Traffic Safety Administration including the following:

(1) Requiring that the ignition interlock system selected shall:

(A) Not impede the safe operation of the vehicle;

(B) Incorporate features that make circumvention difficult and that do not interfere with the normal use of the vehicle;

(C) Correlate closely with established measures of alcohol impairment;

(D) Operate accurately and reliably in an unsupervised environment;

(E) Resist tampering and give evidence when tampering is attempted;

(F) Be difficult to circumvent and require premeditation to do so;

(G) Require a deep lung breath sample as a measure of blood alcohol concentration equivalence;

(H) Operate reliably over the range of automobile environments; and

(I) Be manufactured by a party who will provide liability insurance.

(2) Designating the facilities where ignition interlock devices may be installed;

(3) Establishing guidelines for the proper use of ignition interlock devices; and

(4) Establishing guidelines for the provision of ignition interlock devices at reduced rates to persons who, according to standards specified by the division, qualify as indigent.

i. The Director may adopt, in whole or in part, the guidelines, rules, regulations, studies, or independent laboratory tests performed on and relied upon in the certification of ignition interlock devices by other states, their agencies or commissions.

Source: 39:4-50.17; 39:4-50.18; 39:4-50.19; 39:4-50.20; 39:4-50.21.

COMMENT

This section contains the substance of the original sections, but consolidates them.

39A:41-DUI11. Criminal and civil liability for facilitating operation of vehicle

a. When a person is summoned by or on behalf of a person who has been arrested for a violation of 39:4-50 or 39:4- 50.4a in order to transport or accompany the arrestee from the premises of a law enforcement agency, the law enforcement agency shall provide that person with a written statement advising of the potential criminal and civil liability for permitting or facilitating the arrestee's operation of a motor vehicle while the arrestee remains intoxicated. The person to whom the statement is issued shall acknowledge, in writing, receipt of the statement, or the law enforcement agency shall record the fact that the written statement was provided, but the person refused to sign an acknowledgment.

b. The Attorney General shall establish the content and form of the written statement and acknowledgment to be used by law enforcement agencies and may issue directives to ensure the uniform implementation of this section. Nothing in this subsection shall impose any obligation on a physician or other health care provider involved in the treatment or evaluation of the arrestee.

Source: 39:4-50.22.

COMMENT

This section contains the substance of the original, but restructures the language and adds paragraph identification.

39A:41-DUI12. Vehicle impoundment

a. When a person has been arrested for a violation of 39:4-50 or 39:4-50.4a, the arresting law enforcement agency shall impound the vehicle the person was operating at the time of arrest.

b. A vehicle impounded pursuant to this section shall be impounded for a period of 12 hours after the time of arrest or until such later time as the arrestee claiming the vehicle meets the conditions for release in subsection (d).

c. A vehicle impounded pursuant to this section may be released to a person other than the arrestee prior to the end of the impoundment period only if:

(1) The vehicle is not owned or leased by the person under arrest and the person who owns or leases the vehicle claims the vehicle and meets the conditions for release in subsection (d); or

(2) The vehicle is owned or leased by the arrestee, the arrestee gives permission to another person, who has acknowledged in writing receipt of the statement

required in 39:4-50a, to operate the vehicle and the conditions for release in subsection (d) are met.

d. A vehicle impounded pursuant to this section shall not be released unless the person claiming the vehicle:

(1) Presents a valid operator's license, proof of ownership or lawful authority to operate the motor vehicle, and proof of valid motor vehicle insurance for that vehicle;

(2) Is able to operate the vehicle in a safe manner and would not be in violation of Title 39; and

(3) Meets any other conditions for release established by the law enforcement agency.

e. A law enforcement agency impounding a vehicle pursuant to this section may charge a reasonable fee for towing and storage of the vehicle. The law enforcement agency may retain custody of the vehicle until that fee is paid.

Source: 39:4-50.23.

COMMENT

This section contains the substance of the original.

39A:41-DUI13. Consumption of alcoholic beverage by driver or passenger

a. A person shall not consume an alcoholic beverage while operating a motor vehicle. A passenger in a motor vehicle shall not consume an alcoholic beverage while the motor vehicle is being operated. This subsection shall not apply to a passenger of a charter or special bus operated as defined under 48:4-1 or a limousine service.

b. A person shall be presumed to have consumed an alcoholic beverage in violation of this section if an open or unsealed container of an alcoholic beverage is located in the passenger compartment of the motor vehicle, the contents of the alcoholic beverage have been partially consumed and the physical appearance or conduct of the operator of the motor vehicle or a passenger may be associated with the consumption of an alcoholic beverage. For the purposes of this section, the term "open or unsealed" shall mean a container with its original seal broken or a container such as a glass or cup.

c. Violation of this section is a class C offense. A person convicted of first violation of this section shall be informed by the court of the penalties for a subsequent violation. Imprisonment or community service penalties shall not be imposed for the first offense, but may be imposed for the subsequent offense.

Source: 39:4-51a.

COMMENT

This section contains the substance of the original. Subsection c designates penalty according to the new penalty classification system contained in 39A:44-GP1. Language was added to subsection c to preserve the distinction between first and subsequent offenses.

39A:41-DUI14. Open alcoholic beverage container

a. All occupants of a motor vehicle located on a public highway, or the right-of-way of a public highway, are prohibited from possessing an open or unsealed alcoholic beverage container. This subsection shall not apply to a passenger of a charter or special bus operated as defined under 48:4-1 or a limousine service. For the purposes of this section, the term "open or unsealed" shall mean a container with its original seal broken or a container such as a glass or cup.

b. A person shall not be deemed to be in possession of an opened or unsealed alcoholic beverage container if the container is located in the trunk of a motor vehicle, behind the last upright seat in a trunkless vehicle, or in the living quarters of a motor home or house trailer.

c. Violation of this section is a class C offense. A person convicted of first violation of this section shall be informed by the court of the penalties for a subsequent violation. Imprisonment or community service penalties shall not be imposed for the first offense, but may be imposed for the subsequent offense.

Source: 39:4-51b.

COMMENT

This section contains the substance of the original. Subsection c designates penalty according to the new penalty classification system contained in 39A:44-GP1. Language was added to subsection c to preserve the distinction between first and subsequent offenses.

LAW OF ROAD, OPERATION AND MOVING VIOLATIONS

CHAPTER 27. LAW OF ROAD AND RIGHT OF WAY

39A:27-LOR1. Traffic control

a. When a traffic or police officer is stationed in a highway for the purpose of directing traffic, the officer may regulate and control traffic at that point. All drivers of vehicles shall obey the officer's orders and directions, notwithstanding anything contained in this article.

b. The driver of every vehicle and every pedestrian shall obey the instructions of any applicable official traffic control device placed in accordance with the provisions of this chapter, unless otherwise directed by a traffic or police officer.

Source: 39:4-80; 39:4-81.

COMMENT

This section contains the substance of the originals, but consolidates two sections.

39A:27-LOR2. Keeping to right

a. Upon all highways of sufficient width, except one-way streets, the driver of a vehicle shall drive it on the right half of the highway as closely as possible to the right-

hand edge or curb of the highway, unless it is impracticable to do so, and except when properly overtaking and passing another vehicle.

b. When a highway has been divided into two by an intervening space, a physical barrier or a clearly indicated dividing section constructed to impede vehicular traffic, every vehicle shall be driven only upon the right-hand highway. No vehicle shall be driven over, across or within any dividing space, barrier or section, except through an appropriate opening or at a cross-over or intersection established by public authority.

c. In crossing an intersection of highways or the intersection of a highway and a railroad right of way, the driver of a vehicle shall at all times cause the vehicle to travel on the right half of the highway unless the right half is obstructed or impassable. This limitation shall not apply upon a one-way highway.

d. Drivers of vehicles proceeding in opposite directions shall pass each other to the right, each giving to the other at least one-half of the available traveled portion of the highway as nearly as possible.

Source: 39:4-82; 39:4-82.1; 39:4-83; 39:4-84.

COMMENT

This section contains the substance of the original sections, but consolidates them.

39A:27-LOR3. Overtaking vehicles

a. The driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass at a safe distance to the left and shall not again drive to the right side of the highway until safely clear of the overtaken vehicle. If vehicles on the highway are moving in two or more substantially continuous lines, the provisions of this paragraph and R.S. 39:4-87 shall not prohibit the vehicles in one line overtaking and passing the vehicles in another line either upon the right or left, or to prohibit drivers overtaking and passing upon the right another vehicle which is making or about to make a left turn.

b. The driver of an overtaking motor vehicle not within a business or residence district shall give audible warning with his horn or other warning device before passing or attempting to pass a vehicle proceeding in the same direction.

c. The driver of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting such movement in safety. In no event shall such movement be made by driving off the pavement or main-traveled portion of the highway.

d. The driver of a vehicle shall not drive to the left side of the center line of a highway in overtaking and passing another vehicle proceeding in the same direction unless the left side is clearly visible and free of oncoming traffic for a sufficient distance ahead to permit the overtaking and passing to be made in safety.

e. The driver of a vehicle shall not drive to the left of the center of a highway in order to overtake and pass another vehicle proceeding in the same direction upon the crest of a grade or upon a curve in the highway where the driver's view along the highway is obstructed within a distance of 500 feet.

f. Except when otherwise directed by an officer or when the lane in which the driver is operating is obstructed and impassable, the driver of a vehicle shall not cross an appropriately marked "No Passing" line in a "No Passing" zone established pursuant to a regulation of the State Highway Commissioner or an ordinance or resolution adopted by a municipal governing body or a board of chosen freeholders, as applicable.

g. The driver of a vehicle on a highway, about to be overtaken and passed by a vehicle approaching from the rear, shall give way to the right in favor of the overtaking vehicle, and shall not increase the speed of the vehicle until completely passed by the overtaking vehicle.

Source: 39:4-85; 39:4-86; 39:4-87.

COMMENT

This section contains the substance of the original sections, but consolidates them. Subsection (b) appears to be outdated (it was last amended in 1951) and it may be appropriate to remove that language.

39A:27-LOR4. One-way traffic

a. The Commissioner may, for highways under the Commissioner's jurisdiction, by regulation designate any highway for one-way traffic and shall erect appropriate signs giving notice. Local and county authorities may do the same with respect to highways under their jurisdiction by ordinance or resolution

b. Upon a highway or roadway properly designated and signed for one-way traffic, a vehicle shall be driven only in the direction designated.

Source: 39:4-85.1.

COMMENT

This section contains the substance of the original.

39A:27-LOR5. Traffic on marked lanes

When a highway has been divided into clearly marked lanes for traffic, drivers of vehicles shall obey the following regulations:

a. A vehicle shall normally be driven in the lane nearest the right-hand edge or curb of the highway when that lane is available for travel, except when overtaking another vehicle or in preparation for a left turn.

b. A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from that lane until the driver has ascertained that the movement can be made with safety.

c. Upon a highway which is divided into three lanes, a vehicle shall not be driven in the center lane except when overtaking or passing another vehicle or in preparation for a left turn or unless the center lane is at the time allocated for traffic moving in the direction the vehicle is proceeding and is posted to give notice of that allocation.

d. The State Highway Commissioner may by regulation or local authorities may by resolution or ordinance for highways under their jurisdiction designate right-hand

lanes for slow moving traffic and inside lanes for traffic moving at the speed designated. When the lanes are signposted or marked to give notice of the designation a vehicle may be driven in any lane allocated to traffic moving in the direction in which it is proceeding, but when traveling within the inside lanes the vehicle shall be driven at approximately the speed authorized in such lanes and speed shall not be decreased unnecessarily so as to block or hinder traffic.

e. When a highway has been divided in such a manner that there are three or more lanes for traffic in any one direction, no truck of 10,000 pounds registered gross weight or over shall be driven in the farthest left-hand lane, except when and to the extent necessary to prepare for a left turn, or when necessary to enter or leave such highway by entrance or exit to or from the left lane or when reasonably necessary in response to emergency conditions.

Source: 39:4-88.

COMMENT

This section contains the substance of the original.

39A:27-LOR6. Following

a. The driver of a vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard to: the speed of the preceding vehicle, the traffic upon, and condition of, the highway.

b. The driver of a truck traveling upon a highway, outside of a business or residence district, shall not follow another truck within 100 hundred feet, but this shall not be construed to prevent one motor truck overtaking and passing another.

Source: 39:4-89.

COMMENT

This section contains the substance of the original.

39A:27-LOR7. Right of way

a. The driver of a vehicle approaching an intersection shall yield the right of way to a vehicle which has entered the intersection. When two vehicles enter an intersection at the same time the driver of the vehicle on the left shall yield the right of way to the driver of the vehicle on the right.

b. The driver of a vehicle within an intersection intending to turn to the left shall yield to a vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard, but the driver having so yielded, and having given a signal when and as required by law, may make the left turn. Other vehicles approaching the intersection from the opposite direction shall yield to the driver making the left turn.

Source: 39:4-90.

COMMENT

This section contains the substance of the original.

39A:27-LOR8. Yielding to emergency vehicles

a. The driver of a vehicle upon a highway shall yield the right of way to any authorized emergency vehicle that is operated:

(1) On official business, or in the exercise of the driver's profession or calling;

(2) In response to an emergency call or in the pursuit of an actual or suspected violator of the law; and

(3) When an audible signal by bell, siren, exhaust whistle or other means is sounded from the emergency vehicle and when the emergency vehicle, except a police vehicle, is equipped with at least one lighted lamp displaying a red light visible under normal atmospheric conditions from a distance of at least 500 feet to the front of the vehicle.

b. Subsection (a) shall not relieve the driver of any authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall it protect the driver from the consequences of reckless disregard for the safety of others. Nothing in this section shall be construed to limit any immunity or defense otherwise provided by law.

c. No driver of any vehicle other than one on official business shall follow any authorized emergency vehicle, traveling in response to an emergency call, closer than 300 feet, or drive nearer to, or park the vehicle within 200 feet of, where any fire apparatus has stopped in answer to a fire alarm. Upon the immediate approach of an authorized emergency vehicle giving audible signal, and equipped, as required by this section, and unless otherwise directed by a police or traffic officer:

(1) The driver of every vehicle shall immediately drive to a position as near as possible and parallel to the right-hand edge or curb of the highway, clear of an intersection of highways, and shall stop and remain in that position until the authorized emergency vehicle has passed; and

(2) The person in control of a street car shall immediately stop the car clear of an intersection of highways and keep it stationary until the authorized emergency vehicle has passed.

d. It shall be lawful for any fire department vehicle when returning to its fire station from an emergency call to display a flashing red light visible under normal atmospheric conditions from a distance of at least 500 feet to the rear of the vehicle and no driver of any vehicle other than one on official business shall follow any such vehicle displaying said light closer than 300 feet.

Source: 39:4-91; 39:4-92; 39:4-92.1.

COMMENT

This section contains the substance of the original, but consolidates three sections that pertain to emergency vehicles.

39A:27-LOR9. Limited access highway

A person shall not drive a vehicle onto or from any limited-access highway except at such entrances and exits as are established by public authority.

Source: 39:4-90.1

COMMENT

This section contains the substance of the original.

39A:27-LOR10. Processions

If a procession takes longer than five minutes to pass a given point, it shall be interrupted every five minutes for the passage of traffic which may be waiting. Authorized emergency vehicles, United States mail vehicles and physicians' vehicles shall have the right of way through a procession.

Source: 39:4-93.

COMMENT

This section contains the substance of the original.

39A:27-LOR11. Railroad blocking highway

No employee of a railroad company shall operate a locomotive, train or crossing gate in such a manner as to unnecessarily prevent or interfere with the use of a highway for the purpose of travel.

Source: 39:4-94.

COMMENT

This section contains the substance of the original.

39A:27-LOR12. Highway, road or street closed with posted notice and barricade

Whenever by order of the Commissioner of Transportation, a State highway, or by resolution of a county governing body, a county public road, or by appropriate action of the governing body of a municipality, a municipal street or road is declared closed to traffic for any lawful purpose, and a notice of the closing has been posted at the beginning and ending points of the closed section of the highway, road, or street, and a barricade erected at those points, any person who without appropriate permission:

a. Mutilates or removes the notice, or damages, destroys or removes any warning sign or signal, or removes the barricade placed or posted at any point along the highway, road or street in connection with or relating to the closed portion thereof; or

b. Drives a vehicle over or upon the closed section of the highway, road or street which he or she knows or should have reason to know has been closed to traffic; or

c. Violates any rule or regulation for the use of the highway, road or street duly made by the Commissioner or county or municipal governing body, as authorized by law, shall be subject to a fine of not more than $100.

Source: 39:4-94.2.

COMMENT

This section contains the substance of the original. The penalty has not been included in the classification system. If, after further research, it appears that it is appropriate to do so, subsection (c) will be changed.

CHAPTER 42. OPERATION OR ACTS AFFECTING OPERATION OF VEHICLE

39A:42-O1. Leaving vehicle with engine running

A person who leaves a motor vehicle with its engine running, stationary on a highway, unoccupied by a person able to control it, and without setting the hand brake to prevent the vehicle from moving, shall be guilty of a class E offense.

Source: 39:4-53.

COMMENT

This section contains the substance of the original but designates the penalty according to the new penalty classification system contained in 39A:44-GP1.

39A:41-O1.5. Operating, using or tampering with motor vehicle without owner's consent

a. A person shall not operate or use any motor vehicle without the permission of the owner.

b. Violation of subsection (a) is a class C offense.

c. A person shall not interfere or tamper with a motor vehicle or put its engine in motion while it is standing, without its owner's permission.

d. First violation of subsection (c) is a class E offense. Subsequent violation is a class D offense.

Source: 39:4-48; 39:4-49.

COMMENT

This section contains the substance of the original sections, but consolidates them. Subsections (b) and (d) designate penalties according to the new penalty classification system contained in 39A:44-GP1.

39A:42-O2. Trailers and towing

a. A motor vehicle shall not be used on public highways while drawing more than 2 motor-drawn vehicles. A "double saddle-mount," means mounting the front of a motor vehicle by use of a coupling device, known as a "saddle-mount," on the rear of a towing vehicle and mounting the front of another motor vehicle by use of another "saddle-mount" on the rear of the towed vehicle. The Commissioner may, by regulation, prescribe standards to insure the sufficiency of the "saddle-mount" devices, lighting, braking and towing methods in double saddle-mount operations and in any other combination of motor-drawn vehicles. The over-all length of any combination of vehicles shall not exceed the over-all length limitation prescribed in 39:3-84, and any violation is subject to the penalty provided for violations of the over-all length limitation.

b. When operated on the highways of this State, trailers shall be connected to the towing vehicle by at least one chain or cable, in addition to the hitch bar, of sufficient

strength to hold the drawn vehicle on a hill if the hitching bar becomes disconnected, or shall be provided with an adequate device to prevent its rolling backward.

c. An "attachable auxiliary motor vehicle axle" means a single axle mounted on two or more wheels, an equal number of wheels on each side, which may be attached, and dismounted, to a truck or truck tractor to form a tandem axle. When a tandem axle is formed with an attachable motor auxiliary axle, the allowable gross weight on the axle shall be the same as set forth in 39:3-84 for tandem axles if the centers of the axles are on or between two parallel transverse vertical planes spaced between 40 and 96 inches apart. Violations of the allowable gross weight shall be treated as provided in 39:3-84.3.

d. An attachable auxiliary axle, upon satisfactory proof of ownership, may be registered on a gross weight basis in the same manner as commercial vehicles under 39:3-20 and shall display one *registration* plate or tab of a classification determined by the Commissioner and located on the auxiliary axle as prescribed by the Commissioner. Unless registered and displaying a registration plate or tab, no such attachable auxiliary axle owned by a resident of this State may be operated on the highways of this State. No attachable auxiliary axle owned by a non-resident shall be operated on the highways of this State unless registered in accordance with the laws respecting the registration of motor vehicles of the jurisdiction in which the non-resident resides, if registration is required therein, and which has conspicuously displayed any identification marker furnished by the jurisdiction.

e. When an attachable auxiliary axle registered in New Jersey is operated on a highway in conjunction with a tractor-semitrailer combination, and one unit of the combination is registered in this State and the other in a foreign jurisdiction, known as a "mixed combination," the registered weight of the auxiliary axle may be added to the registered weight of the New Jersey registered unit in determining if the over-all registered weight conforms with the "mixed combination" registration requirements of 39:3-20. *If the over-all registered weight of the auxiliary axle and the New Jersey registered unit is less than half the combined gross weight of the entire combination, then the owner, lessee and bailee shall be subject to the penalty formula set forth in 39:3-20.*

f. When a registered auxiliary axle or converter dolly appears on a highway as part of a tractor-semitrailer combination or a combination of two drawn vehicles registered in a foreign jurisdiction or jurisdictions, the entire combination shall be deemed to be of foreign origin and the registration requirements as to "mixed combinations" shall not apply, provided the auxiliary axle or converter dolly is registered with the director for a gross weight of 10,000 pounds. A "converter dolly" means an attachable auxiliary frame with hitch bar and fifth wheel with the axle or axles mounted on 2 or more wheels, an equal number of wheels on each side, which may be attached to a semitrailer to form a trailer.

g. A converter dolly, upon satisfactory proof of ownership, may be registered on a gross weight basis in the same manner as commercial vehicles under 39:3-20 and shall display one *registration* plate or tab of a classification to be determined by the Commissioner and located on the dolly as prescribed by the Commissioner. Unless registered and displaying a registration plate or tab, no converter dolly owned by a resident of this State shall be operated on the highways of this State. No converter dolly

owned by a non-resident shall be operated on the highways of this State unless registered in accordance with the laws of the jurisdiction in which the non-resident resides if registration is required therein, and which conspicuously displays an identification marker if furnished by the jurisdiction.

h. It shall be unlawful for any combination of two drawn vehicles registered under this Title with a gross weight of load and vehicles in excess of the gross weight provided on the registration certificates to be operated on the highways of this State. In any violation thereof, the owner, lessee and bailee shall be subject to the penalty provided in 39:3-20. In any combination of two drawn vehicles, with or without use of a converter dolly, and part or parts of the combination is registered in New Jersey and part or parts in a foreign jurisdiction or jurisdictions, the registration requirements as to "mixed combinations" and the penalty for violations provided in 39:3-20 shall apply.

i. An auxiliary axle or converter dolly, for the purposes of this section shall not be considered a "vehicle" or "motor vehicle" as defined in 39:1-1.

j. Violation of this section, except as specifically provided herein, is a class C offense.

Source: 39:4-54.

COMMENT

This section contains the substance of the original, although it adds lettering with which to identify the subsections. The language in subsection (e) regarding mixed combination vehicles and penalty provisions will be checked with MVC. Subsection (j) designates penalty according to the new penalty classification system contained in 39A:44-GP1. The level of the offense was changed from class D to class C by the Commission to bring the penalty in accord with penalties for similar offenses and to address concerns raised by law enforcement officers.

39A:42-O3. Steep grades and curves

The driver of a motor vehicle traversing a steep grade or mountain highway shall hold the vehicle under control and as near the right-hand side of the highway as reasonably possible, and when traveling on a down grade on a highway, shall not coast with the gears of the vehicle in neutral. When approaching a curve where the view is obstructed within a distance of 200 feet along the highway, the driver shall give audible warning with a horn or other warning device.

Source: 39:4-55.

COMMENT

This section contains the substance of the source.

39A:42-O4. Delaying traffic and obeying directions of officer

a. A person shall not operate a vehicle in such condition, so constructed or so loaded, as to be likely to cause delay in traffic or accident to man, beast or property.

b. A vehicle or street car shall not be permitted to occupy a street as to interfere with or interrupt the passage of other vehicles, nor shall the driver of a vehicle or street

car drive such vehicle or street car into an intersection if preceding traffic prevents immediate clearance of the intersection.

c. Drivers of vehicles shall at all times comply with any direction, by voice or hand, of a member of a police department, a peace officer, or the Commissioner, when enforcing a provision of this chapter.

d. When stopped by a law enforcement officer during the period when lighted lamps are required, the driver of a vehicle equipped with an interior light shall, upon request of the officer, activate an interior light of the vehicle to illuminate the driver's compartment of the vehicle. Purposeful violation of this subsection is a class E offense.

Source: 39:4-56; 39:4-57; 39:4-57.1; 39:4-67.

COMMENT

This section contains the substance of the original sections, but combines them. Subsection (d) designates the penalty according to the new penalty classification system contained in 39A:44-GP1.

39A:42-O5. Willful disablement or abandonment

a. A person shall not operate a vehicle upon the public highways, bridges or tunnels in this State and willfully cause the vehicle to become disabled for the purpose of interfering with or obstructing the passage of other vehicles.

b. A person shall not willfully abandon a vehicle upon the public highways, bridges or tunnels in this State for the purpose of interfering with or obstructing the passage of other vehicles.

c. First violation of this section is a class C offense, and the license to operate a motor vehicle of a person convicted of this violation shall be suspended for a period between one and five years. Subsequent violation is a class B offense, and the license to operate a motor vehicle of a person convicted of this violation shall be suspended for five years. In fixing the penalty, the court shall consider the hazard to the public safety and the public inconvenience created by the conduct.

d. The registration of a motor vehicle used by a person in violation of this section shall be suspended for between 90 days and one year unless the owner can satisfactorily demonstrate to the Commissioner that the vehicle was used without the owner’s knowledge and consent. In fixing the period of suspension, the Commissioner shall consider the threat to public safety and the public inconvenience caused by the conduct.

e. In view of the serious threat to the health, safety and welfare of the people of this State that may be presented by any concerted effort, plan or demonstration involving the use and operation of vehicles to impede, hamper, stall and interfere with the ordinary progress of vehicular traffic on the highways and bridges of the State, the penalties and sanctions provided by this section shall be applicable under such circumstances.

Source: 39:4-56.1; 39:4-56.2; 39:4-56.3; 39:4-56.4.

COMMENT

This section contains the substance of the original sections, but combines them. Subsection c designates penalties according to the new penalty classification system contained in 39A:44-GP1.

39A:42-O6. Abandonment

a. It is unlawful for a person to abandon a motor vehicle on or along a highway, other than a limited access highway, or other public property or on any private property without the consent of the owner or other person in charge of the private property. A vehicle that has remained on or along a highway or other public property or on private property without consent for a period of more than 48 hours, or for any period without current license plates, shall be presumed to be an abandoned motor vehicle. Vehicles used or to be used in the construction, operation or maintenance of public utility facilities and which are left in a manner which does not interfere with the normal movement of traffic shall not be considered abandoned vehicles for the purposes of this section.

b. It is unlawful for a person to abandon a motor vehicle on or along any limited access highway without the consent of the State Department of Transportation or other entity having jurisdiction over the limited access highway. A vehicle remaining on or along such a highway for a period of more than four hours, or for any period without current license plates, shall be presumed to be an abandoned motor vehicle. Legally parked vehicles, such as vehicles parked in a designated rest area for not more than 12 hours, or vehicles used or to be used in the construction, operation or maintenance of public utility facilities and which are left in a manner which does not interfere with the normal movement of traffic shall not be considered abandoned vehicles for the purposes of this section.

c. First violation of subsections (a) or (b) is a class C offense, and a driver's license of a person convicted of the first violation shall be suspended or revoked for not more than two years. Subsequent violation of these subsections is a class B offense, and a driver's license of a person convicted of the subsequent violation shall be suspended or revoked for not more than five years.

d. A person shall not park or leave unattended a vehicle on private property without the consent of the owner or other person in control or possession of the property or for a period in excess of that for which consent was given, except in the case of emergency or disablement of the vehicle in which case its owner or operator shall arrange for the expeditious removal of the vehicle. This section shall not apply to manufactured or mobile homes left unattended and for which there exists or existed a rental agreement to occupy a space on the property. A law enforcement officer may, in the performance of the officer's duty, enter the property on request of the property owner on whose property a vehicle is parked in violation of this subsection to issue a summons for the violation.

e. The owner or other person in control or possession of the property on which a vehicle is parked or left unattended in violation of subsection (d) may remove or hire another person to remove and store the vehicle. It shall be the obligation of the owner of the vehicle to pay the reasonable costs for the removal and any storage that results from the removal, before the owner is entitled to recover possession of the vehicle. If the

owner of the vehicle refuses to pay the costs or fails to make a claim for the return of the vehicle within 90 days after its removal, the vehicle may be sold at public auction in accordance with the provisions of 2A:44-20 through 2A:44-31.

Source: 39:4-56.5; 39:4-56.6; 39:4-56.7.

COMMENT

This section contains the substance of the original sections, but consolidates them. Subsection © designates penalties according to the new penalty classification system contained in 39A:44-GP1.

39A:42-O7. Towing service contract

a. In this section:

(1) "Public entity" means the State, and any county, municipality, district, or political subdivision and any authority, agency, board or body thereof.

(2) "Public highway" means every street, road or highway open to the use of the public for the purpose of vehicular travel.

(3) "Private entity" means an entity other than a public entity with jurisdiction over a road or highway in the State open to the use of the public.

b. Any towing service under contract to a public or private entity to tow disabled motor vehicles which, after being called to remove a disabled motor vehicle, fails to remove from a public highway any motor vehicle debris or material in the area surrounding the vehicle shall be guilty of class E offense if the debris or material is likely to cause injury to a person operating a motor vehicle or substantial damage to another motor vehicle. A towing service shall not be required to remove any debris or material which may be hazardous such as oil, gasoline, kerosene or other petroleum or chemical products, or debris or material which the service is not equipped to remove.

Source: 39:4-56.8.

COMMENT

This section contains the substance of the original. Subsection (b) designates penalty according to the new penalty classification system contained in 39A:44-GP1.

39A:42-O8. General requirements and prohibitions

a. A person shall not drive a vehicle that is constructed, loaded or covered so as to prevent the driver from having a clear view of the traffic following and at its sides, unless it is equipped with a device that will show the driver the road to the rear and side.

b. A person shall not stand in a highway for the purpose of or while soliciting a ride from the operator of any vehicle other than a bus or a street car.

c. An operator of a vehicle shall not stop the vehicle on highway for the purpose of letting off or taking on a person, other than at the curb or side of the highway, or knowingly permit a person to alight from or enter upon the vehicle while it is in motion.

d. A vehicle waiting at the curb shall promptly give move to provide a place to a vehicle about to take on or let off passengers.

e. A person shall not ride upon the rear end of a vehicle without the consent of the driver, and when so riding, no part of the person's body shall protrude beyond the limits of the vehicle.

f. A person shall not ride on, and an operator shall not knowingly allow a person to ride on, a vehicle or a portion thereof not designed or intended for the conveyance of passengers. This subsection shall not apply to an employee engaged in the necessary discharge of a duty.

g. Except for emergency vehicles and vehicles being operated at the direction of a law enforcement officer, a person shall not drive a vehicle on public property other than public highways, or on private property, to avoid a traffic control signal or sign. Violation of this subsection is a class D offense.

h. The operator of a street car or bus shall not knowingly operate the same while any door is open.

i. A person driving a motor vehicle shall, at the request of or signal by a person riding or driving a horse in the opposite direction, cause the motor vehicle to stop and remain stationary as long as may be necessary to allow the horse to pass.

j. A person shall not operate a motor vehicle, except a motor vehicle operated for emergency purposes by a fire department or ambulance or rescue squad, in a manner which causes the destruction of agricultural crops, fences, fields or other agricultural or recreational property. "Recreational property" means any public or private property used as a golf course, park, or other similar purpose.

Source: 39:4-58; 39:4-59; 39:4-61; 39:4-62; 39:4-65; 39:4-66.2; 39:4-68; 39:4-69; 39:4-72; 39:4-97a.

COMMENT

This section contains the substance of the original sections, but combines an assortment of provisions into a single section. Subsection g designates penalty according to the new penalty classification system contained in 39A:44-GP1. The level of the offense was changed from class C to class D by the Commission to bring the penalty in accord with penalties for similar offenses and to address concerns raised by law enforcement officers.

39A:42-O9. Endangering person or property

a. Notwithstanding any provision of law to the contrary, it shall be unlawful for any person to drive or operate a motor vehicle in an unsafe manner likely to endanger a person or property.

b. Violation of subsection (a) is a class C offense.

(1) No motor vehicle penalty points shall be assessed for the first or the second violation of this section.

(2) Motor vehicle penalty points shall be assessed pursuant to 39:5-30.5 for the third or subsequent violation of this section.

c. An offense committed under this section that occurs more than five years after the prior offense shall not be considered a subsequent offense for the purpose of assessing motor vehicle penalty points under subsection (b).

d. In addition to any fine, fee or other charge imposed pursuant to law, the court shall assess a person convicted of an offense under subsection (a) a surcharge of $250 to be collected by the court and distributed to the Division of Revenue in the Department of the Treasury as a New Jersey Merit Rating Plan surcharge pursuant to 17:29A-35.

Source: 39:4-97.2.

COMMENT

This section contains the substance of the original. Subsection (b) designates penalty according to the new penalty classification system contained in 39A:44-GP1. The Commission received recommendations to abolish the surcharge or take other action to reduce the penalty for this offense since it was designed to be a "break" statute for drivers. It was suggested that, at more than $400, it is no break. It was suggested that someone with a good driving record might actually be better off taking the 2 points.

39A:42-O10. Soliciting trade or contributions

a. Except as provided in this section, a person shall not stand in a highway to stop or delay the progress of a vehicle to solicit the purchase of goods, merchandise or tickets, or to solicit contributions for any cause. The only question of law and fact in determining guilt under this section shall be whether goods, merchandise or tickets were tendered or offered for sale, or whether a contribution was solicited.

b. A municipal governing body by ordinance may authorize charitable organizations as defined in 45:17A-20 to solicit contributions in a highway other than interstate highways or toll roads maintained pursuant to 27:12C-1 et seq. or 27:25A-1 et seq., 27:12B-1 et seq., or 27:23-1 et seq., subject to regulations properly promulgated by the Department of Transportation in consultation with the Division of Highway Traffic Safety.

c. A municipality shall not authorize charitable organizations to solicit on any county highway or intersection of a county highway without the approval of the board of chosen freeholders. A municipality shall not authorize charitable organizations to solicit on any State highway or intersection of a State highway without the approval of the Commissioner of Transportation. The board of chosen freeholders and the Commissioner of Transportation shall not unreasonably withhold approval.

d. In addition to the prohibition contained in the subsection (a), the Commissioner of Transportation may, when public safety requires, designate by regulation any highway or sections of any highway as a location wherein the standing of any person or the parking of any vehicle for the purpose of soliciting the purchase of goods, merchandise or tickets, or for the purpose of soliciting contributions for any cause, is deemed hazardous or inimical to the proper flow of traffic, and is prohibited. Each highway or section so designated shall be clearly marked by appropriate signs erected and maintained by the

entity with responsibility for the maintenance of the highway, upon receipt by the entity of written notice from the Commissioner of the adoption of such regulation. A person shall not stand in, and an operator shall not allow a vehicle to stand in, any section of a highway so designated and marked to stop or delay the progress of a vehicle for the purpose of soliciting the purchase of goods, merchandise or tickets, or for the purpose of soliciting contributions for any cause. The only question of law and fact in determining guilt under this subsection shall be whether goods, merchandise or tickets were tendered or offered for sale, or whether a contribution was solicited. When public safety requires, the Commissioner of Transportation may, by regulation, amend or alter any designation made pursuant to this subsection. Nothing contained in this subsection shall be construed to authorize or permit any person to stand in or to allow a vehicle to stand in any highway if doing so is prohibited by any other provision of the law, or by any ordinance, resolution, regulation or order duly adopted.

e. Violation of any provision of this section is a class D offense.

Source: 39:4-60.

COMMENT

This section contains the substance of the original. Subsection (e) designates the penalty according to the new penalty classification system contained in 39A:44-GP1.

39A:42-O11. Rotating flashing lights

No rotating or flashing light which imitates or resembles rotating or flashing lights used by public and governmental agencies or any public utility to indicate emergency or hazardous conditions shall be erected or used within 100 feet of a highway within the State. Every such prohibited light or signal is a public nuisance and the entity with jurisdiction over the highway or the municipality in which the prohibited act takes place may remove it or cause it to be removed without notice. This subsection does not apply to a rotating or flashing light used to indicate an emergency or hazardous condition.

Source: 39:4-60.1; 39:4-60.2; 39:4-60.3.

COMMENT

This section contains the substance of the original sections, but combines them.

39A:42-O12. Throwing or dropping objects from vehicle

a. A person who throws, places or deposits, or who permits to be thrown, placed, or deposited from a vehicle, any glass or other sharp, injurious or cutting substance in or upon a public highway of this State shall, except when acting under the authority of the governing body of a municipality, be guilty of a class C offense and may forfeit the privilege to operate a motor vehicle in this State for a period of 30 days.

b. A person shall not throw or drop any object or debris of any nature from a vehicle, whether in motion or not, when such vehicle is on a highway. The words "object or debris of any nature" as used in this section shall include a cigarette, cigar, match, or ashes, or any substance or thing in and of itself likely to cause or fuel a fire, but such inclusion does not limit the generality of the words "object or debris of any nature." A

person who violates this section shall be subject to a fine between $200 and $1,000 for each offense. The Director shall cause to be erected on the highways signs deemed necessary to inform people using the highways of the consequences of violating the provisions of this subsection. There shall be a rebuttable presumption that the owner of the vehicle, if present in the vehicle, or, in the owner's absence, the driver of the vehicle, is presumed to be responsible for any violation of this section, if:

(1) An object or debris of any nature is thrown or dropped from the vehicle by an occupant of the vehicle;

(2) There are two or more occupants in the vehicle; and

(3) It cannot be determined which occupant of the vehicle is the violator.

Source: 39:4-63; 39:4-64; 39:4-64.1.

COMMENT

This section contains the substance of the original sections, but combines them. Subsection (a) designates the penalty according to the new penalty classification system contained in 39A:44-GP1. The penalty in subsection (b) has not been included in the classification system. If, after further research, it appears that it is appropriate to do so, the language of this subsection will be changed.

39A:42-O13. Entering or leaving alley, driveway, garage or private road; crossing sidewalk

a. When the driver of a vehicle about to enter an alley, driveway, garage, or private road from a highway finds it necessary to drive upon the sidewalk, the driver shall first yield the right of way to all pedestrians on the sidewalk, if they are so close as to constitute an immediate hazard.

b. The driver of a vehicle emerging from an alley, driveway, garage, or private road shall stop the vehicle immediately prior to driving upon the sidewalk, and shall enter the sidewalk only after yielding the right of way to a pedestrian on the sidewalk, if the pedestrian is so close as to constitute an immediate hazard.

c. The driver of a vehicle emerging from an alley, driveway, garage, or private road shall stop the vehicle immediately prior to entering or crossing a highway, and shall enter or cross the highway only after yielding the right of way to the traffic on the highway, if the traffic is so close as to constitute an immediate hazard.

d. A person shall drive a horse or vehicle across, or allow it to stand on, a sidewalk unless crossing the sidewalk to go into a yard or lot, and then not without the consent of the owner of the premises. This subsection shall not prohibit the passing of a horse or vehicle over a sidewalk in front of an alley or passageway with the owner's consent, or any municipality from causing to be driven or operated along or over the sidewalks within the municipality any vehicle for the purpose of maintaining or cleaning the sidewalks.

Source: 39:4-66; 39:4-66.1; 39:4-71.

COMMENT

This section contains the substance of the original sections, but combines them.

39A:42-O14. Use of wireless communications device

a. As used in this section, "hands-free wireless telephone" means a mobile telephone with an internal feature or function or with an attachment or addition, whether or not permanently part of such mobile telephone, enabling a user to engage in a conversation without the use of either hand. This definition does not preclude the use of either hand to activate, deactivate, or initiate a function of the telephone. "Use" of a wireless telephone shall include, but not be limited to, talking or listening to another person on the telephone.

b. This section supersedes any county or municipal ordinance concerning the use of a wireless telephone by an operator of a motor vehicle.

c. The use of a wireless telephone by an operator of a moving motor vehicle on a public highway shall be unlawful except when the telephone is a hands-free wireless telephone, provided that its placement does not interfere with the operation of federally required safety equipment and the operator exercises a high degree of caution in the operation of the motor vehicle.

d. The operator of a motor vehicle may use a hand-held wireless telephone while driving with one hand on the steering wheel only if:

(1) The operator has reason to fear for his life or safety, or believes that a criminal act may be perpetrated against himself or another person; or

(2) The operator is using the telephone to report to appropriate authorities a fire, a traffic accident, a serious road hazard or medical or hazardous materials emergency, or to report the operator of another motor vehicle who is driving in a reckless, careless or otherwise unsafe manner or who appears to be driving under the influence of alcohol or drugs.

e. A hand-held wireless telephone user's telephone records or the testimony or written statements from appropriate authorities receiving such calls shall be deemed sufficient evidence of the existence of all lawful calls made under subsection (c).

g. Enforcement of this section by State or local law enforcement officers shall be accomplished only as a secondary action when the operator of a motor vehicle has been detained for a violation of Title 39 or another offense.

h. Violation of this section is a class C offense. A person shall not be imprisoned or required to perform community service for violation of this section. No motor vehicle points or automobile insurance eligibility points pursuant to 17:33B-14 shall be assessed for this offense.

i. The prohibitions set forth in this section are not applicable to any of the following persons while in the actual performance of their official duties: a law enforcement officer; a member of a paid, part-paid, or volunteer fire department or company; or an operator of an authorized emergency vehicle.

j. The Commissioner shall develop and undertake a program to notify and inform the public as to the provisions of this section.

Source: 39:4-97.3; 39:4-97.4; 39:4-97.5.

COMMENT

This section contains the substance of the original sections, but combines them. Subsection (h) designates the penalty according to the new penalty classification system contained in 39A:44-GP1, specifying that only monetary penalties may be imposed. It is noted that subsection (g), like other sections in this chapter, must be changed to reflect the current state of the law.

CHAPTER 43. SPEED

<note:"vehicle" includes street cars>

39A:43-S1. Racing

a. A person who operates a motor vehicle on a public highway for a wager or in a race or for the purpose of making a speed record or who arranges for, manages, encourages, or assists in the holding of, or the attempting to hold, any such race or speed race event, is a disorderly person.

b. First violation of this section is a class C offense. Subsequent violation is a class B offense.

Source: 39:4-52; 39:5C-1.

COMMENT

This section contains the substance of the original sections, but combines them. Subsection (b) designates penalties according to the new penalty classification system contained in 39A:44-GP1. The level of the offense had been changed from class D to class C for the first offense and from class C to class B for subsequent offense by the Commission to bring the penalty in accord with penalties for similar offenses and to address concerns raised by law enforcement officers.

39A:43-S2. Reckless driving

a. A person who drives a vehicle heedlessly, in willful or wanton disregard of the rights or safety of others, in a manner to endanger, or be likely to endanger, a person or property, is guilty of reckless driving.

b. First violation of this section is a class B offense. Subsequent violation is a class A offense.

Source: 39:4-96.

COMMENT

This section contains the substance of the original. Subsection b designates penalties according to the new penalty classification system contained in 39A:44-GP1. The level of the offense had been changed from class C to class B for the first offense and from class C to class A for the subsequent offense by the Commission to bring the penalty in accord with penalties for similar offenses and to address concerns raised by law enforcement officers.

39A:43-S3. Careless driving

A person who drives a vehicle carelessly, or without due caution and circumspection, in a manner to endanger, or be likely to endanger, a person or property, shall be guilty of careless driving.

Source: 39:4-97.

COMMENT

This section contains the substance of the original.

39A:43-S4. Slow speed

No person shall drive a motor vehicle at such a slow speed as to impede or block the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law.

Source: 39:4-97.1.

COMMENT

This section contains the substance of the original.

39A:43-S5. Rates of speed

a. Subject to 39:4-96 and 39:4-97 and except in instances where a lower speed is specified in this chapter, it shall be prima facie lawful for the driver of a vehicle to drive it at a speed not exceeding the following:

(1) Four mph across a sidewalk.

(2) 25 miles per hour ("mph"), when passing through a school zone during recess, when the presence of children is clearly visible from the highway, or while children are going to or leaving school, during opening or closing hours;

(3) 25 mph in any business or residential district;

(4) 35 mph in any suburban business or residential district;

(5) 50 mph in all other locations, except as provided in 39:4-98.3 et al.

b. Except as provided in 39:4-8, whenever it is determined on the basis of an engineering and traffic investigation that any speed in this section is greater or less than is reasonable or safe under the conditions at any intersection or other place on any part of a highway, the Commissioner of Transportation, for State highways, may by regulation and municipal or county authorities, for highways under their respective jurisdictions, may by ordinance or resolution, as appropriate, and subject to the approval of the Commissioner of Transportation, designate a reasonable and safe speed limit. Such a designated speed limit shall be prima facie lawful when appropriate signs giving notice of the speed are erected at the intersection, or other place or part of the highway.

c. Appropriate signs giving notice of the speed limits authorized under subsection (a) may be erected if the Commissioner or the municipal or county authorities, as the case may be, determine they are necessary. Appropriate signs giving notice of the speed limits authorized under subsection (b) shall be erected by the Commissioner or the municipal or county authorities, as appropriate. The Commissioner of Transportation shall cause the erection and maintenance of signs at such points of entrance to the State as are deemed advisable, setting forth the lawful rates of speed.

d. The driver of every vehicle shall, consistent with the requirements of this section, drive at an appropriate reduced speed when approaching and crossing an intersection or railway grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding highway, and when special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway conditions.

e. The State Highway Commissioner may, by regulation and with appropriate signs, designate lower maximum speed limits for trucks of a registered gross weight of 10,000 pounds and over, at a differential of five miles per hour, on State highways or appropriate portions of highways having four or more traffic lanes, where the legal speed limit is 50 mph or greater.

Source: 39:4-98; 39:4-98.1; 39:4-100.

COMMENT

This section contains the substance of the original sections, but combines them.

39A:43-S6. 65 mph speed limit

a. As used in this section:

(1) "Authorities" means the New Jersey Highway Authority, the New Jersey Turnpike Authority and the South Jersey Transportation Authority.

(2) "Commissioner" means the Commissioner of Transportation.

(3) "Eligible public highways" means public highways as defined in 27:1B-3 of which portions have been determined by the Commissioner to be appropriate for a 65 mph speed limit based on criteria determined by the Commissioner. Public highways under the jurisdiction of counties and municipalities are not eligible public highways.

b. After initially establishing, by written order, the speed limit of 65 mph on approximately 400 miles of eligible highway, the Commissioner may increase or decrease the number of miles of eligible public highways on which a 65 mph speed limit has been established. An order increasing or decreasing the number of highways with a speed limit of 65 mph, shall cite the eligible public highways to which it is to be applicable and contain a description in plain language of the order's contents, the effective date of the order and any other information the Commissioner deems necessary.

c. The Commissioner shall cause a general public notice of a proposed order, including a summary of the provisions of the proposed order, to be published in a newspaper or newspapers having general circulation in the municipality or municipalities affected by the order. The notice shall include a telephone number or address a member of the public may use to receive a copy of the complete text of the proposed order and shall provide for a 30-day period from the date of publication for public comment. The order shall be final on the 31st day after publication of the notice or on a later date if the Commissioner so determines. Nothing in this subsection shall prohibit the Commissioner from extending the comment period or from modifying or withdrawing the proposed order as a result of the review of public comment.

d. A final order shall be effective and enforceable upon compliance with the requirement for the proper posting of signs providing notice of the speed limit.

e. Any official traffic control device established pursuant to this section shall conform to the "Manual on Uniform Traffic Control Devices."

f. An order issued pursuant to this section shall be binding and enforceable under Title 39 and all other applicable laws, in any court of competent jurisdiction, until superseded by order of the Commissioner.

Source: 39:4-98.4; 39:4-98.5.

COMMENT

This section contains the substance of the original sections, but combines them. The reference in subsection (e) will be checked to make sure it refers to a federal manual, then the reference will be clarified.

39A:43-S7. Fines for offenses doubled

a. For the purposes of this section:

(1) “Area of highway construction or repair" means the segment of a highway identified by properly posted traffic control devices or signs as undergoing construction, reconstruction, repair, or maintenance operation. An area of highway construction or repair consists of the area between the first traffic control device or sign informing motor vehicle operators of the highway construction or repair and the last traffic control device or sign indicating all restrictions are removed and normal motor vehicle operations may resume.

(2) "Highway" means any highway under the jurisdiction of the State Department of Transportation, a county, a municipality or a toll road authority.

(3) "Safe corridor" or "safe corridor area" means a segment of highway under the jurisdiction of the Department of Transportation which, based upon accident rates, fatalities, traffic volume and other highway traffic safety criteria, is identified by the Commissioner of Transportation as a segment warranting designation as a "safe corridor."

(4) “Toll road authority" means the New Jersey Turnpike Authority, the New Jersey Highway Authority, or the South Jersey Transportation Authority.

b. The fine for a motor vehicle offense embodied in the following sections of the law, when committed in an area which has been designated as having a speed limit of 65 mph, shall be double the amount specified by law: 39:4-52; 39:4-57; 39:4-80; 39:4-81; 39:4-84; 39:4-85; 39:4-86; 39:4-88; 39:4-89; 39:4-90; 39:4-96; 39:4-97; 39:4-98 (when guilty of driving at a speed that is 10 miles per hour or more over the established speed limit); 39:4-126; 39:4-127; 39:4-129; 39:4-144; 39:5C-1; 39:4-82.1; 39:4-90.1; 27:23-29; 27:12B-18; and 27:25A-21.

c. The fine for a motor vehicle offense shall be double the amount specified by law when traveling 20 mph or more over the designated speed limit as set forth in 39:4-98, except as provided in 39:4-203.5(b) and 39:4-98.6(a).

d. The fine for a motor vehicle offense embodied in the following sections the law, when committed in an area of highway construction or repair, or when committed in a designated safe corridor, shall be double the amount specified by law: 39:3-20(b); 39:4-52; 39:4-57; 39:4-71; 39:4-80; 39:4-81; 39:4-82; 39:4-83; 39:4-84; 39:4-85; 39:4-86; 39:4-88; 39:4-89; 39:4-90; 39:4-96; 39:4-97; 39:4-98; 39:4-99; 39:4-105; 39:4-115; 39:4-

119; 39:4-122; 39:4-123; 39:4-124; 39:4-125; 39:4-127; 39:4-129; 39:4-144; 39:5C-1; 39:4-66.1; 39:4-82.1; 39:4-90.1; 39:4-97.2; 39:4-98.7; 27:23-29; 27:12B-18; and 27:25A-21.

e. Safe corridor areas shall be designated by traffic order issued pursuant to 39:4-8.2 et seq.

f. When an area of highway construction or repair is within a safe corridor, the fine for a motor vehicle offense embodied in subsection (d) shall be doubled only once. When a safe corridor is within an area of highway construction or repair, the fine for a motor vehicle offense embodied in subsection (d) shall be doubled only once. Fines for violation of 39:4-98.7 in a safe corridor or an area of highway construction or repair shall be doubled only once. The increase from the doubled fines imposed and collected in designated safe corridor areas shall be forwarded by the person to whom they are paid to the State Treasurer, who shall annually deposit those moneys in the "Highway Safety Fund " established pursuant to 39:3-20.4.

g. Signs designed in compliance with the specifications of the Department of Transportation or, if appropriate, the authority having jurisdiction over the highway, shall be appropriately placed, by order of the Commissioner or the affected authority to notify drivers approaching areas designated as: having a speed limit of 65 miles per hour, areas of highway construction or repair, or designated safe corridor areas, that the fines are doubled for motor vehicle offenses in those areas. Traffic control signs and devices erected or displayed by the State Department of Transportation or an authority within an area designated as having a speed limit of 65 miles per hour, areas of highway construction or repair, or designated safe corridor areas, shall conform to the uniform system specified in the most current "Manual on Uniform Traffic Control Devices for Streets and Highways," prepared by the Federal Highway Administration in the United States Department of Transportation.

h. It is not a defense to the imposition of the fines authorized under this section that a sign notifying drivers that fines are doubled was not posted, improperly posted, wrongfully removed or stolen, or that signs or devices were not placed in compliance with the most current "Manual on Uniform Traffic Control Devices for Streets and Highways."

i. The Commissioner shall include information concerning the penalties imposed pursuant to this section in any revision of the New Jersey Driver Manual and the New Jersey Motorist Guide.

Source: 39:4-98.6; 39:4-98.7; 39:4-203.5.

COMMENT

This section contains the substance of the original sections, but combines them. The reference to the manual in subsection to make sure that it is accurate, and the language of the subsection will be updated as necessary. The MVC will be asked about the reference to the New Jersey Motorist Guide in subsection (i).

39A:43-S8. Reduction of speed for maintenance, repair or emergent conditions

a. A county or municipal governing body may adopt an ordinance or resolution, as appropriate, designating a county or municipal official who may order a reduction of a regular speed limit for periods not to exceed 72 hours on segments of highways under its jurisdiction for the purpose of maintenance or repairs. A resolution or ordinance adopted pursuant to this subsection shall specify the circumstance under which a speed limit may be reduced. An ordinance or resolution reducing the speed limit pursuant to this subsection shall not require the approval of the Commissioner of Transportation but it is the duty of the designated county or municipal official to notify the Commissioner of the affected segment of highway no less than seven days before any reduced speed limit takes effect; except that in emergency situations the notification period may be waived by the Commissioner. It is the duty of the designated county or municipal official to place one or more signs indicating the reduced speed limit along the affected highway.

b. The Commissioner is authorized to set or change by emergency order, for periods of up to 60 days, the speed limit on any public highway based on emergent conditions, such as construction work, dangerous conditions, extreme congestion or traffic problems, imminent peril, or imminent risk to motorists or to the public safety. An order issued pursuant to this subsection shall cite the portions of public highway to which it applies, a description in plain language of what the order requires, the effective date of the order and any other information the Commissioner deems necessary. An emergency order shall be final upon the signature of the Commissioner, or on a later date selected by the Commissioner and shall be effective and enforceable upon compliance with the requirement for the posting of signs providing notice of the speed limit. An emergency order issued pursuant to this subsection may, upon its expiration date, be renewed by the Commissioner for additional 60-day periods, until the emergent condition necessitating the emergency order is mitigated.

c. An official traffic control device established pursuant to this section shall conform to the "Manual on Uniform Traffic Control Devices."

d. A speed limit established pursuant to this section shall be prima facie lawful when appropriate signs giving notice of the speed limit are erected.

Source: 39:4-98.2; 39:4-98.9.

COMMENT

This section contains the substance of the original sections, but combines them. The reference to the manual in subsection (c) will be checked to determine if it refers to a federal manual, and the language will be updated as necessary.

39A:43-S9. Exceeding speed limits

a. It shall be prima facie unlawful for a person to exceed any of the foregoing speed limitations or any speed limitation in effect as established by the proper authority.

b. In every charge of violation of this chapter, the complaint and the summons or notice to appear, shall specify the speed at which the defendant is alleged to have driven

and the speed which this article declares shall be prima facie lawful at the time and place of the alleged violation.

c. If a physician's motor vehicle is stopped for exceeding the speed limit while responding to an emergency call, the registration number of the vehicle and the driver's license number may be inspected and noted and the physician shall then be allowed to proceed in the vehicle to the physician's destination. Proceedings may be taken subsequently as would be proper if the person was not been a physician.

d. Motor vehicles belonging to the military establishment, while in use for official purposes in time of riot, insurrection or invasion; all police officers, while engaged in the apprehension of violators of the law, or of persons charged with, or suspected of, a violation, are exempt from the provisions of this chapter relating to speed.

Source: 39:4-99; 39:4-102; 39:4-103.

COMMENT

This section contains the substance of the original sections, but combines them.

39A:43-S10. Speedway

Nothing in this chapter shall apply to a speedway, constructed with the permission of the local authorities or the board of freeholders of the county or counties in which the speedway is located, and built or intended for the exclusive use of motor vehicles, if the speedway at no point crosses a highway, railroad or railway at grade.

Source: 39:4-101.

COMMENT

This section contains the substance of the original.

39A:43-S11. Photo radar

Notwithstanding any law, rule or regulation to the contrary, a law enforcement officer or agency shall not use photo radar to enforce the provisions of this chapter. As used in this act, "photo radar" means a device used primarily for highway speed limit enforcement substantially consisting of a radar unit linked to a camera, which automatically produces a photograph of a vehicle traveling at a speed in excess of the legal limit.

Source: 39:4-103.1

COMMENT

This section contains the substance of the original.

39A:43-S12. Penalty

Unless another penalty is specified in this chapter, each violation of any section of this chapter is a class D offense.

Source: 39:4-104.

COMMENT

This section contains the substance of the original. The section designates penalty according to the new penalty classification system contained in 39A:44-GP1. The level of the offense had been changed from class C to class D by the Commission to bring the penalty in accord with penalties for similar offenses and to address concerns raised by law enforcement officers.

CHAPTER 44. GENERAL PENALTY

39A:44-GP1. Penalty provisions

a. Offenses defined by this code are classified, for the purpose of establishing penalty, into five degrees.

(1) Class A offenses. Offenses in this class shall carry a fine not less than $1,000 and not more than $10,000. In addition to the fine, a person may be imprisoned for up to 30 days, or required to perform a community service for up to 90 days, or both.

(2) Class B offenses. Offenses in this class shall carry a fine not less than $500 and not more than $1,000. In addition to the fine, a person may be imprisoned for up to 20 days, or required to perform a community service for up to 60 days, or both.

(3) Class C offenses. Offenses in this class shall carry a fine not less than $100 and not more than $500. In addition to the fine, a person may be imprisoned for up to 10 days, or required to perform a community service for up to 30 days, or both.

(4) Class D offenses. Offenses in this class shall carry a fine not less than $50 and not more than $100. A person shall not be imprisoned or required to perform a community service for violation of a section carrying a class D penalty.

(5) Class E offenses. Offenses in this class shall carry a fine up to $50. A person shall not be imprisoned or required to perform a community service for violation of a section carrying a class E penalty.

b. Violation of <chapter 4> for which no classification is provided, is a class E offense.

c. Violation of 39:4-80 et seq., 39:4-1-5 et seq., 39:4-123 et seq., and 39:4-140 et seq., for which no classification is provided, is a class C offense.

d. A juvenile under 17 violating any section of Title 39 pertaining to pedestrians and bicycles may be guilty of a class E offense or given a warning by a police officer. No points shall be assessed pursuant to 39:5-30.5 for these violations. A juvenile convicted of a violation of Title 39 pertaining to pedestrians or bicycles, for a violation on or after January 1, 1983, may petition the sentencing court for reduction of the sentence in accordance with this subsection. The court shall sentence pursuant to the provisions of this subsection unless, for good cause shown, it determines that the original sentence was proper under the circumstances.

Source: 39:4-203; 39:4-203.3; 39:4-203.4.

COMMENT

Subsection (a) is new. It explains the new classification system for penalties included in the revised Title 39 and specifies the penalties for each class of offenses.

Subsections (b), (c), and (d) contain the substance of the original sections, but combine them and classify them according to the new classification system.

39A:44-GP2. Indigency

a. A defendant convicted of a traffic offense or a parking offense, shall, upon a satisfactory showing of a condition of indigency or participation in a government-based income maintenance program, be permitted by the fine in installments. The court shall set the amount and frequency of each installment, except that the final installment shall be due no later than 12 months from the date of conviction.

b. If the defendant fails to comply with any of the terms of an installment order, the court may, in addition to any other penalties it may impose, order the suspension of the defendant's driver's license and notify the Director of the Division of Motor Vehicles of the action.

Source: 39:4-203.1; 39:4-203.2.

COMMENT

This section contains the substance of the original sections, but combines them.

TURNS, SIGNALS AND PARKING

CHAPTER 28. TURNS, SIGNALS AND RAILROAD TRACKS

39A:28-TS0. Definitions

a. "Frozen dessert truck" means a motor vehicle in which frozen desserts are carried for purposes of retail sale on the streets of the State.

b. "Vend" or "vending" means offering frozen desserts for sale from a motor vehicle on the streets of the State.

c. "Frozen desserts" means ice cream, frozen custard, French ice cream, French custard ice cream, sherbet, fruit sherbet, ice milk, ice, water ice, nonfruit sherbets, nonfruit water ices, freezer made milk shakes, quiescently frozen confection, quiescently frozen dairy confection, whipped cream confection, bisque tortoni, artificially sweetened ice cream, or artificially sweetened ice milk, special frozen dietary foods, frozen yogurt, mellorine frozen desserts, as all such products are commonly known, together with any such mix used in frozen desserts and any products which are similar in appearance, odor or taste to such products or are prepared or frozen as such products are customarily prepared or frozen whether made with dairy or non-dairy products and ice flavored with syrup.

Source: 39:4-128.3.

COMMENT

This section…

39A:28-TS1. Right and left hand turns

Except as otherwise provided in this chapter, the driver of a vehicle intending to turn at an intersection shall do so as follows:

a. Right turns. Both the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the highway.

b. Left turns.

(1) On two-way highways. At a intersection where traffic is permitted to move in both directions on each highway entering the intersection, an approach for a left turn shall be made in that portion of the right half of the highway nearest the center line and by passing to the right of such center line where it enters the intersection and after entering the intersection the left turn shall be made so as to leave the intersection to the right of the center line of the highway being entered. When practicable the left turn shall be made in that portion of the intersection to the left of the center of the intersection.

(2) On other than two-way highways. At any intersection where traffic is restricted to one direction on one or more of the highways, the driver of a vehicle intending to turn left at any such intersection shall approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of such vehicle and after entering the intersection the left turn shall be made so as to leave

the intersection, as nearly as practicable, in the left-hand lane lawfully available to traffic moving in such direction upon the highway being entered.

[TABLE OR GRAPHIC MATERIAL SET FORTH IS NOT DISPLAYABLE]

c. The State Highway Commissioner and local authorities, for highways under their respective jurisdictions, may modify the method of turning at intersections by clearly indicating by buttons, markers or other direction signs, within an intersection, the course to be followed by vehicles turning there. No driver shall fail to turn in the manner so directed when such direction signs are installed by said authorities.

Source: 39:4-123; 39:4-124.

COMMENT

This section…

39A:28-TS2. Turning in an area with obstructed view; backing or turning in street

a. The driver of a vehicle shall not turn the vehicle around to proceed in the opposite direction on any curve or on the approach to or near the crest of a grade or at any place upon a highway where the view of the vehicle is obstructed within a distance of 500 feet along the highway in either direction. A vehicle shall not be turned around proceed in the opposite direction on a state highway which shall be conspicuously marked with signs stating "no U turn".

b. A vehicle shall not back or make a turn in a street, if by so doing it interferes with other vehicles, but shall go around a block or to a street sufficiently wide to turn in without backing.

Source: 39:4-125; 39:4-127.

COMMENT

This section…

39A:28-TS3. Signaling

a. A driver shall not turn a vehicle at an intersection unless the vehicle is in proper position upon the highway. A driver shall not turn a vehicle to enter a private road or driveway or otherwise turn a vehicle from a direct course or move right or left upon a highway, or start or back a vehicle unless and until such movement can be made with safety. A person shall not turn a vehicle without giving an appropriate signal in the event any other traffic may be affected by such movement. A signal of intention to turn right or left when required shall be given continuously during not less than the last 100 feet traveled by the vehicle before turning.

b. A person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear.

c. The signal herein required shall be given either by means of the hand and arm, or by an approved mechanical or electrical signal device, except that when a vehicle is constructed or loaded to prevent the hand and arm signal from being visible, both to front

and rear, the signal shall be given by a device of a type which has been approved by the Commission. When the signal is given by means of the hand and arm, the driver shall indicate an intention to stop or turn by extending the hand and arm from and beyond the left side of the vehicle in the following manner and such signals shall indicate as follows:

(1) Left turn.--Hand and arm extended horizontally.

(2) Right turn.--Hand and arm extended upward.

(3) Stop or decrease speed.--Hand and arm extended downward.

Source: 39:4-126.

COMMENT

This section…

39A:28-TS4. Stopping at railroad crossings

(a) A person driving a vehicle approaching a railroad grade crossing shall stop between 15 and 50 feet from the nearest rail of such railroad, and shall not proceed until the driver can do so safely. These requirements apply when:

(1) A clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train;

(2) A crossing gate is lowered or a human flagman gives or continues to give a signal of the approach or passage of a railroad train;

(3) A railroad train approaching within approximately 1,500 feet of the highway crossing emits a signal audible from such distance and such railroad train, by reason of its speed or nearness to such crossing, is an immediate hazard;

(4) An approaching railroad train is plainly visible and is in hazardous proximity to such crossing.

(b) A person shall not drive a vehicle through, around, or under any crossing gate or barrier at a railroad crossing while the gate or barrier is closed or is being opened or closed.

Source: 39:4-127.1.

COMMENT

This section…

39A:28-TS5. Moveable span bridges

a. A person shall not drive a vehicle through, around, or under any gate or barrier at or on the approaches to a movable span bridge while the gate or barrier is closed or is being opened or closed.

b. A person shall not drive any vehicle in disobedience to the directions of a traffic control signal or sign, police officer or duly authorized bridge tender, flagman or gateman, located at or in advance of said bridge.

Source: 39:4-127.2

COMMENT

This section…

39A:28-TS6. Stopping and crossing at grade crossings

a. The driver of a bus designed for carrying more than six passengers, or of a school bus carrying a school child or children, or of a vehicle carrying explosive substance or flammable liquids as a cargo or part of a cargo, shall, before crossing at grade any track of a railroad, stop the vehicle between 15 and 50 feet from the nearest rail of the railroad and, while stopped, listen and look in both directions along the track for an approaching train, and for signals indicating the approach of a train.

b. After stopping as required in subsection (a) and proceeding when safe to do so, the driver shall cross only in such gear of the vehicle that there will be no necessity for changing gears while traversing the crossing and the driver shall not shift gears while crossing the track or tracks.

c. Subsections (a) and (b) do not apply to grade crossings no longer used for railroad traffic and which have been abandoned by the railroad company if appropriate signs have been posted to indicate that the crossing has been abandoned or is no longer used for railroad traffic. Those subsections do not apply to grade crossings where the railroad track has been removed or paved over and the warning signs erected by the railroad have been removed, if written notice is given to the Commissioner of Transportation and to the appropriate State or local authority with jurisdiction over the highway prior to undertaking the removal or paving of railroad track. Those sections also do not apply to grade crossings marked with a sign reading "Exempt Crossing."

d. The Commissioner of Transportation is vested with the exclusive authority to designate and mark railroad grade crossings across any highway in this State with a sign "Exempt Crossing." The Commissioner shall hold a public hearing before designating a crossing as exempt, with notice to be served in accordance with the applicable regulations. The Commissioner shall designate a grade crossing as exempt when the potential for damage and injury from accidents between motor vehicles required to stop and other motor vehicles traveling in the same direction exceeds that between a train and the vehicles required to stop. Crossings designated as exempt may include industrial, spurline and secondary crossings. The Commissioner shall promulgate all necessary regulations to effectuate the purpose of this section.

e. A person shall not operate or move a crawler-type tractor, wheel tractor, tractor engine with or without trailer or trailers attached, steam shovel, derrick, roller, self-propelled concrete mixer, or any self-propelled vehicle, equipment, machinery, apparatus or structure with a normal operating speed of 10 or less miles per hour, or a vertical body or load clearance of less than 1/2 inch per foot of the distance between any two adjacent axles or in any event of less than 9 inches, measured above the level surface of a highway, on or across any track or tracks at a railroad grade crossing without first complying with the following requirements:

(1) Notice of such intended crossing shall be given to the nearest superintendent or trainmaster of the railroad. The notice shall specify the approximate

time of crossing and a reasonable time shall be given to such railroad to provide proper protection at such crossing.

(2) After making proper arrangements with the appropriate officer of the railroad and before making a crossing, the person operating or moving any such vehicle or equipment shall first stop it between 15 and 50 feet from the nearest rail of such railroad and, while stopped, shall listen and look in both directions along the track for an approaching train and for signals indicating the approach of a train, and shall not proceed until the crossing can be made safely.

(3) A crossing shall not be made when warning is given by automatic signal or crossing gates or a flagman or otherwise of the immediate approach of a railroad train or car. If the flagman is provided by the railroad, movement over the crossing shall be made under his jurisdiction.

f. First violation of this section is a class E offense. Subsequent violation is a class D offense.

g. This section shall not be construed as limiting the authority of a municipality to adopt police regulations governing the operation of buses and to provide penalties for their violation, or to relieve the owner or operator of such bus subject to the jurisdiction of the Board of Public Utilities from any penalty prescribed by the laws of this State for violation of orders of such Board.

Source: 39:4-128.

COMMENT

Subsection (f) designates penalties according to the new penalty classification system contained in 39A:44-GP1.

39A:28-TS7. Buses used to transport children stopped to receive or discharge passengers

a. On highways not divided by safety islands or physical traffic separation installations, the driver of a vehicle approaching or overtaking a bus being used solely for the transportation of children to or from school, a school connected activity or a summer day camp which has stopped to receive or discharge a child, shall stop the vehicle at least 25 feet from such school bus and keep the vehicle stationary until the child has entered the bus or alighted and reached the side of the highway and until a flashing red light is no longer exhibited by the bus. This section applies only to a bus designated as a school bus by one sign on the front and one sign on the rear, with each letter on such signs at least four inches in height.

b. On highways with multiple lanes separated by safety islands or physical traffic separation installations, the driver of a vehicle overtaking a school bus stopped to receive or discharge a child, shall stop the vehicle at least 25 feet from such school bus and keep the vehicle stationary until the child has entered the bus or alighted and reached the side of the highway and until a flashing red light is no longer exhibited by the bus.

c. On highways with multiple lanes separated by safety islands or physical traffic separation installations, the driver of a vehicle in a lane blocked from the bus by a safety

island or physical traffic separation installation and approaching a school bus stopped to receive or discharge a child, shall reduce the speed of the vehicle to not more than 10 miles per hour and shall not resume normal speed until the vehicle has passed the bus and has passed any child who may have alighted from, or been about to enter, the bus.

d. For purposes of this section, "highway" means the entire width between the boundary lines of every way, whether publicly or privately maintained, when any part is open to the public for purposes of vehicular travel.

e. When a school bus is parked at the curb for the purpose of receiving children from or discharging children to enter a school, school connected activity, or a summer day camp located on the same side of the street as that on which the bus is parked, drivers of vehicles may pass the bus without stopping at a speed not exceeding 10 miles per hour.

f. The driver of a bus being used solely for the transportation of children to or from school, school connected activity or a summer day camp shall continue to exhibit a flashing red light and shall not start the bus until every child who alighted from the bus has reached a place of safety.

g. Violation of this section is a class C offense.

h. The penalties in this section shall be enforced and recovered pursuant to the provisions of chapter 5 of Title 39 of the Revised Statutes. There shall be a rebuttable presumption that the registered owner of a vehicle involved in a violation of this section was the person who committed the act. A person who suppresses, by way of concealment or destruction, any evidence of a violation of this section or who suppresses the identity of the violator shall be guilty of a class D offense.

i. The Commissioner may also revoke the driver's license of any person found guilty of willful violation of this section and shall, at all times, have power to validate a license which was revoked, or grant a new license to a person whose license was revoked pursuant to this section.

Source: 39:4-128.1.

COMMENT

Subsections (g) and (h) designate penalties according to the new penalty classification system contained in 39A:44-GP1.

39A:28-TS8. Frozen dessert trucks

a. The driver of a vehicle approaching or overtaking from either direction a frozen dessert truck stopped on the highway shall stop before reaching the truck when the flashing red lights and stop signal arm are in use. After stopping, a driver may proceed past the truck at a speed not exceeding 15 miles per hour, and shall yield the right of way to any pedestrian who crosses the highway to or from the frozen dessert truck. The driver of a vehicle on a highway separated by safety islands or physical traffic separation installations need not stop upon meeting or passing a frozen dessert truck on another highway.

b. In addition to other equipment required by law, every frozen dessert truck shall be equipped with:

(1) Signal lamps mounted at the same level and as high and widely spaced laterally as practicable. These lamps shall be 5 to 7 inches in diameter and shall display two alternately flashing red lights visible at 500 feet to the front and rear in normal sunlight upon a straight level highway.

(2) A stop signal arm that can be extended horizontally from the left side of the truck. When the arm is extended, the side of the arm nearest the truck shall be 7¼ inches long and parallel to the side of the truck. The side furthest from the truck shall be 18 inches long and parallel to the side nearest the truck. The two sides shall be 18 inches apart creating a symmetrical, trapezoidal shape. Two alternately flashing red lights shall be located in the outside corners of the extended signal arm and the corners shall be rounded to conform to the shape of the lights. Each red light shall be 3 to 5 inches in diameter and visible at 300 feet to the front and rear in normal sunlight upon a straight and level street. Both sides of the signal arm shall have a red reflectorized background and the following legend: The word "STOP" shall appear in 6-inch high, 1 inch wide white letters in the middle of the signal arm; above the word "STOP," the phrase "IF SAFE" shall appear in 2 inch high, one-quarter inch wide white letters; below the word "STOP," the phrase "THEN GO" shall appear in 2 inch high, one-quarter inch wide white letters. All colors shall meet specifications in the most recently published Federal Highway Administration Standard Color Charts. The bottom of the extended signal arm shall be 42 inches above the street.

(3) A convex mirror mounted on the front so a driver in the normal seating position can see the area in front of the truck obscured by the hood.

c. The driver of a frozen dessert truck stopped on a highway for vending shall actuate the special red flashing lights and extend the stop signal arm. The lights and the stop signal arm shall not be used when the truck is in motion nor at any time the truck is stopped for a purpose other than vending.

d. The following requirements apply to vending of frozen desserts:

(1) No vending on streets where the speed limit exceeds 30 miles per hour.

(2) No vending within 500 feet of any property used as a grade or junior high or middle school from 1 hour before the regular school day to 1 hour after the regular school day except on days when school is not attended by children or if vending on school property has been approved in writing by the board of education.

(3) No vending to a person standing in the highway.

(4) No vending while stopped on the left side of a one-way highway.

(5) Vending is allowed only when the frozen dessert truck is lawfully parked or stopped.

(6) Vending is allowed only from the side of the truck away from moving traffic and as near as possible to the curb or edge of the highway.

e. The driver of a frozen dessert truck shall not back up the truck to make or attempt a sale.

f. The driver of a frozen dessert truck shall not permit any unauthorized person to ride in or on the vehicle. A person shall not ride in or on a frozen dessert truck unless employed by its owner or authorized in writing to do so by the owner or police department.

g. Violation of this section is a class D offense. Penalty may be enforced by summary proceedings.

Source: 39:4-128.4; 39:4-128.5; 39:4-128.6; 39:4-128.7; 39:4-128.8; 39:4-128.9; 39:4-128.10.

COMMENT

Subsection g designates penalty according to the new penalty classification system contained in 39A:44-GP1.

CHAPTER 29. PARKING

39A:29-P1. Definitions

a. "Parking offense" means a violation of a State statute, an ordinance or resolution adopted by a county, municipality or authority or a regulation issued by a State authority which regulates the parking of vehicles. For purposes of this chapter, violations of ordinances or regulations will be within the civil jurisdiction of the court.

b. "Parking ticket" means the summons issued alleging that a parking offense has occurred.

Source: 39:4-139.3.

COMMENT

This section…

39A:29-P2. Parking

a. The operator of a vehicle shall not stop, stand or park the vehicle in a highway other than parallel with the edge of the highway headed in the direction of traffic, on the right-hand side of the road and with the curb side of the vehicle within six inches of the edge of the highway, except:

(1) Upon streets which have been designated by ordinance and marked or signed for angle parking, vehicles shall be parked at the angle to the curb designated and indicated by the ordinance and marks or signs.

(2) Upon one-way streets, local authorities may permit parking of vehicles parallel with the left-hand edge of the highway headed in the direction of traffic, on the left-hand side of the road and with the curb side of the vehicle within six inches of the edge of the highway.

b. A person shall not park or leave standing a vehicle, whether attended or unattended, upon the highway, outside of a business or residence district, when it is practicable to park or leave it standing off the highway. In no event shall a person park or leave standing a vehicle whether attended or unattended, upon a highway, unless a

clear and unobstructed width of not less than fifteen feet upon the highway opposite the standing vehicle is left for free passage of other vehicles, or unless a clear view of the vehicle may be obtained from a distance of 200 feet in each direction upon the highway.

c. If a vehicle is disabled or otherwise unable to proceed while on a highway, the driver or person in charge of such vehicle shall immediately, by the quickest means of communication, notify the nearest police authority.

d. A person having control of a motor vehicle shall not allow it to stand on a highway unattended without first effectively setting the brakes and stopping the motor, and, when standing on a grade, without turning the wheels to the curb or side of the highway.

e. A driver of a vehicle shall not stand or park the vehicle for a period of time longer than is necessary for the loading or unloading of passengers or materials or longer than is provided in this chapter. The loading or unloading of passengers shall not consume more than three minutes in an alley or at a curb adjacent to the entrance of a school, church, theatre, hotel, hospital or any other place of public assemblage during hours designated by official signs.

f. A vehicle upon a highway, which is disabled to the extent that the operator cannot move it, or an unoccupied vehicle parked or standing in violation of this chapter, shall be deemed a nuisance and a menace to the safe and proper regulation of traffic and a peace officer may provide for the removal of the vehicle. The owner shall pay the reasonable costs of the removal and storage that may result from such removal, before regaining possession of the vehicle.

Source: 39:4-135; 39:4-136; 39:4-137; 39:4-139.

COMMENT

This section…

39A:29-P3. Places where parking prohibited

a. Except when necessary to avoid conflict with other traffic or in compliance with the directions of a traffic or police officer or traffic sign or signal, the operator of a vehicle shall not stand or park the vehicle in any of the following places:

(1) Within an intersection;

(2) On a crosswalk;

(3) Between a safety zone and the adjacent curb or within at least 20 feet of a point on the curb immediately opposite the end of a safety zone;

(4) In front of a public or private driveway;

(5) Within 25 feet of the nearest crosswalk or side line of a street or intersecting highway, except at alleys;

(6) On a sidewalk;

(7) In any appropriately marked "No Parking" space established pursuant to the duly promulgated regulations of the Commissioner of Transportation;

(8) Within 50 feet of a "stop" sign;

(9) Within 10 feet of a fire hydrant;

(10) Within 50 feet of the nearest rail of a railroad crossing;

(11) Within 20 feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within 75 feet of said entrance, when properly signposted;

(12) Alongside or opposite any street excavation or obstruction when stopping, standing, or parking would obstruct traffic, when properly signposted;

(13) On the highway side of any vehicle stopped or parked at the edge or curb of a street;

(14) Upon any bridge or other elevated structure upon a highway, or within a highway tunnel or underpass, or on the immediate approaches thereto except where space for parking is provided;

(15) In a space on public or private property appropriately marked for vehicles for the physically handicapped pursuant to 39:4- 197.5, 52:27D-119 et seq. or any other applicable law unless the vehicle is authorized by law to be parked there and a handicapped person is either the driver or a passenger in that vehicle. State, county or municipal law enforcement officers or parking enforcement authority officers shall enforce the parking restrictions on spaces appropriately marked for vehicles for the physically handicapped on both public and private property.

b. A person shall not move a vehicle not lawfully under that person's control into any such prohibited area or away from a curb such distance as is unlawful.

Source: 39:4-138.

COMMENT

This section…

39A:29-P4. "No parking" zones

The Commissioner, by regulations, shall have authority to establish and maintain "no parking" zones on portions of State highways where parking is deemed hazardous or inimical to the proper flow of traffic. "No parking" zones so established shall be clearly marked by appropriate signs of a type and design according to specifications adopted by the Commissioner.

Source: 39:4-138.1.

COMMENT

This section…

39A:29-P5. Parking in front of driveways

a. Notwithstanding the provisions of R.S. 39:4-138 to the contrary, a municipality may, by ordinance, permit the parking of motor vehicles in front of private driveways when both the motor vehicle and driveway involved are owned by the same person, when

the motor vehicle is owned by a member of the same household as the owner of the private driveway, or when the owner of the private driveway authorizes the parking of a motor vehicle in front of the private driveway; and where such parking is not otherwise prohibited and would not interfere with the normal flow of traffic.

b. A motor vehicle may not be parked in front of a private driveway unless the owner of the private driveway or a member of the owner's household has been issued a valid permit and the permit is properly displayed, or unless the owner has authorized another party to use and display the owner's permit for parking in front of the private driveway, and the permit is valid and properly displayed. A municipality may, by ordinance, establish a fee for these permits.

c. A municipality enacting an ordinance pursuant to subsection (a) shall provide for the issuance of permits which authorize the parking of motor vehicles in front of private driveways and identify the location of the driveway in front of which the parking of a motor vehicle is permitted. The permits shall be issued to owners of private driveways and to members of the same household as the owner of a private driveway provided that a completed application for a permit has been filed as required by the municipality.

d. An owner of a private driveway shall be eligible to apply for up to three permits for his or her own motor vehicles or for use by other parties authorized by the owner to park in front of the private driveway. Each member of the owner's household who owns a motor vehicle shall also be eligible to apply for a permit. The permit shall be 5 ½ inches by 8 ½ inches in size, shall bear an appropriate certification of authenticity and shall be displayed prominently within the vehicle when it is parked so as to be seen from the middle of the street.

Source: 39:4-138.3; 39:4-138.4; 39:4-138.5.

COMMENT

This section…

39A:29-P6. Uniform traffic ticket for parking offenses

a. The complaint and summons for a parking offense shall be a uniform traffic ticket in the form prescribed by the Administrative Director of the Courts and shall contain information advising the person to whom it is issued of the manner in which and the time within which an answer to the offense alleged is required. The parking ticket shall also advise that penalties may result from a failure to answer, that the failure to answer or appear shall be considered an admission of liability, and that a default judgment may be entered against the owner of the vehicle. A parking ticket shall also contain sufficient information to inform the person of the nature, date, time and location of the offense alleged.

b. A parking ticket shall be served personally upon the operator of a vehicle who is present at the time of service, and the operator’s name recorded on the parking ticket, together with the plate number and type as shown by the registration plates of the vehicle and the make or model of the vehicle. If the operator is not present, the parking ticket shall be served upon the owner of the vehicle by affixing the parking ticket to the vehicle

in a conspicuous place, or by any other method approved by the Rules Governing the Courts of the State of New Jersey (Court Rules). Service by affixation shall have the same effect as if the parking ticket was personally served on the owner or operator of the vehicle.

c. The original parking ticket shall be signed by the complainant, who shall certify to the truth of the facts set forth therein. The original parking ticket or a true copy of the parking ticket shall be considered a record kept in the ordinary business of the enforcement agency and shall be prima facie evidence of the facts contained therein.

e. An operator of a vehicle who is not the owner, but who operates the vehicle with the express or implied permission of the owner, shall be considered the agent of the owner to receive service of parking tickets. The owner and operator shall be jointly liable for parking offenses, unless the owner can show that the vehicle was used without express or implied consent. An owner who pays any fine, penalty, civil judgment, costs or administrative fees in connection with a parking offense may recover that sum from the operator in a court of competent jurisdiction.

f. The owner of a leased motor vehicle is not liable for a parking offense committed when the motor vehicle is under the control or in the possession of the lessee if, upon notice of a parking offense, the owner notifies the clerk of the proper court, by a form notarized statement prescribed by the Administrative Director of the Courts, of the name and address of the lessee. If the owner fails to properly notify the clerk of the lessee, the court may take any action the interests of justice require, including finding the owner of the motor vehicle liable for the parking offense. After providing the name and address of the lessee, the owner shall not be required to attend a hearing on the offense, unless notified that the offense may have been caused by mechanical failure of the vehicle which resulted from the owner's failure to maintain the vehicle. The lessee of the motor vehicle who intends to claim the offense resulted from the owner's failure to maintain the vehicle shall notify the clerk of the court where the case is pending and the owner of the vehicle of this claim within five days after receiving notice of the offense or at least seven days prior to the date the case will be heard by the court, whichever is later.

g. Immediately upon expiration of time to answer or appear, the municipal court shall follow the procedures set forth in the Court Rules. For residents of New Jersey, this includes mailing a notice of offense or a failure to appear notice to the defendant on a form approved by the Administrative Director of the Courts and informing the defendant of: the parking offense charged; the time and date of the offense; the amount of fines, penalties and costs due; the right to have a hearing; the fact that a civil judgment may be entered for failure to appear or pay the amount due; and that the driver's license may be suspended, driving privileges may be revoked; and that a warrant may be issued for arrest.

Source: 39:4-139.4; 39:4-139.5; 39:4-139.6.

COMMENT

This section…

39A:29-P7. Answering parking ticket or failure to appear notice

a. In answer to a parking ticket or failure to appear notice, a person to whom one was issued may admit the commission of the parking offense by payment of the fine and penalty due; or deny liability and appear in court in accordance with the instructions on the summons or otherwise as provided by court rule.

b. A person to whom a parking ticket or failure to appear notice has been issued may answer by personal appearance or by mail in accordance with instructions on the summons.

c. A person who admits the commission of a parking offense shall, at the same time the answer is submitted, pay the civil fine and any additional penalties established pursuant to local ordinance or regulation, which may be due for failure to answer within the time required.

Source: 39:4-139.7.

COMMENT

This section…

39A:29-P8. Hearing and judgment in parking ticket matters

a. The officer issuing the ticket is not required to appear at the hearing of a case unless the defendant has denied that the parking offense occurred by defendant's commission and the court determines that the officer's presence is required. The court may grant a reasonable adjournment if the officer is not available at the time of hearing. Evidence other than the parking ticket and information from the Commission identifying the owner of the vehicle shall not be required to be submitted to the court, and that documentation in proper form shall be considered prima facie evidence that the registered owner of the vehicle was the person who committed the parking offense.

b. If a person to whom a failure to appear notice has been issued fails to answer or fails to appear at a hearing when required to do so, or, having admitted commission of the parking offense, fails to pay the fine and penalties assessed by the court, the court may, in addition to other remedies and penalties available to the court for failure to appear, enter a judgment by default sustaining the charges, fix the appropriate fine and assess appropriate penalties and costs, if any.

c. A judgment by default may be vacated by the court within one year after its entry only upon written application setting forth both a sufficient defense to the charge and an excusable neglect as to the defendant's failure to attend the hearing. If a failure to appear notice was mailed to the registered owner at the address appearing on the records of the Commission, failure to receive the notice shall not be considered a defense unless the owner can prove the Commission was advised of the owner's correct address prior to the date of the parking offense.

d. If payment is not made within 10 days after entry of a default judgment for a parking offense, the order of the court may be filed in the office of the clerk of the Superior Court and, when filed, shall have the effect of a civil money judgment. Judgments for parking offenses shall be maintained in a separate judgment roll from

other civil judgments. Execution may be levied and other measures taken for the collection of the judgment as authorized for the collection of an unpaid civil judgment. The court may assess costs against a judgment debtor, not to exceed $25 for each violation, to be paid upon satisfaction of the judgment.

e. If a notice of appeal is filed by the person against whom judgment is entered within 10 days after entry of the judgment and the payment of costs which the court shall require, a hearing de novo shall be held in accordance with the rules of the court. Service of a notice of appeal shall not stay the enforcement of a judgment appealed from unless the appellant has posted a bond in the amount of the judgment plus court costs at or before service of the notice of appeal.

f. A default judgment under this act may be filed by the court at any time within three years after the parking ticket was issued.

g. Out of each parking penalty assessed and disbursed to the municipality where a failure to appear notice was issued, $2 shall be distributed to the municipal court by the municipality to provide for the operating costs to administer this chapter. These funds shall be in addition to the municipal court's normal budget allocation but shall not exceed the additional costs to the court as a result of this chapter. If a defendant defaults in the payment of a fine, penalty or costs, or of an installment, the court may require the respondent to show cause why the default should not be treated as a civil contempt and may issue a summons or order to show cause or a bench warrant of arrest for the respondent's appearance. The officers of a corporation or the partners, directors or officers of an association may be held in contempt upon a default by the corporation or association.

Source: 39:4-139.8; 39:4-139.9.

COMMENT

This section…

39A:29-P9. Failure to respond or to pay parking judgment

a. If a person fails to respond to a failure to appear notice or to pay a parking judgment, the municipal court may give notice of that fact to the Commission as prescribed by the Commissioner. If notice has been given under this section of a person's failure to respond or to pay and if the fines and penalties are paid or if the case is dismissed or otherwise disposed of, the municipal court shall promptly give notice to that effect to the Commission.

b. The judge or the Commission may suspend the driver's license of an owner, lessee, or operator who has not answered or appeared in response to a failure to appear notice or has not paid or otherwise satisfied outstanding parking fines or penalties. If an owner, lessee or operator has been found guilty of a parking offense, the court shall provide notice and an opportunity to appear before a judge prior to suspending that person's driver's license. If the owner, lessee or operator is found by the court to be indigent or is participating in a government-based income maintenance program, that person shall be permitted to pay the parking fine and other penalties in installments in

accordance with C.39:4-203.1. The Commission shall keep a record of a suspension ordered by the court.

c. There shall be included in the fines and penalties imposed by the court on a person whose license has been suspended pursuant to this section a fee of $3 which shall be transferred by the court to the Commission. Fees so transferred shall be deposited in a fund established to effectuate the purposes of this chapter.

Source: 39:4-139.10; 39:4-139.12.

COMMENT

This section…

39A:29-P10. Restoration of license

a. When a person whose license has been suspended as a result of a parking offense satisfies the fines and penalties imposed by the court, the court shall forward to the Commission a notice to restore the person's driver's license.

b. Upon receiving a notice to restore, the Commission shall record the restoration and notify the person of the restoration.

Source: 39:4-139.11.

COMMENT

This section…

39A:29-P11. Vehicle with outstanding warrants

a. The governing body of a municipality may make, amend, repeal and enforce an ordinance authorizing the impoundment or immobilization of a vehicle with outstanding warrants found within the jurisdiction of that municipality.

b. Except for vehicles owned by lessors who properly supplied the name and address of the lessee, if outstanding warrants are not paid by midnight on the 30th day following the day on which the vehicle was impounded or immobilized, the vehicle may be sold at a public auction. *The municipality shall give notice of the sale by certified mail to the owner, if the owner's name and address are known, to the holder of a security interest filed with the Commissioner, and by publication in a form to be prescribed by the Commissioner by one insertion, at least five days before the date of the sale, in at least one newspaper published in this State and circulating in the municipality in which the motor vehicle has been impounded or immobilized.*

c. *At any time prior to the sale, the owner of the motor vehicle or other person entitled to it may reclaim possession upon payment of the reasonable costs of removal and storage of the motor vehicle, any fine or penalty and court costs assessed for a violation that gave rise to the impoundment or immobilization of the motor vehicle, and any outstanding warrants against the vehicle; however, the owner-lessor of a motor vehicle who properly supplied the name and address of the lessee may reclaim possession without payment and the lessee shall be liable for any fine, penalty, court costs and outstanding warrants against the vehicle.*

d. Any proceeds obtained from the sale of a vehicle at public auction pursuant to this section in excess of the amount owed to the municipality for the reasonable costs of removal and storage of the motor vehicle, any fine or penalty and court costs assessed against him for a violation that gave rise to the impoundment or immobilization of the motor vehicle, and any outstanding warrants against the vehicle, shall be returned to the owner of the vehicle, if his name and address are known.

Source: 39:4-139.13.

COMMENT

This section…

39A:29-P12. Dismissal of parking cases

In a parking case, if the municipal court fails, within three years of the date of the violation, to either issue a warrant for the defendant's arrest, or to order a suspension of the defendant's driving privileges or the defendant's non-resident reciprocity privileges or prohibit the person from receiving or obtaining driving privileges, the matter shall be dismissed and shall not be reopened.

Source: 39:4-139.10a.

COMMENT

This section…

39A:29-P13. Municipal contracts to process parking offenses

A municipality may enter into a contract with a public agency or private organization for services to be rendered in the processing of parking offenses. A municipality which contracts for processing services shall submit a plan to the Supreme Court describing the services to be provided and the procedures to be used. The Supreme Court shall approve a plan submitted by a municipality prior to the implementation of that plan.

Source: 39:4-139.14.

COMMENT

This section…

STREET CARS, BICYCLES, EPMADS AND HORSES

CHAPTER 35. *STREET* CARS

39A:35-SC1. Operation of vehicles in presence of street cars

a. A vehicle traveling upon a regular street car route so as to obstruct the passage of the street car, shall immediately give way to the street car upon signal from its operator.

b. When a street car has lawfully entered and is crossing an intersection, no vehicle shall drive on or across the tracks within the intersection in front of the street car when there is hazard of a collision.

c. A vehicle overtaking and passing a street car shall not turn in front of the street car to interfere with or impede its movement.

d. A vehicle shall not overtake and pass on the left a street car proceeding in the same direction, whether in motion or temporarily at rest, when a travelable portion of the highway exists to the right of the street car, even though occupied by traffic. This provision shall not apply to one-way streets.

e. A vehicle overtaking a street car stopped for the purpose of receiving or discharging a passenger, shall bring the vehicle to a full stop, at least 10 feet in the rear of the street car, and shall remain stationary until the passenger has boarded the car or reached the adjacent sidewalk. Where a safety zone has been established, a vehicle otherwise permitted to proceed need not be brought to a full stop before passing the street car but may proceed past the car at a speed not greater than is reasonable and with due caution for the safety of pedestrians.

f. A vehicle shall not drive through a safety zone, unless directed to do so by a police or traffic officer or official sign.

g. A vehicle following a street car, upon the tracks, shall keep at least 10 feet behind the car.

Source: 39:4-38; 39:4-39; 39:4-40; 39:4-41.

COMMENT

This section…

39A:35-SC2. Operation of street cars

a. The operator of a street car which collides with a person or vehicle shall stop immediately, give his or her name and address and render any assistance required to an injured person.

b. The operator of a street car, on approaching highway intersections, shall sound the street car signal in quick succession at a reasonable distance from the intersection. No person shall knowingly delay or hinder the passage of the car.

c. Street cars shall not obstruct the crosswalks of a street.

Source: 39:4-42; 39:4-43; 39:4-45.

COMMENT

This section…

39A:35-SC3. Street car stops

a. Every street railway company may establish certain highway intersections or other points along its railway as regular stops, and unless otherwise ordered by the Board of Public Utility Commissioners or the board or body in charge of municipal streets, the

street cars need not stop its cars to take on or let off passengers at any place other than at the established stops.

b. When established street car stops are at highway intersections, the near side of the intersection shall be designated as the established stop, except that the far side may be designated as the established stop at intersections where, in the judgment of the street railway company, the Board of Public Utility Commissioners or the local authorities, the convenience or safety of the public will be better served.

Source: 39:4-44.

COMMENT

This section…

CHAPTER 30. BICYCLES, ROLLERSKATES AND SKATEBOARDS

39A:30-BR1 Definitions.

a. "Bicycle" means a vehicle with two wheels propelled solely by human power and having pedals, handle bars and a saddle-like seat. The term shall include a bicycle for two or more persons having seats and corresponding sets of pedals arranged in tandem. As used in this act "bicycle" means any two-wheeled vehicle having a rear drive wheel which is solely human-powered and having a seat height of 25 inches or greater when the seat is in the lowest adjustable position.

b. "Director" means the Director of Consumer Affairs in the Department of Law and Public Safety.

c. “Motorized bicycle” means…(see 39:1-1 – move this section to ch27?)

d. "Roller skates" means a pair of devices worn on the feet with a set of wheels attached, regardless of the number or placement of those wheels, and used to glide or propel the user over the ground.

e. “Skateboard” means…

Source: 39:4-10.1; 39:4-10.5; 39:4-14.5

COMMENT

This section…

39A:30-BRx. Helmets required for bicycle, skateboard and rollerskate use

a. A person under 14 shall not operate or ride upon a bicycle or operate any rollerskates or skateboard unless that person is wearing a properly fitted and fastened bicycle helmet which meets the standards of the American National Standards Institute (ANSI Z90.4 bicycle helmet standard), the Snell Memorial Foundation's 1990 Standard for Protective Headgear for Use in Bicycling, or the American Society for Testing and Materials (ASTM) standard. This requirement applies to a person who rides upon a bicycle in a restraining seat attached to the bicycle or in a trailer towed by the bicycle.

b. The requirement in subsection (a) of this section shall apply for bicycling at all times while a bicycle is being operated on a property open to or used by the public for

pedestrian and vehicular purposes; however, a municipality may by ordinance exempt from this requirement a person operating or riding on a bicycle when the bicycle is operated:

(1) on a highway closed to motor vehicle traffic and limited to pedestrian or bicycle use at all times or only during specified periods of time during which bicycles may be operated; or

(2) exclusively on a trail, route, course, boardwalk, path or other area set aside for the use of bicycles or for the use of pedestrians and bicycle operation is not otherwise prohibited. An exemption may not be granted under this paragraph for any area immediately adjacent to a highway used by motor vehicle traffic which does not contain a barrier of sufficient height and rigidity to prevent the entry of a bicycle operator onto the highway.

c. An ordinance enacted pursuant to subsection (b) shall specify the roads, highways, trails, routes, courses, boardwalks, paths or areas within the municipality where helmets are not required during the operation of a bicycle.

d. When a bicycle is being operated in an area where bicycle helmets are not required, the operator or passenger, except a passenger in a restraining seat or trailer, shall dismount from the bicycle and walk whenever it is necessary to enter a crosswalk or to cross a highway upon which motor vehicle traffic is permitted.

e. The requirement in subsection (a) shall apply for rollerskating and skateboarding at all times while a person subject to this section is operating roller skates or skateboarding on any property open to the public or used by the public for roller skating or skateboarding.

Source: 39:4-10.1; 39:4-10.2; 39:4-10.5;

COMMENT

This section…

39A:30-BRx. Violation of helmet requirement

a. The Commissioner shall publish a list of bicycle helmets which meet the standards described in subsection 39A:26-BRx(a) and provide for its distribution in as many locations frequented by the public as the Commissioner deems appropriate and practicable.

b. A person who violates 39A:26-BRx(above) shall be warned of the violation by the enforcing official. The parent or legal guardian of that person also may be found guilty of a class E offense for a first violation, and a class D offense for a subsequent violation if it can be shown that the parent or guardian failed to exercise reasonable supervision or control over the person's conduct (not in skateboard portion). Penalties may be waived if an offender or the parent or legal guardian presents suitable proof that an approved helmet was owned at the time of the violation or has been purchased since the violation occurred.

c. Money collected as fines under this section shall be deposited in a nonlapsing revolving fund known as the "Bicycle and Skating Safety Fund." Interest earned on

money in the fund shall accrue to the fund. Money in the fund shall be used by the Commissioner to provide educational programs devoted to bicycle, roller skating and skateboarding safety. If the Commissioner determines that sufficient money is available in the fund, the Commissioner may, as prescribed regulation, use the money to assist low income families in purchasing approved bicycle helmets. For this subsection, "low income family" means a family which qualifies for low income housing under the standards promulgated by the Council on Affordable Housing pursuant to C.52:27D-301 et seq.

d. The failure of any person to comply with 39A:26-BRx(above) shall not constitute negligence per se, contributory negligence or assumption of risk, and shall not in any way bar, preclude or foreclose an action for personal injury or wrongful death by or on behalf of such person (not included in bicycle section, only skate).

Source: 39:4-10.1; 39:4-10.2; 39:4-10.5; 39:4-10.6; 39:4-10.7

COMMENT

Subsection (b) designates penalties according to the new penalty classification system contained in 39A:44-GP1.

39A:30-BRx. Requirements for those in the business of selling or renting bicycles

a. A person or business entity regularly engaged in the business of selling or renting bicycles, rollerskates or skateboards shall post a sign at the point where the sale or rental transaction is completed stating: "STATE LAW REQUIRES A BICYCLE RIDER UNDER 14 YEARS OF AGE TO WEAR A HELMET" or "STATE LAW REQUIRES A PERSON UNDER 14 YEARS OF AGE TO WEAR A HELMET WHEN ROLLERSKATING OR SKATEBOARDING", as appropriate. The sign shall be at a minimum 15 inches in length and 8 inches in width. This notification requirement shall not apply to a seller when the bicycle, rollerskates or skateboard is sold other than by an in-person transaction.

b. A person or business entity who fails to post the required sign is subject to a penalty not to exceed $25 a day for each day the business is open to the public and the sign is not posted. The enforcement of this section is vested in the Director of the Division of Consumer Affairs of the Department of Law and Public Safety, inspectors appointed by that Director, and the police, peace officers, or inspectors appointed for this purpose by a municipality, a county or the State. Jurisdiction of proceedings to collect the penalties prescribed by this section is vested in the Superior Court and the municipal court in a municipality where the defendant is apprehended or resides. Process shall be executed in a summary manner pursuant to N.J.S. 2A:58-1 et seq.

c. A person or business entity regularly engaged in the business of renting bicycles, rollerskates or skateboards shall provide a helmet to a person under 14 years of age who will operate or ride in an area where a helmet is required, if the person is not in possession of a helmet. A fee may be charged for the helmet rental.

d. A person or business entity regularly engaged in the business of selling or renting bicycles, rollerskates or skateboards who complies with the requirements of this section shall not be liable in a civil action for damages for any physical injury sustained

by the bicycle operator or passenger or the rollerskater or skateboarder under the age of 14 as a result of the operator's or passenger's failure to wear a properly fitted or fastened helmet in violation of this section.

e. The provisions of this chapter concerning the sale or rental of a bicycle shall not apply to the sale or rental of a bicycle by a person not regularly engaged in the business of selling or renting bicycles and where the bicycle was obtained by the person making the sale or rental for that person's own use.

Source: 39:4-10.3; 39:4-14.6;

COMMENT

This section…

39A:30-BRx. Sale of rollerskates or skateboards and protective gear warning

a. It shall be unlawful to manufacture, assemble, sell, offer to sell or distribute rollerskates, skateboards or electric personal assistive mobility devices without a warning notice consistent with the requirements of this section.

b. The warning notice shall be placed in at least one of the following locations and shall be clearly visible to the consumer: (1) on one roller skate in each pair of rollerskates or on the skateboard; (2) on the outside of the box or other container in which the rollerskates, skateboard or electric personal assistive mobility device are offered for sale at retail; or (3) on any user's guide or instruction manual provided with the rollerskates, skateboard or electric personal assistive mobility device.

c. The warning notice must be printed in clear and conspicuous type and be substantially similar to the following: "WARNING! REDUCE THE RISK OF SERIOUS INJURY AND ONLY USE WHILE WEARING FULL PROTECTIVE GEAR--HELMET, WRIST GUARDS, ELBOW PADS AND KNEE PADS."

d. A person, form, corporation or other legal entity regularly engaged in the business of manufacturing or assembling rollerskates, skateboards or electric personal assistive mobility devices who complies with the requirements of this section shall not be liable in a civil action for damages for any physical injury sustained by a user of rollerskates, a skateboard or an electric personal assistive mobility device as a result of that user's failure to wear a helmet in accordance with this chapter.

Source: 39:4-10.8

COMMENT

This section…

39A:30-BRx. Rights and duties of rollerskaters and skateboarders

a. A person operating rollerskates or a skateboard upon a highway shall be granted all of the rights and subject to all of the duties applicable to the driver of a vehicle by chapter four of Title 39 of the Revised Statutes, except those provisions which by their nature can have no application.

b. Regulations applicable to rollerskates and skateboards shall apply whenever a person operates any rollerskates or skateboard upon a highway or upon any path set aside for the exclusive use of rollerskates or skateboards subject to the exceptions stated in (a).

c. The governing body of a municipality may, by ordinance, regulate the operation of rollerskates and skateboards upon highways and public properties under municipal jurisdiction; provided that no such ordinance shall:

(1) Absolve a person operating rollerskates or a skateboard upon a permitted highway of any of the duties applicable to the operator of a bicycle pursuant to Article 3 of chapter 4 of Title 39 of the Revised Statutes, except the provisions which by their nature can have no application;

(2) Prohibit a person from operating a skateboard upon any public highway, except those specifically designated by ordinance.

d. Nothing in this chapter shall obligate the Commissioner of Transportation to maintain, plan, design or construct highways to accommodate the operation of rollerskates or skateboards.

e. A person operating rollerskates or a skateboard upon a highway shall ride as near to the right side of the highway as practicable, exercising due care when passing a standing vehicle or one proceeding in the same direction; provided that a person may move to the left under any of the following situations:

(1) To make a left turn from a left-turn lane or pocket;

(2) To avoid debris, drains or other hazardous conditions that make it impracticable to ride at the right side of the highway;

(3) To pass a slower moving vehicle;

(4) To occupy an available lane when traveling at the same speed as other traffic; or

(5) To travel no more than two abreast when traffic is not impeded.

f. Persons operating rollerskates or skateboards upon a highway may travel no more than two abreast when traffic is not impeded, but otherwise shall ride in single file, except on paths or parts of highways set aside for the exclusive use of bicycles, rollerskates or skateboards.

g. The provisions of this chapter shall not apply to operators and patrons of rollerskating rinks governed by the "New Jersey Roller Skating Rink Safety and Fair Liability Act," 5:14-1 et seq.

Source: 39:4-10.10; 39:4-10.10a; 39:4-10.10b; 39:4-10.11; 39:4-10.12;

COMMENT

This section…

39A:30-BRx. Required equipment for bicycles

a. A bicycle in use from dusk until dawn shall be equipped with a lamp on the front which emits white light visible from a distance of at least 500 feet to the front, and

with a lamp on the rear which emits red light visible from a distance of at least 500 feet to the rear. A red reflector approved by the Commission may also be mounted on the rear which shall be visible between 50 feet and 300 feet to the rear when directly in front of the head lamps on a motor vehicle.

b. A person shall not operate a bicycle unless it is equipped with a bell or other device capable of giving a signal audible for a distance of at least 100 feet, but a bicycle shall not be equipped with, nor shall a person use upon a bicycle, any siren or whistle.

c. Every bicycle shall be equipped with a brake that will enable the operator to make the braked wheels skid on dry, level, clean pavement.

d. No person shall sell or offer to sell, or rent or offer to rent, whether it be by retail, wholesale or by auction, any bicycle manufactured on or after June 1, 1976 unless the bicycle is equipped with front, rear and pedal reflectors and either (a) side reflectors; or (b) retroreflective tire sidewalls which form a continuous circle on each sidewall, in order to permit recognition and identification under illumination from motor vehicle headlamps. Such front, rear, pedal and side reflectors shall be colored and mounted in conformity with regulations promulgated by the Director of the Division of Consumer Affairs.

e. No person shall sell or offer to sell at retail any bicycle unless there is affixed to that bicycle a statement promoting the use of helmets by bicycle riders. If a bicycle is sold unassembled, the statement shall be displayed in a prominent manner on the carton or package containing the unassembled bicycle. The Director of the Division of Consumer Affairs in the Department of Law and Public Safety shall provide that the affixing of the warning cards "This Bike Is Missing One Part," designed by the New Jersey Coalition for Prevention of Developmental Disabilities and funded by the Office for the Prevention of Mental Retardation and Developmental Disabilities in the Department of Human Services, to a bicycle offered for sale at retail shall fulfill the requirements of this subsection and that those warning cards shall be readily available to the retail sellers of bicycles at cost.

Source: 39:4-10; 39:4-11; 39:4-12; 39:4-14.4; 39:4-14.4a; 39:4-14.7a

COMMENT

This section…

39A:30-BRx. Operation of bicycles

a. A person riding a bicycle upon a highway shall be granted all of the rights and subject to all of the duties applicable to the driver of a vehicle by chapter four of Title 39 of the Revised Statutes except the provisions which by their nature can have no application.

b. Regulations applicable to bicycles shall apply whenever a bicycle is operated upon any highway or upon any path set aside for the exclusive use of bicycles subject to those exceptions stated in (a).

c. A law enforcement officer operating a bicycle while in the performance of the officer's duty, and engaged in the apprehension of violators of the law or of persons charged with, or suspected of, a violation is not be subject to this section.

d. A person operating a bicycle upon a highway shall ride as near to the right side of the highway as practicable, exercising due care when passing a standing vehicle or one proceeding in the same direction; provided that a person may move to the left under any of the following situations:

(1) To make a left turn from a left-turn lane or pocket;

(2) To avoid debris, drains or other hazardous conditions that make it impracticable to ride at the right side of the highway;

(3) To pass a slower moving vehicle;

(4) To occupy any available lane when traveling at the same speed as other traffic; or

(5) To travel no more than two abreast when traffic is not impeded.

e. Persons riding bicycles upon a highway may travel no more than two abreast when traffic is not impeded, but otherwise shall ride in single file except on paths or parts of highways set aside for the exclusive use of bicycles.

f. A person propelling or riding on a bicycle shall not ride other than upon a permanent and regular attached seat, nor shall a person ride with that person's feet removed from the pedals, or with both hands removed from the handlebars, nor shall the person practice any trick or fancy riding in a street. A bicycle shall not be used to carry more persons at one time than the number for which it is designed and equipped.

g. A person riding upon a bicycle, coaster, skates, sled, or toy vehicle may not attach that item or him- or herself to a vehicle upon a highway and no operator of a vehicle shall knowingly allow any person riding upon a bicycle, coaster, skates, sled or toy vehicle to attach that item of him- or herself to the vehicle.

Source: 39:4-12; 39:4-14; 39:4-14.1; 39:4-14.2;

COMMENT

This section…

39A:30-BRx. *Miscellaneous provisions*

a. Except as otherwise provided by this chapter, a person who violates a provision of this chapter shall be subject to a fine not exceeding $200 or imprisonment for a term not exceeding 15 days or both. [*class C*]

b. Any person who shall violate any of the provisions of this act shall be subject to a fine of not more than $50 for a first offense and a fine of $100 for each subsequent offense. [*classes E and D*]

c. The Commissioner shall use a portion of the fund established pursuant to C. 39:4-14.3v for the purpose of providing an educational program for the safe operation of bicycles.

d. The Director of the Division of Consumer Affairs in the Department of Law and Public Safety may adopt regulations covering the types of equipment and the specifications therefor, including the color and mounting thereof, in accordance with Federal standards regulating bicycles promulgated by the Consumer Product Safety Commission entitled "Requirements For Bicycles" (16 CFR Part 1512) and pursuant to the Federal Hazardous Substances Act (15 U.S.C. 1261, et seq.) and any amendatory or supplemental acts or regulations promulgated thereto.

e. The Director of the Division of Consumer Affairs in the Department of Law and Public Safety shall, pursuant to the provisions of the "Administrative Procedure Act", promulgate regulations to effectuate the purposes of this chapter.

f. The enforcement of this chapter shall be vested in the Director of the Division of Consumer Affairs of the Department of Law and Public Safety, the inspectors appointed under the Director's authority, and the police, peace officers or inspectors duly of a municipality, county or the State. Jurisdiction of proceedings to collect the penalties prescribed by this act is vested in the Superior Court and the municipal court in any municipality where the defendant may be apprehended or reside. Process shall be prosecuted in a summary manner pursuant to N.J.S.2A:58-1 et seq.

Source: 39:4-14.3a; 39:4-14.3v1; 39:4-14.7; 39:4-14.7a; 39:4-14.8; 39:4-14.9

COMMENT

The penalty provisions of this section must be rationalized since they are contradictory.

CHAPTER 31. MOTORIZED BICYCLES

39A:31-MBx. Location where motorized bicycles may be operated

a. Motorized bicycles shall not be operated upon interstate highways or upon public highways divided by a grass or concrete median or highways with posted speed limits in excess of 50 miles per hour or upon the railroad or right-of- way of an operating railroad within the State of New Jersey or upon any public land where expressly prohibited by the governing body, department or agency having jurisdiction thereof.

b. The Commissioner may adopt regulations prohibiting the operation of motorized bicycles on a public highway with a speed limit in excess of 40 miles per hour, which in the Commissioner's discretion are hazardous for the operation of motorized bicycles or permitting the operation of motorized bicycles on any public highway, upon which the operation of motorized bicycles is otherwise prohibited by this section, which in the Commissioner's discretion are safe for the operation of motorized bicycles. In no case shall the Commissioner adopt a regulation permitting motorized bicycles to be operated on any highway with a posted speed in excess of 50 miles per hour.

c. A municipality shall not limit or otherwise restrict the operation of motorized bicycles on any public highways under its jurisdiction in contravention of this section or any applicable regulations.

Source: 39:4-14.3

COMMENT

This section…

39A:31-MBx. Requirements upon sale of motorized bicycle

a. At the time of original sale of a motorized bicycle in this State, a motorized bicycle dealer shall complete an approved form which shall contain the following information:

(1) The year of manufacture, make, model, color, and unladen weight of the motorized bicycle;

(2) The United States Department of Transportation head tag serial number of the motorized bicycle;

(3) The name, street address, and age of the purchaser of the motorized bicycle;

(4) The business name and address of the motorized bicycle dealer from whom the bicycle was purchased;

(5) The amount of New Jersey sales tax collected by the dealer;

(6) The motorized bicycle dealer's New Jersey sales tax authorization number;

(7) Signatures of both the motorized bicycle dealer and the purchaser;

(8) The month, day and year of sale;

(9) The name of the insurer of the motorized bicycle and the policy number; and

(10) Any other information required by the Commissioner.

b. The dealer shall retain one copy of the form and present the other two to the purchaser. The form shall constitute temporary registration for the vehicle for a period of 20 days from the date of purchase provided that the purchaser complies with all other laws and regulations regarding operation of motorized bicycles.

c. The dealer shall issue the purchaser temporary license plates to be displayed on the motorized bicycle until permanent registration is completed and a motorized bicycle license plate is issued.

d. Within 20 days the purchaser shall present one copy of the form to the Commission, together with any additional required information, pay the requisite fee and register the motorized bicycle in the manner provided in this chapter.

e. For motorized bicycles purchased prior to June 11, 1984 and for which no bill of sale or other formal proof of ownership is available, the Commissioner may accept as proof of ownership a sworn affidavit from the owner, setting forth with reasonable specificity facts regarding the acquisition of ownership, together with any supporting documents. A person who knowingly submits a false bill of sale, false receipt for purchase, or any other false proof of ownership, or who knowingly submits any false

affidavit or false supporting document regarding proof of ownership of a motorized bicycle, commits a crime of the fourth degree.

Source: 39:4-14.3j; 39:4-14.3p

COMMENT

This section…

39A:31-MBx. Documentation required for operation of motorized bicycles

a. A person shall not operate a motorized bicycle unless in possession of a valid driver's license of any class or a motorized bicycle license, which shall be issued by the Commission to a person 15 or older, upon proof of identity and date of birth, and after the person has passed a satisfactory examination as to ability as an operator. The examination shall include a test of the applicant's knowledge of the mechanism of motorized bicycles as is necessary to insure their safe operation and of the laws and ordinary usages of the road and a demonstration of ability to operate a motorized bicycle.

b. The demonstration of an applicant's ability to operate a motorized bicycle shall be administered at such municipalities that the Commission shall designate, under the supervision of the Commission or an authorized agent, in accordance with the applicable regulations.

c. The Commissioner may issue a learner's permit to a person 15 or older, upon proof of identity and date of birth, allowing such person to operate a motorized bicycle during daylight hours without supervision for a period not to exceed 45 days to prepare to become a licensed motorized bicycle driver. The permit shall be sufficient authorization for the person to operate a motorized bicycle. No permit shall be issued unless the applicant pays $5 to the Commission or an authorized agent.

d. A valid driver's license, insurance identification card, and registration certificate shall be in the possession of the operator at all times when operating a motorized bicycle with motor engaged on the highways of this State. The operator shall exhibit a driver's license upon request of a police officer or magistrate so the officer may determine the identity of the licensee, the correctness of the registration certificate, and the correctness of the evidence of a policy of insurance. Violation of this subsection is a class E offense. If a person charged with a violation of this subsection can exhibit a valid driver's license, insurance identification card, and registration certificate, which were valid on the day the person was charged, to the judge of the municipal court before whom the operator is summoned to answer to the charge, the judge may dismiss the charge but may impose court costs.

e. Every owner of a motorized bicycle principally garaged or operated in this State and every person in the business of renting motorized bicycles shall maintain liability insurance coverage, under provisions approved by the Commissioner of Insurance, insuring against loss resulting from liability imposed by law for bodily injury, death and property damage sustained by any person arising out of the ownership, operation or use of a motorized bicycle. The Commissioner of Insurance, in consultation with the Commissioner, shall by regulation fix the amounts and limits of coverage of, and requirements for, such insurance.

f. A motorized bicycle shall not be operated on the public highways or public lands of this State unless registered by the owner. The Commissioner may grant a registration to the owner of a motorized bicycle who is at least 15, upon submission of a proper application and payment of the fee if the motorized bicycle is of a type approved by the Commissioner. The form and contents of the registration certificate shall be prescribed by the Commissioner, who shall maintain a record of all certificates issued and their contents. The fee for the initial registration of a motorized bicycle and for each annual renewal is $8. The registration shall expire and the certificate become void on the last day of the 11th calendar month following the calendar month in which it was issued, except the Commissioner may suspend or revoke a registration for a violation of this chapter or an applicable regulation. Registration certificates shall be issued on and after the first day of the calendar month immediately preceding the commencement of the registration period, to be effective immediately. Application forms for renewals of registrations shall be mailed by the Commissioner to the last address of the owner of a motorized bicycle as it appears on the Commission's records. The registration requirements shall not apply to a nonresident motorized bicycle owner who has complied with the registration and licensing laws of the state of residence, if the motorized bicycle is appropriately identified in accordance with the laws of that state.

g. At the time of issuance of the registration, the Commissioner shall also issue to the registrant, at no additional cost, a motorized bicycle license plate to be attached to the bicycle by the registrant. Each plate shall contain a clearly visible license number assigned by the Commissioner and shall bear the insignia "MOPED" in clear lettering. The license plate number shall be contained on the certificate of registration.

h. Article 15 of chapter 4 of Title 39 of the Revised Statutes pertaining to accidents and reports is applicable to all accidents involving motorized bicycles. A law enforcement officer investigating an accident in which a motorized bicycle is involved shall report the accident to the Commission. The report shall include information relating to the cause of the accident and extent of any injury to the operator and such other information as may be required.

Source: 39:4-14.3; 39:4-14.3d; 39:4-14.3e; 39:4-14.3f; 39:4-14.3i; 39:4-14.3j; 39:4-14.3k; 39:4-14.3o.

COMMENT

Subsection (d) designates the penalty according to the new penalty classification system contained in 39A:44-GP1.

39A:31-MBx. Operation of motorized bicycles

a. Motorized bicycles shall not be operated by a person under 15.

b. A motorized bicycle shall carry only the operator.

c. No person shall operate a motorized bicycle in this State unless a license plate is displayed in accordance with the license plate provisions applicable to motorcycles.

d. No person shall operate a motorized bicycle unless he wears a protective helmet of a type approved by the Commissioner.

e. Unless otherwise determined by the Commissioner, statutes and regulations applicable to bicycles apply whenever a motorized bicycle is operated upon any highway or any public land.

f. A person operating a motorized bicycle upon a public highway is subject to all of the duties applicable to the driver of a vehicle by chapter 4 of Title 39 and 2C:11-5.

g. It is unlawful for a person to operate a motorized bicycle while under the influence of intoxicating liquor, or a narcotic, hallucinogenic or habit-producing drug. A person who violates this subsection is subject to the same penalties as provided in 39:4-50 for conviction of operating a motor vehicle while under the influence of any such substance. In a prosecution for a violation of this section, the presumptions, consent and procedures set forth in 39:4-50.1 and 39:4-50.2 to 39:4-50.5 are applicable.

h. A person under 17 who commits a second violation of the provisions of 39:4-14.3 or 39:4- 14.3a et seq. or any other provision of chapter 4 of Title 39 of the Revised Statutes shall have the privilege to operate a motorized bicycle suspended for a period of 30 days from the date of conviction. For a subsequent violation a person shall have the privilege to operate a motorized bicycle suspended until the age of 17.

i. An operator of a motorized bicycle who is convicted of a violation of 39:4-66 concerning operation of a vehicle when emerging from an alley, driveway, garage, or private road or driveway or 39:4-66.1 concerning operation of a vehicle when entering an alley, driveway, garage, or private road or driveway from a highway shall be subject to the penalties in 39:4-203.

Source: 39:4-14.3; 39:4-14.3d; 39:4-14.3g; 39:4-14.3h; 39:3-14.3m; 39:4-14.3q; 39:4-14.3x

COMMENT

This section…

39A:31-MBx. Removal, destruction, theft or transfer

a. When a motorized bicycle for which a registration certificate has been issued has been permanently removed from the State, the owner shall notify the Commissioner in writing within 10 days.

b. When a motorized bicycle for which a registration certificate has been issued has been destroyed, stolen, or its use discontinued, the owner shall notify the Commissioner in writing, sign and execute the registration certificate, and return it to the Commissioner within 10 days.

c. When there is a transfer of ownership of a motorized bicycle for which a registration certificate has been issued, the owner shall sign over the registration to the purchaser. The new owner shall apply to the Commissioner for a new registration certificate and license plate and return the original registration certificate and license plate with the application. The new owner shall not operate the motorized bicycle until the new registration is completed. The application form for registering a motorized bicycle whose ownership has been transferred shall contain the same information contained in the application completed by a motorized bicycle dealer at the time of

original sale, with modifications made by the Commissioner and the new owner shall pay the established fees for registering the motorized bicycle.

Source: 39:4-14.3l;

COMMENT

This section…

39A:31-MBx. Additional requirements pertaining to motorized bicycles

a. A person engaged in the business of selling motorized bicycles at retail shall not sell or offer to sell a motorized bicycle unless the motorized bicycle is in conformity with this chapter and applicable regulations.

b. Except as otherwise provided by this act, violation of any of the provisions of this act or any rule or regulation promulgated pursuant to this act is a class D offense.

c. The Commissioner shall promulgate rules and regulations pursuant to the "Administrative Procedure Act" requiring manufacturers or distributors to certify in writing to the Commission the make and model numbers of motorized bicycles which they sell or distribute in this State.

d. The Commissioner shall compile and maintain a list of approved motorized bicycles and shall only permit approved makes and models of motorized bicycles which are sold or distributed in this State after the effective date of this act to be registered but this section shall not preclude registration of a motorized bicycle where its registrant establishes with reasonable specificity that the motorized bicycle conforms to the definition in 39:1-1 and the requirements of 39:4-14.3 and 39:4- 14.3a et seq.

e. The Commissioner shall establish a fund not to exceed $50,000 per year for the purpose of providing an educational program for the safe operation of motorized bicycles.

f. The fees collected pursuant to this act shall be appropriated to the Commission.

g. Requiring a motorized bicycle dealer to be licensed as a motor vehicle dealer under 39:10-19 for the purposes of this act does not make that person a motor vehicle dealer for the purpose of restrictions or regulations contained in a planning or zoning ordinance under the "Municipal Land Use Law," 40:55D-1 et seq.

Source: 39:4-14.3a; 39:4-14.3n; 39:4-14.3r; 39:4-14.3t; 39:4-14.3v; 39:4-14.3w

COMMENT

Subsection (b) designates the penalty according to the new penalty classification system contained in 39A:44-GP1.

CHAPTER 32. ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICES

39A:32-MD1. Requirements

a. “Electric personal assistive mobility device" (“EPAMD”) means a self-balancing non-tandem two wheeled device designed to transport one person which uses an electric propulsion system with average power of 750 watts (one horsepower), whose maximum speed on a paved level surface, when powered solely by such a propulsion system while operated by a person weighing 170 pounds, is less than 20 miles per hour. The device shall not be considered a motorized wheelchair, motorized bicycle, motorcycle, motorized scooter, motorized skateboard, vehicle or motor vehicle.

b. An EPAMD may be operated on the public highways, sidewalks and bicycle paths of the State. Every person operating such a device shall be granted all of the rights and be subject to all of the duties applicable to the driver of a bicycle except as to those provisions thereof which by their nature can have no application. An EPAMD shall be subject to the safety and equipment requirements applicable to bicycles, except as to those provisions thereof which by their nature can have no application.

c. The operator of an EPAMD shall not be required to obtain a driver's license therefor or to register the device. The operator shall not be required to furnish proof of having liability insurance for the device or other proof of financial responsibility.

d. The governing body of any municipality may, by ordinance, regulate the operation of EPAMD upon the highways and public properties under municipal jurisdiction. The State or the governing body of any county or municipality may prohibit or regulate their operation on any public highway under its jurisdiction.

e. Notwithstanding the other provisions of this section, an operator of an electric personal assistive mobility device shall:

(1) wear a helmet while operating that device; and

(2) be 16 years of age or older, except for an operator with a mobility-related disability.

f. An operator who fails to comply with the requirements of this chapter shall receive a warning for the first offense. For a second offense, the operator shall be fined $10. For a subsequent offense, the EPAMD shall be impounded for not more than 30 days. A person who fails to comply with the requirements governing warning notices shall be fined not more than $100 for each violation.

Source: 39:4-14.10; 39:4-14.11.

COMMENT

The penalty provisions of this section have not been included in the classification system. If further research reveals that it is appropriate to do so, they will be included.

CHAPTER 33. HORSES AND HORSE-DRAWN VEHICLES

39A:33-HDV1. Horses on public highways

a. A person shall not drive a horse attached to a sleigh or sled on a public highway unless there are a sufficient number of bells attached to the horse's harness to give warning of its approach.

b. A horse shall not be left unattended in a public highway unless securely fastened or unless the wheels of the vehicle to which the horse is harnessed are securely tied, fastened or chained, and the vehicle is of sufficient weight to prevent its being dragged at a dangerous speed with the wheels so secured.

c. A horse shall not be unbitted on a public highway unless secured by a halter.

d. A person shall not remove a wheel, pole shaft, whiffletree, swinglebar or a part of a vehicle or harness likely to cause accident if the horse starts, without first unhitching the horse attached to the vehicle.

e. A person shall not fasten a horse in such a manner that the tie rope, reins, or lines are an obstruction to the free use of a sidewalk or crosswalk.

f. A horse shall not be hitched or fastened to a pole carrying any wires, a public lamp-post, or pole, a shade tree or its protecting box or casing, or to a water hydrant.

g. A person shall not run or race a horse on a public highway, whether the running, racing or trotting is for trial of speed or for the purpose of passing another horse or vehicle. This section shall not apply where permission for racing is given by the proper municipal authorities and the portion of the public highway devoted to the racing is properly closed to other traffic.

h. A person shall not cease to hold the reins in that person’s hands while riding, driving, or conducting a horse.

i. Every vehicle drawn by a horse or other beast shall carry, from 30 minutes after sunset to 30 minutes before sunrise, and during foggy conditions, at least one lighted lamp on the front of the vehicle. The lamp shall show a white light and shall be of a nature and so displayed that it may be seen from at least 500 feet in the direction toward which the vehicle is proceeding. During those same times, there shall be attached to the rear of the vehicle two lighted lamps showing a red light visible for a distance of at least 500 feet in the direction from which the vehicle is proceeding.

Source: 39:4-15; 39:4-16; 39:4-17; 39:4-18; 39:4-19; 39:4-20; 39:4-21; 39:4-22; 39:4-25.

COMMENT

This section…

39A:33-HDV2. Rights and prohibitions regarding horses and horse-drawn vehicles

a. A person riding an animal or driving an animal-drawn vehicle upon a public highway shall be granted all of the rights and shall be subject to all of the duties

applicable to the driver of a vehicle by chapter four of Title 39 of the Revised Statutes and all supplements thereto, except the provisions which by their very nature can have no application.

b. A person shall not ill-treat, overdrive, override or beat a horse. A person who violates this section is guilty of a disorderly persons offense, except that a person who beats a horse is guilty of a crime of the fourth degree, and shall be subject to the provisions of 4:22-17, 4:22-21, and 4:22- 26, as appropriate.

c. A person shall not crack or use a whip to annoy, interfere with or endanger a person or excite a horse other than a horse that person is using.

Source: 39:4-23; 39:4-24; 39:4-25.1.

COMMENT

This section…

PEDESTRIANS AND HANDICAPPED MOTORISTS

CHAPTER 38. PEDESTRIANS

39A:38-P1. Crossing highways with controlled intersections

a. On highways where intersections are controlled by a traffic control signal or by traffic or police officers, pedestrians shall not cross a highway against the "stop" signal unless otherwise specifically directed to go by a traffic or police officer, or official traffic control device.

b. A pedestrian crossing or starting across an intersection on a "Go" signal, whether the intersection is marked with a crosswalk or not, shall have the right of way over all vehicles, including those making turns, until the pedestrian has reached the opposite curb or place of safety, and no operator of a vehicle shall fail to yield the right of way even if the pedestrian is still within the intersection when the signal changes.

c. At intersections where traffic is directed by a police officer or traffic signal, no pedestrian shall enter upon or cross the highway at a point other than a crosswalk. Pedestrians shall move, whenever practicable, upon the right half of crosswalks.

d. The local authority in a particular jurisdiction may regulate, by an ordinance approved by the Commissioner, the crossing of pedestrians at intersections of highways where traffic is controlled by traffic control signals.

Source: 39:4-32; 39:4-33; 39:4-35; 39:4-37.

COMMENT

This section…

39A:38-P2. Crossing or walking along highways without controlled intersections

a. Where traffic is not controlled and directed by a police officer or a traffic control signal, pedestrians shall cross the highway within a crosswalk or, in the absence of a crosswalk and where not otherwise prohibited, at right angles to the highway.

b. It shall be unlawful for a pedestrian to cross any highway separated by a medial barrier, except where provision is made for pedestrian crossing.

c. On all highways where there are no sidewalks or paths provided for pedestrian use, pedestrians shall, when practicable, walk only on the extreme left side of the highway or its shoulder facing approaching traffic. Where sidewalks are provided it shall be unlawful for any pedestrian to walk along and upon an adjacent highway.

Source: 39:4-34.

COMMENT

This section…

39A:38-P3. Exceptions to pedestrian right of way; pedestrian responsibilities

a. The driver of a vehicle shall yield the right-of-way to a pedestrian crossing the highway within a marked or unmarked crosswalk at an intersection, except:

(1) When the movement of traffic is being regulated by police officers or traffic control signals;

(2) Where otherwise prohibited by municipal, county, or State regulation; or

(3) Where a pedestrian tunnel or overhead pedestrian crossing has been provided. A pedestrian crossing a highway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right of way to all vehicles on the highway.

b. Nothing in this chapter shall relieve a pedestrian from using due care for the pedestrian's own safety. No pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is *impossible* for the driver to yield.

c. When a vehicle is stopped to permit a pedestrian to cross the highway, the driver of another vehicle approaching from the rear shall not overtake and pass such stopped vehicle.

d. Every pedestrian upon a highway at any point other than within a marked or unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the highway.

e. Nothing in this chapter shall relieve a driver from the duty to exercise due care for the safety of any pedestrian upon a highway.

Source: 39:4-36; 39:4-36.1.

COMMENT

This section…

39A:38-P5. Right of way of visually impaired persons

a. A visually impaired person using as a guide a walking cane, predominantly white or metallic in color, or a guide dog, equipped with a rigid "U"-shaped harness such as customarily used on dog guides or any guide dog instructor engaged in instructing a guide dog shall have the right-of-way in crossing any highway or any intersection thereof.

b. All drivers of vehicles shall yield the right-of-way to a visually impaired person or guide dog instructor engaged in instructing a guide dog even if traffic on the highway or intersection is controlled by traffic signals, despite any New Jersey motor vehicle and traffic laws to the contrary.

c. The failure of a visually impaired person or guide dog instructor to comply with the provisions of this chapter shall not give rise to a conclusive presumption of contributory negligence by such person.

d. The provisions of this section shall not apply where traffic is directed by a traffic or police officer.

Source: 39:4-37.1.

COMMENT

This section…

CHAPTER 39. HANDICAPPED OR MENTALLY RETARDED PERSONS

39A:39-HP1. Definitions

a. "Appropriate identification" means, in the case of a restricted parking zone, a permit issued by a municipality under C.39:4-197.7 and, in the case of a restricted parking space, a placard or wheelchair symbol license plates issued by the Commission under C.39:4-206.

b. "Eligible handicapped person" means a handicapped person who is the holder of an identification card issued by the Commission under C.39:4-205, or a permit issued by a municipality under C.39:4-197.7.

c. "Handicapped person" means a person who has lost the use of one or more limbs as a consequence of paralysis, amputation, or other permanent disability or who is permanently disabled as to be unable to ambulate without the aid of an assisting device or whose mobility is otherwise limited as certified by a physician with a plenary license to practice medicine and surgery; a podiatrist licensed to practice in this State or a *bordering state*; a physician stationed at a military or naval installation located in this State who is licensed to practice in any state; or, a chiropractic physician licensed to practice in this State *or a bordering state*.

d. "Mentally retarded person" means a person in a state of significant subnormal intellectual development with a reduction of social competence which state shall have existed prior to adolescence and is expected to be of lifelong duration.

e. "Park unlawfully" means to park a motor vehicle in a restricted parking space or a restricted parking zone if the motor vehicle does not display appropriate identification.

f. "Restricted parking space" means a parking space which the State or a local government has established for the exclusive use of a handicapped person but shall not include a restricted parking zone established under C.39:4-197.6.

g. "Restricted parking zone" means a parking zone in front of the residence of a handicapped person which a municipality has established for the use of that handicapped person under C.39:4-197.6.

Source: 39:4-204; 39:4-207.2; 39:4-207.6.

COMMENT

This section…

39A:39-HP2. Handicapped person identification cards

a. The Commissioner shall issue, at the expense of the State, handicapped person identification cards upon the application of qualifying handicapped persons after due investigation of the qualifying status of each applicant.

b. The card shall:

(1) Identify the handicapped person and state that the holder is qualified to receive the card;

(2) Identify the registration number of the vehicle for which any wheelchair symbol license plates have been issued under this chapter;

(3) State that the card is for the exclusive use of the person to whom it was issued, is nontransferable and will be forfeited if presented by any other person; and

(4) State that any abuse of any privilege, benefit, precedence or consideration granted to a person to whom such card may be issued will be sufficient cause for revocation of the card, corresponding windshield placard and wheelchair symbol license plates, and that in the absence of any such revocation said card shall be valid indefinitely.

Source: 39:4-205.

COMMENT

This section…

39A:39-HP3. Handicapped person windshield placard and license plates

a. The Commissioner shall issue to a person who receives a handicapped person identification card a placard of a size and design determined by the Commissioner in consultation with the Division of Vocational Rehabilitation Services and the Office of

Disability Services, indicating that a handicapped person identification card has been issued, which shall be displayed in a manner determined by the Commissioner on the motor vehicle used to transport the handicapped person, when the vehicle is parked overtime or in special parking places established for use by handicapped persons.

b. Notwithstanding any provision of C. 39:4-204 et seq. to the contrary, the chief of police of each municipality in this State shall issue a temporary handicapped placard of not more than six months' duration to any person who has temporarily lost the use of one or more limbs, is temporarily disabled and unable to ambulate without the aid of an assisting device or whose mobility is otherwise temporarily limited, as certified in the same manner required for a handicapped person. Each temporary placard shall set forth the date on which it shall become invalid.

c. The physician certification required for a temporary placard shall state that the person meets the conditions constituting temporary disability and shall be provided on the standard form developed by the Commissioner in consultation with local chiefs of police and representatives of the handicapped. The form shall contain only those conditions constituting temporary disability as provided in this section. The physical presence of the handicapped person shall not be required for the issuance of a temporary handicapped placard.

d. A temporary placard may be renewed one time at the discretion of the issuing authority for a period of not more than six months' duration. The placard shall be displayed on the motor vehicle used by the temporarily handicapped person and shall give the person the right to park overtime or to use special parking places established for use by handicapped persons in any municipality of this State.

e. The fee for the issuance of a permanent or temporary placard issued pursuant to this section shall be $4 and payable to the Commissioner.

f. In addition to handicapped person identification cards and windshield placards, the Commissioner may, for a fee of $10 per vehicle, issue license plates bearing the national wheelchair symbol for:

(1) Not more than two motor vehicles owned, operated or leased by a handicapped person or by any person furnishing transportation on his behalf; or

(2) Any two motorcycles owned, operated or leased by a handicapped person.

Source: 39:4-206.

COMMENT

This section…

39A:39-HP4. Handicapped nursing home resident identification card and placard

a. The Commissioner shall issue a handicapped nursing home resident identification card and corresponding windshield placard upon the application of a nursing home owner or operator for use in a vehicle owned or operated by the nursing home when that vehicle is used to transport handicapped nursing home residents.

b. The card and placard shall:

(1) Identify the nursing home owner or operator and state that the person is qualified to receive the card and placard;

(2) Identify the registration number of the nursing home's vehicle for which the card is issued;

(3) State that the identification card and corresponding windshield placard are for the exclusive use of the nursing home's vehicle when transporting a handicapped nursing home resident;

(4) State that the identification card and corresponding windshield placard are not transferable and will be forfeited if used for purposes not authorized under this act; and

(5) State that an abuse of any privilege, benefit, precedence or consideration granted to a person to whom the identification card and corresponding windshield placard are issued is sufficient cause for revocation of the identification card and corresponding windshield placard and that in the absence of any such revocation, the identification card and corresponding windshield placard are valid indefinitely.

c. The windshield placard shall be displayed on the vehicle when the vehicle is used to transport handicapped nursing home residents. A vehicle displaying this windshield placard is authorized to park in a space appropriately marked for vehicles for the handicapped only when delivering or receiving handicapped nursing home residents from one location to another. The vehicle is not permitted to park in designated handicapped parking spaces when it is not transporting handicapped nursing home residents.

d. The fee for the issuance of the card and placard is $4 and is payable to the Commissioner.

Source: 39:4-207.8.

COMMENT

This section…

39A:39-HP5. Parking spaces for handicapped persons

a. A person who owns or controls a parking area open to the public, or to which the public is invited, and which contains special parking spaces for the use of persons who have been issued a placard or wheelchair symbol license plates pursuant to this chapter shall assure that access to these special parking spaces and to curb cuts or other improvements designed to provide accessibility for handicapped persons is not obstructed.

b. If snow or ice is obstructing the special parking space, curb cut or other improvement designed to provide accessibility for the handicapped, it shall be removed within 48 hours after the weather condition causing the snow or ice ceases.

c. A person who violates this act shall be liable for a penalty between $200 and $500.

Source: 39:4-207.9.

COMMENT

The penalty in subsection (c) has not been included in the classification system. If, after further research, it appears that it is appropriate to do so, the language will be changed.

39A:39-HP6. Request for removal of vehicle unlawfully parked in handicapped space or zone

a. An eligible handicapped person may request a law enforcement officer to arrange for the removal and storage of a motor vehicle parked unlawfully in a parking space or zone restricted for use by a handicapped person. It shall be the obligation of the owner of the motor vehicle to pay the reasonable costs for the removal and storage which may result from the removal.

b. The removal of a motor vehicle under this section is subject to local ordinances concerning the regulation of that practice, including, but not limited to, the fees charged for the removal, notice requirements, and the licensing of persons engaged in removal.

c. The assessment of removal and storage costs against a person under this section shall be in addition to any other penalty assessed against the person.

Source: 39:4-207.7.

COMMENT

This section…

39A:39-HPx. Special parking privileges

a. No penalty shall be imposed for the parking overtime of a motor vehicle which displays a placard or wheelchair symbol license plates issued pursuant to this chapter under any law or municipal ordinance unless the vehicle is parked in one location for more than 24 hours. This provision applies only when the person to whom the placard or special license plate has been issued is either the driver or a passenger of the vehicle.

b. A motor vehicle with a special license plate, placard or parking permit issued to a handicapped person by another state, district or territory of the United States, or by Canada shall be entitled to special parking privileges for the handicapped established by any law or any ordinance, resolution or regulation.

Source: 39:4-207; 39:4-207.5.

COMMENT

This section…

39A:39-HPx. Motor vehicles used to transport mentally retarded persons

a. The Commissioner shall issue a special insignia upon the application of a federal, State, county or municipal entity, or a public or private nonprofit organization incorporated under the laws of this State, for motor vehicles owned or operated by the

applicant and used to transport mentally retarded persons. The design and placement of the insignia shall be determined by the Commissioner.

b. The fee for the issuance of an insignia shall be determined by the Commissioner and the insignia shall be renewable annually at the time fixed for the annual registration of the vehicle.

c. The Commissioner may also issue to an applicant, at the expense of the State, special vehicle identification cards to be carried by the operators of motor vehicles used to transport mentally retarded persons. The cards shall be renewable annually by the director at the time fixed for the annual registration of the vehicles.

d. The director may also issue to an applicant a placard to be displayed on the motor vehicle.

e. A motor vehicle for which an insignia has been issued and which is properly identified may park in a space appropriately marked for vehicles for the handicapped whenever the vehicle is being used to transport mentally retarded persons.

Source: 39:4-207.3; 39:4-207.4.

COMMENT

This section…

VEHICLES OF UNUSUAL DIMENSIONS AND LOADS

CHAPTER 34. VEHICLES OR APPARATUS OF UNUSUAL SIZE OR WEIGHT

39A:34-VUS1. Moving heavy machinery or apparatus

a. A person may move overweight or oversized vehicles, apparatus or machinery, including road building machinery, vehicles, traction engines, rollers and structural units incapable of dismemberment, on trailers or semitrailers, along or across a public highway if the trailers or semitrailers have been registered with the Commissioner for a $200 fee. Registration is not required of vehicles registered in another state which exempts properly registered New Jersey vehicles from its registration requirements.

b. In addition to registration, a permit must be obtained from the Commissioner for State highways, from the county supervisor(s) for county roads or from the duly authorized official(s) for municipal roads. The trailer or semitrailer shall be loaded and operated to avoid damage to the surface of any public highway, bridge or railroad crossing. The gross weight of the combination of vehicle and load shall be limited to 800 pounds for each inch of width of the tires on all wheels. A permittee shall be responsible in money damages to the municipality, county, State Highway Commissioner or railroad company maintaining a crossing if the permittee fails to comply with the statutes or regulations governing the use of the highway or crossing, or the rules governing the movement authorized under the permit.

c. A trailer or semitrailer between 96 and 144 inches wide, used to transport divisible loads for industrial processing or storage, may be registered with the Commissioner for $200. A registered trailer or semitrailer may be operated on a public

highway, except limited access highways, if the distance operated on the highway does not exceed 1,000 feet from the point of entrance to the point of exit and if the vehicle has a valid permit. The movement may be made at any hour of any day with no escort vehicles required. The distance limitation shall not apply when the vehicle is empty and proceeding to or from an inspection, service, maintenance, or repair facility.

d. The *director*, board of chosen freeholders and municipality may by regulation or resolution, as appropriate, adopt rules regarding the issuance and use of permits not contrary to this chapter, and may impose reasonable permit fees. No permit may be issued unless the appropriate state, county or municipal official is reasonably satisfied as to the financial responsibility of the applicant to meet claims for damages which may arise and reasonable evidence of the financial responsibility is filed with the official.

Source: 39:4-26; 39:4-27.

COMMENT

This section…

39A:34-VUS2. Limitations on movement of heavy machinery or apparatus

a. No overweight or oversized vehicle, apparatus or machinery having a height, including load or equipment or apparatus, in excess of 14 feet shall be operated, driven, propelled or conveyed along or across a public highway with overhead wires unless employees of the entity responsible for those wires are present prepared to supervise any movement or change in the wires, or to make immediate repairs in case of damage.

b. No overweight or oversized vehicles, apparatus or machinery shall be operated, driven, propelled or conveyed along the tracks of a street railway except between nine o'clock p.m. and six o'clock a.m.

Source: 39:4-28; 39:4-29

COMMENT

This section…

39A:34-VUS3. Limitations on chapter

a. This chapter does not apply to any road building machinery, vehicle, traction engine, steam roller (“road building machinery”) or other apparatus or machinery running upon railroad or street railway tracks, or a private railroad or railway, spur track or switch.

b. A license shall not be required for road building machinery or other apparatus or machinery while actually used in any type of construction. Such road building machinery or other apparatus or machinery may be operated or drawn, subject to the following conditions:

(1) An individual or business entity may, for such machinery or equipment, obtain general registration and license plates with the word "temporary" or "in-transit" stated thereon if the Commissioner is satisfied as to the financial responsibility of the owner to meet any claim for damages arising out of an accident and satisfactory evidence of such responsibility has been filed with the Commissioner.

(2) The annual fee for the issuance of a certificate of registration, or duplicate, and five sets of "temporary" or "in-transit" plates bearing a number corresponding to the certificate of registration shall be $100.

(3) “Temporary” or “in–transit” plates can be placed on any road building machinery or other apparatus or machinery, owned or operated by the individual or business entity to whom the registration is issued, only in moving to and from the location of any type of construction.

Source: 39:4-30.

COMMENT

This section…

39A:34-VUS4. Violations

Violation of this chapter is a class D offense. The fine shall be paid to the board or body charged with maintaining the highway on which the violation occurred.

Source: 39:4-31.

COMMENT

This section designates the penalty according to the new penalty classification system contained in 39A:44-GP1. In keeping with the revised penalty provisions, references to incarceration for non-payment of the fine have been removed.

CHAPTER 37. LOADS AND LOADING OF VEHICLES

39A:37-LL1. Overweight vehicles on interstate bridges

a. A motor vehicle shall not be driven over a bridge in this State if the gross weight of the vehicle and load is greater than the gross posted weight limit of the bridge.

b. Signs warning operators that they are approaching a bridge with a maximum gross weight limit shall be posted in a conspicuous place upon the bridge or immediately adjacent to it and at the last safe exit or detour preceding the bridge. These signs shall indicate the maximum gross weight permitted on the bridge and shall be in accordance with the current standards prescribed by the Manual on Uniform Traffic Control Devices for Streets and Highways. The signs shall be posted and maintained by the entity with jurisdiction over the bridge.

c. Violation of this section is a class B offense.

d. The owner and operator of a vehicle used in violation of this section shall be responsible to the governmental or other entity owning or maintaining the bridge, for any damage done to the bridge by reason of the violation.

Source: 39:4-75;

COMMENT

Subsection (c) designates the penalty according to the new penalty classification system contained in 39A:44-GP1.

39A:37-LL2. Overweight vehicles on intrastate bridges

a. A vehicle shall not be driven over any interstate bridge owned or maintained in whole or in part by this State, upon which is posted in a conspicuous place a sign stating the gross weight that the bridge will carry, if the gross weight of any such vehicle and the load is greater than the gross weight stated on the sign.

b. A person violating this section, and the owner of a vehicle driven upon a bridge in violation of this section, with a gross weight or with weight on any axle or wheel exceeding by more than 3% the maximum weight allowed, shall be fined $0.02 for each pound of excess weight if the excess does not exceed 10,000 pounds, and $0.03 for each pound of excess weight if the excess weight exceeds 10,000 pounds, but in no event less than $50.

c. The owner of a vehicle driven in violation of this section shall, in addition to the penalty prescribed above, be responsible to the entity having control of the bridge, for damages done to any bridge by reason of a violation of this section.

d. Money received from penalties imposed for violations of this section shall be forwarded by the Commissioner to the State Treasurer.

Source: 39:4-76.

COMMENT

Penalties in subsection (b) have not been included in the classification system. If, after further research, it appears that it is appropriate to do so, the language will be changed.

39A:37-LL3. Loading

a. A person shall not cause or permit a vehicle to be loaded or to operate a vehicle loaded so that the contents or any part thereof may be scattered in any highway. When the load of a vehicle is of material other than farm products susceptible to scattering on a highway and the load extends above the height of the sides, tail gate or rear of the body of the vehicle, the load shall be securely covered by a tarpaulin or other cover.

b. Where public safety warrants, the Commissioner shall, after a public hearing, prescribe by regulation the minimum safety standards for fastening loads on and fix loading procedures for a commercial type flat bed motor vehicle. Any regulation promulgated by the Commissioner shall be filed in the Secretary of State's office and copies shall be available, upon request, in the Commissioner's office.

c. The owner, lessee, bailee, or operator of a vehicle found on a highway in violation of a safety standard or procedure prescribed by the Commissioner shall be guilty of a class C offense.

Source: 39:4-77.

COMMENT

Subsection (c) designates penalty according to the new penalty classification system contained in 39A:44-GP1.

39A:37-LL4. Snow or ice falling from vehicle

a. When snow or ice is dislodged from a moving vehicle and strikes another vehicle or pedestrian causing injury or property damage:

(1) The operator of a non-commercial motor vehicle shall be guilty of a class B offense.

(2) The operator, owner, lessee, bailee, or any one of them, of a commercial motor vehicle shall be guilty of a class A offense.

b. No motor vehicle points or automobile insurance eligibility points pursuant to C.17:33B-14 shall be assessed for this offense.

Source: 39:4-77.1.

COMMENT

Subsection (a) designates penalties according to the new penalty classification system contained in 39A:44-GP1.

39A:37-LL5. Specific loads

A person shall not load or drive a vehicle loaded with iron or other material that may strike together, unless it is properly deafened to cause no unnecessary noise.

Source: 39:4-78.

COMMENT

This section…

39A:37-LL6. Loading

a. An operator shall not allow a vehicle to stand backed to the curb when loading or unloading, except when it is impracticable to load or unload it while standing parallel to the curb. No vehicle may completely block the passage of another vehicle or street car by remaining backed up to the curb. When necessary to back up to the curb, the towing vehicle in any combination of vehicles shall stand as nearly parallel as practicable to the curb and face the direction of traffic.

Source: 39:4-79.

COMMENT

This section…

CHAPTER 47. TRANSPORTATION OF DANGEROUS ARTICLES ON HIGHWAY

39A:47-DAR1. Radioactive material

a. As used in this section:

(1) "Certificate of handling" means a written document issued by the Department of Environmental Protection pursuant to C. 26:2D-18 et seq., approving the

use of certain specified New Jersey highways for the transport of specified quantities of radioactive materials.

(2) "Certificate number" means the number associated with the certificate of handling issued by the Department of Environmental Protection.

b. For the transport of certain types and quantities of radioactive material as specified by C. 26:2D-18 et seq., the operator of the motor vehicle shall produce the certificate of handling or certificate number when requested to do so by any State Police officer or any representative of the Department of Environmental Protection acting in performance of the office, and shall produce any other documents as may be required by law to determine the identity of the certificate holder.

c. Where a radioactive material shipment has been certified pursuant to C. 26:2D-18 et seq., and the applicable regulations, and it does not require placarding on the outside of the shipping vehicle pursuant to federal law or regulations, the driver or operator of the vehicle shall conspicuously post a placard in the cab to be readily visible from outside the cab of the vehicle bearing the conventional radiation symbol and the words:

"CAUTION: THIS VEHICLE CONTAINS RADIOACTIVE MATERIAL".

Compliance with this section shall be deemed compliance with C. 39:5B-11.

d. In addition to any other conditions or liability imposed by law, it shall be unlawful to ship or transport, or cause to be shipped or transported, by motor vehicle over the highways of this State those types and quantities of radioactive material for which a certificate of handling is required pursuant to C. 26:2D-18 et seq., unless the certificate of handling or certification number is obtained from the State Department of Environmental Protection and is in the possession of the operator of the motor vehicle used for transport of the material on the highways of this State.

e. Where a certificate of handling is required and has been issued by the Department of Environmental Protection, it shall be unlawful to ship or transport, or cause to be shipped or transported, radioactive material that in any way constitutes a deviation from the conditions of the certificate of handling by motor vehicle over the highways of this State.

f. A State Police officer or representative of the State Department of Environmental Protection, while in the performance of their duties, is authorized to inspect a motor vehicle to investigate an actual or suspected source of radiation for the purpose of determining compliance with the provisions of, or the need for, a certificate of handling.

g. Violation of this section by an authorized carrier of radioactive materials is a class B offense. Violation of this section by not an authorized carrier of radioactive materials is a class A offense. The penalty shall be recovered pursuant to N.J.S.A. 2A:58-1 et seq.

Source: 39:5B-18; 39:5B-19; 39:5B-20; 39:5B-21; 39:5B-22; 39:5B-23; 39:5B-24.

COMMENT

Subsection (g) designates penalties according to the new penalty classification system contained in 39A:44-GP1. The level of the offense had been changed by the Commissioners from class C to class B for authorized carriers and from class C to class A for unauthorized carriers to bring the penalty in accord with penalties for similar offenses and to address concerns raised by law enforcement officers. Additional research is required to make sure that the proposed modifications do not contravene federal law or regulation.

39A:47-DAR2. Hazardous material

a. As used in this section:

(1) "Department" means the Department of Transportation;

(2) "Hazardous material" means a substance or material determined by the Secretary of the United States Department of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce and so designated pursuant to the provisions of 49 U.S.C. § 1801 et seq.

b. There is created in the Division of State Police of the Department of Law and Public Safety, an Office of Hazardous Materials Transportation Compliance and Enforcement. It shall be the responsibility of this office to coordinate the implementation and enforcement of the provisions of this section and the applicable regulations.

c. The Department, in consultation with the Department of Environmental Protection, the Department of Labor, the Department of Commerce and Economic Development, the Divisions of Motor Vehicles and State Police of the Department of Law and Public Safety, and other appropriate State departments and agencies, shall, annually prepare and submit to the Governor and the Legislature a report detailing the incidence and means of the transportation of hazardous materials in this State, evaluating the protection afforded New Jersey citizens by all relevant federal and State statutes and regulations, and recommending executive or legislative actions necessary to insure the safe and proper transportation of hazardous materials.

d. Violation of this section or any applicable regulation is a class A offense. Notwithstanding any other provision of law, 50 percent of the penalty moneys collected pursuant to this paragraph shall be deposited into the "Highway Safety Fund" created pursuant to 39:3-20.4. The complaint and summons shall state whether the charges pertain to a first offense, or to a second or subsequent offense. If the complaint or summons fails to allege a second or subsequent offense, the penalty imposed shall be for a first offense. The penalty may be reduced to $25 for a first offense, $50 for a second offense, and $125 for a third and subsequent offense for a non-out-of-service equipment violation if the defendant provides proof of repair to the vehicle satisfactory to the court. Proof that the violation has been corrected shall be by a document certifying that the non-out-of-service equipment violation has been corrected. The Division of State Police, a diesel emissions inspection center licensed by the New Jersey Motor Vehicle Commission, a certified fleet mechanic approved by the New Jersey Motor Vehicle Commission, or any other entity approved by the New Jersey Motor Vehicle Commission shall be authorized to issue the requisite certifying documentation. The Division of State

Police may designate times and locations where a defendant may bring a vehicle for an inspection pursuant to which a requisite certifying document may be issued. Nothing in this section shall be construed as requiring the Division of State Police to conduct a vehicle inspection pursuant to which a requisite certifying document may be issued other than at the time and locations as the Division of State Police may provide.

e. Repairs to effect a reduction of penalty under the provisions of this section shall be made before the hearing date. A defendant may be permitted to submit the certification of repairs by mail; provided that if the court deems the certification to be inadequate, it shall afford the defendant the option to withdraw the defendant's guilty plea.

f. The Department may adopt a schedule of penalties for any specific violation of C.39:5B-25 et seq. or any applicable regulation. A penalty imposed pursuant to this section may be collected in a civil action by a summary proceeding under C.2A:58-10 et seq., or in a summary proceeding before a court wherein injunctive relief has been sought. The State Police and police officers of the Port Authority of New York and New Jersey may issue a summons and complaint returnable in a municipal court or other court for violations of C. 39:5B-25 et seq., this section and any applicable regulation. The Superior Court shall have jurisdiction of proceedings for the enforcement of the penalties provided in this section and municipal courts shall have jurisdiction of proceedings for the enforcement of penalties under $5,000.

g. Penalties imposed pursuant to this section shall not reduce or limit the liability of any person under State law for cleanup costs or other damages arising from a discharge of hazardous materials.

h. The Superintendent of the State Police, police officers of the Port Authority of New York and New Jersey and personnel of the Department and the Department of Environmental Protection authorized by the Superintendent may, in addition to seeking a civil penalty, seek injunctive relief in the Superior Court as to any person found to have violated 39:5B-25 et seq., this chapter, or any applicable regulation.

Source: 39:5B-25; 39:5B-26; 39:5B-27; 39:5B-28; 39:5B-29;

COMMENT

Subsection (d) designates penalties according to the new penalty classification system contained in 39A:44-GP1. Further research is required for this section since the currently assigned penalty does not distinguish between first and subsequent offenses, which conflicts with other language in the statute. Further, the designated penalty does not include the option, contained in the current statute, of imposing the current upper limit of $25,000 for the third offense so additional modifications to this section are anticipated.

39A:47-DAR3. Transportation of hazardous material

a. The transportation of hazardous materials in this State shall be carried out in accordance with 39:5B-25 et seq. and this section chapter, except that this section shall not be construed to limit the application or enforcement of the system of reporting the generation, transportation, storage and disposal of hazardous wastes required to be

reported to the Department of Environmental Protection on the special waste manifest pursuant to N.J.A.C. 7:26-7.1 et seq., or as otherwise provided by law.

b. The Superintendent of the State Police may inspect vehicles, railroad cars, and places of origin or destination in the State of the hazardous materials being transported, as may be necessary to carry out *P.L.1983, c. 401* and this chapter. The Superintendent may also break cargo seals on vehicles and railroad cars as necessary to inspect vehicles and railroad cars transporting hazardous materials to ascertain that packages as defined in 49 C.F.R. § 171.8 have been properly classified, described, packaged, marked, labeled, blocked and braced and are in proper condition for shipment.

c. The powers exercised by the Superintendent pursuant to this section may also be exercised by police officers of the Port Authority of New York and New Jersey, and by personnel of the Department of Transportation authorized by the Superintendent. Personnel of the Department of Environmental Protection authorized by the Superintendent may, consistent with federal regulations, inspect the contents of packages referred to in subsection (b) at places of origin prior to acceptance by the transporter or at places of destination after acceptance by the consignee. Authorized personnel of the Department of Environmental Protection may also conduct, in conjunction with and under the direction of State Police personnel, inspections and break cargo seals as described in subsection (b) when at off-highway facilities, including, but not limited to, public truck stops, public rest areas, State weigh stations, and commercial motor vehicle inspection stations.

d. The Commissioner of Transportation is authorized to adopt, in consultation with the Superintendent of the State Police regulations governing inspection and breaking of cargo seals by those authorized to do so under this section. A person not given specific authority in this section to do so shall not break cargo seals under this section or otherwise implement the provisions of this section.

e. a. Notwithstanding any provision of Title 39 or Title 48, the Commissioner of Transportation shall require all railroads operating in New Jersey to annually report to the Department the number of placarded rail freight cars transporting hazardous materials, as defined in C.39:5B-25 et seq., originating or terminating in the State, and shall annually pay the department a $3 fee per placarded rail freight car transporting hazardous materials which originates or terminates in this State during the reporting year.

f. The Commissioner of Transportation may, annually or less frequently, adopt regulations in accordance with the "Administrative Procedure Act," providing for the revision of the fee set forth in subsection (e), provided that such fee shall not be increased by more than the increase in the consumer price index for all urban wage earners and clerical workers (CPI-W) in the Philadelphia-New Jersey Area, as reported by the United States Department of Labor for the period since the fee was last determined.

g. Moneys received from fees collected pursuant to this section shall be deposited in the General Fund and disbursed to the Department, subject to appropriation, to defray the expenses of the placarded rail freight car transporting hazardous materials program.

Source: 39:5B-30; 39:5B-31; 39:5B-31.1.

COMMENT

This section…

39A:47-DAR4. Qualification of interstate motor carriers

a. The Superintendent of the State Police shall, in consultation with the Division of Motor Vehicles in the Department of Law and Public Safety and with the Department of Transportation, revise and readopt the regulations adopted by the Superintendent to provide that the regulations:

(1) Substantially conform to the requirements concerning the qualifications of interstate motor carrier operators and vehicles established pursuant to sections 401 to 404 of the "Surface Transportation Assistance Act of 1982," 49 U.S.C.App. §§ 2301-2304 and the federal "Motor Carrier Safety Act of 1984," 49 U.S.C.App. § 2501 et seq.; and

(2) Include provisions regarding motor carrier operators and vehicles engaged in intrastate commerce or used wholly within a municipality or a municipality's commercial zone, except for farm vehicles registered pursuant to R.S. 39:3-24 and R.S. 39:3-25, that are compatible with federal rules and regulations.

b. Notwithstanding any provision of law or regulation to the contrary, a person shall not operate a commercial motor vehicle in this State unless the operation of that vehicle is in accordance with the regulations adopted by the Superintendent.

c. The regulations adopted pursuant to this section shall include those concerning protection against shifting or falling cargo contained in 49 C.F.R. §§ 393.100 to 393.106.

Source: 39:5B-32.

COMMENT

This section…

CHAPTER 36. DISPLAY OF INFORMATION ON COMMERCIAL VEHICLES

39A:36-CV1. Information required to be displayed on commercial vehicles

a. Every vehicle used for commercial purposes on a highway, except for passenger automobiles and vehicles owned or leased by a pharmacy and utilized for the transportation or delivery of drugs, shall conspicuously display, on the vehicle or a nameplate, the name of the owner, lessee or lessor of the vehicle and the name of the municipality in which the owner, lessee or lessor has the principal place of business. Franchised public utilities and operators of fleets of 50 or more commercial vehicles shall be exempted from displaying the name of the municipality, provided that their vehicles display a corporate identification number.

b. The sign or name plate shall be in plain view and not less than three inches high. Where space for lettering is limited by the design of the vehicle or the presence of other required identification markings, and strict compliance with this section is impractical, the lettering shall be as close to three inches high as is possible, provided the

name is clearly visible and readily identifiable. In a combination of two vehicles this section will be served when either unit of the combination conforms with the identification specifications. A person shall not operate, cause or permit to be operated on a highway a commercial vehicle that does not comply with this section, except for passenger automobiles and vehicles owned or leased by a pharmacy and utilized for the transportation or delivery of drugs.

c. For this section, a franchised public utility means a public utility, as defined in R.S. 48:2-13, with a defined geographical service territory approved by the Board of Public Utilities.

d. Violation of this section, unless provided otherwise, is a class E offense. In default of the payment, the person violating this section shall be imprisoned in the county jail for a period not exceeding 10 days. Money received from fines under this section shall be forwarded by the Commissioner to the State Treasurer, to be used as a fund for the repair of the improved roads throughout the State with due regard for the repair of the most *improved* roads and the distribution of benefits throughout the counties of the State.

e. Every owner of a commercial motor vehicle (CMV) as defined C.39:3-10.11 with a gross vehicle weight rating or a combined gross vehicle weight rating of 26,001 pounds or more which is registered or principally garaged in this State shall display the gross vehicle weight rating (GVWR) as set forth in subsection (b). For this subsection, GVWR means the value specified by the manufacturer as the maximum loaded weight of a single or combination (articulated) vehicle, or registered gross weight, whichever is greater. A person who knowingly displays or causes to be displayed on a CMV a GVWR less than the actual GVWR, or an owner who knowingly permits a CMV to be operated in this State with a displayed GVWR less than the actual GVWR shall be guilty of a class A offense.

Source: 39:4-46; 39:4-47.

COMMENT

Subsections d and e designate penalties according to the new penalty classification system contained in 39A:44-GP1.

ENFORCEMENT

CHAPTER 45. ENFORCEMENT

39A:45-E1. Enforcement

a. Except as otherwise provided, the enforcement of *this subtitle* shall be vested in the Commissioner and the police or peace officers of, or inspectors duly appointed for that purpose by, a municipality or county or by the State.

b. Nothing in this section shall be construed to authorize police or peace officers or inspectors appointed by a municipality or county to conduct random roadside examinations of a vehicle.

Source: 39:5-1.

COMMENT

This section…

39A:45-E2. Judicial powers of Commissioner

a. The Commissioner shall have the same powers as are conferred on a municipal court judge.

b. In considering violations of *this subtitle*, the Commissioner may hold court in any municipality in the State, upon five days' notice given to the defendants summoned to appear. The Commissioner shall conduct the proceedings in compliance with the applicable Court Rules governing municipal courts.

c. The fees and costs shall be the same as in a municipal court. Appeals from a court held by the Commissioner shall be taken to the Superior Court.

Source: 39:5-2.

COMMENT

This section…

39A:45-E3. Process; complaint; venue

a. When a person has violated a provision of *this subtitle*, the judge may, within 30 days after the commission of the offense, issue process directed to a constable, police officer or the Commissioner for the appearance or arrest of the person so charged. In the case of a violation enumerated in subsection (b), this period shall commence upon the filing of a complaint.

b. A complaint may be made to a judge for a violation of:

(1) 39:3-12, 39:3-34, 39:3-37, 39:4-129 or 39:10-24 within one year after the commission of the offense; and

(2) 39:4-50, 39:4-50.4a, 39:3-10.13, 39:3-10.24, 12:7-46, 12:7-57, 39:3-40, or 39:4-128.1 within 90 days after the commission of the offense.

c. Proceedings shall be brought before a judge with jurisdiction in the municipality in which the violation is alleged to have occurred. When a violation occurs on a street through which the boundary line of two or more municipalities runs or crosses, then the proceeding may be brought before the judge with jurisdiction in any one of the municipalities divided by the boundary line. If there is no judge or no judge with jurisdiction available for the acceptance of bail and disposition of the case, or if a judge with jurisdiction is disqualified for any legal cause, the proceeding shall be brought before a judge with jurisdiction in the nearest municipality to the one in which it is alleged the violation occurred.

d. Proceedings for the violation of *this subtitle* shall be brought in the name of the State, *with the Commissioner, police officer, peace officer, constable or any other person who institutes the proceedings as prosecutor. A judge may refuse to issue a warrant on the complaint of a person other than the Commissioner or a police officer, until a sufficient bond to secure costs has been executed and delivered to the judge.*

e. All acts, whether in connection with the taking of complaints, issuing process, return of process, taking of bail for appearance or committing to custody for failure to deposit such bail and all proceedings preliminary to trial, including the arraignment, taking of plea and postponement of trial and all ministerial acts and proceedings subsequent to trial, may be performed by the clerk or deputy clerk of a judge.

f. Proceedings may be instituted on any day of the week, and the institution of the proceedings on Sunday shall be no bar to successful prosecution. Any process served on Sunday shall be as valid as if served on any other day of the week.

Source: 39:5-3; 39:5-5; 39:5-6; 39:5-24.

COMMENT

This section…

39A:45-E4. Forfeiture of bond or cash deposit

a. A bail bond, if forfeited, may be enforced by the Commissioner. A cash deposit in lieu of bond, if forfeited, shall be paid to the Commissioner by the court with which it was deposited. Any such forfeiture shall be in a proceeding instituted by the Commissioner, a member of Commissioner's staff, the State Police, an inspector of the Public Utility Commission, or a law enforcement officer of any other State agency.

b. The Commissioner shall dispose of the proceeds of the forfeiture in the manner provided by 39:5-40. The proceeds of forfeitures in a proceeding instituted by a local officer shall be forwarded by the court to the proper financial officer of the county in which they were collected, to be used by the county to fund road repairs. A court may first deduct costs and fees from forfeited bail as authorized by 22A:3-4, and pay the same to the municipal treasurer.

Source: 39:5-9.

COMMENT

This section…

39A:45-E5. Arrest without warrant

a. A law enforcement officer may, without a warrant, arrest a person violating any provision of *chapter 3 of this Title*, in the officer's presence, or any person, other than a person operating a vehicle running upon a route approved by the Board of Public Utilities ("BPU"), violating provision of *chapter 4 of this Title* in the officer's presence. A law enforcement officer may, without a warrant, arrest any person the officer has probable cause to believe has operated a motor vehicle in violation of R.S. 39:4-50 or C. 39:3-10.13, regardless of whether the suspected violation occurs in the officer's presence. The exemption from arrest of an operator of a vehicle running on a route approved by the BPU shall not operate to prevent that person's arrest for a violation of R.S. 39:4-50.

b. The arresting officer shall bring any person arrested without a warrant before a judge of the municipal court of the municipality where the offense is committed, or before the Commissioner. If the arrest is for a violation of R.S. 39:4-50, the arresting officer may, if no judge, clerk or deputy clerk is available, temporarily detain the person

arrested in a police station or other place maintained by a municipality for the detention of offenders, or in the common jail of the county, for a reasonable time to permit the arresting officer to obtain a warrant for the offender's further detention. Temporary detention shall not exceed 24 hours from the time of the arrest. If the arrest is for a violation of any other provision *of this subtitle*, the person arrested shall be detained in the police station or municipal court until the arresting officer makes a complaint and a warrant issues.

c. A law enforcement officer may, instead of arresting an offender, serve that person with a summons.

Source: 39:5-25.

COMMENT

This section…

39A:45-E6. Validity of summons or warrant

A summons or warrant issued by a court under this chapter shall be valid throughout the State. An officer who may serve the summons or warrant and make arrest in the county in which it was issued may also serve the summons or warrant and make arrest in any county of the State.

Source: 39:5-28.

COMMENT

This section…

39A:45-E7. License exhibited to court

A driver arrested for a violation of *this subtitle* shall, on demand of the court hearing the complaint, produce the driver's license for inspection. If the driver fails to produce a license or give satisfactory excuse for its nonproduction, the driver shall, in addition to any other penalties imposed, be subject to a fine not exceeding $25.

Source: 39:5-27.

COMMENT

This section…

39A:45-E8. Suspension of sentence

In any proceeding instituted pursuant to *this subtitle*, except where a mandatory penalty is fixed, the court may suspend the imposition or execution of sentence, and may also place the defendant on probation under the supervision of the chief probation officer of the county for a period between six months and one year. The probation shall be administered pursuant to 2A:168-1 to 2A:168-13.

Source: 39:5-7.

COMMENT

This section…

39A:45-E9. Appeal

a. If a defendant appeals to the Superior Court, the appeal shall operate as consent to an amendment of the complaint to substitute a new or different charge growing out of the act or acts complained of or the circumstances surrounding such acts. Any provision of law limiting the time within which a charge may be brought or proceedings taken in prosecution shall be deemed to have been waived by the appeal.

b. On an appeal by the defendant, the county prosecutor of the county in which the alleged violation was committed shall represent the complainant except when:

(1) A complaint is made by a member of the State Police charging a violation of 39:3-40, 39:4-50 or 39:4-96, in which case the Attorney General, and not the prosecutor, shall represent the complainant; and

(2) There is violation of a municipal ordinance relating to traffic regulations and the proceeding was instituted by a municipal officer, the municipal attorney shall represent the complainant.

c. If the county prosecutor is responsible for representing the complainant, the prosecutor may request the Attorney General to attend personally, or by such assistant or assistants as he shall designate, to aid in the prosecution of the appeal.

d. Where a license has been revoked for a violation of 39:4-50, and an appeal has been taken from the judgment, the appeal does not operate to restore the license during the pendency of the appeal, but the license may be restored either by the trial court or the appellate court pending disposition of the appeal.

Source: 39:5-11; 39:5-20; 39:5-22.

COMMENT

This section…

39A:45-E10. Suspension or revocation of driving privilege

a. Every: registration certificate; driver's license; privilege to drive motor vehicles, including commercial motor vehicles; and endorsement may be suspended or revoked. A person may be prohibited from obtaining a driver's license or a registration certificate, or disqualified from obtaining any endorsement, and the reciprocity privilege of a nonresident may be suspended or revoked by the Commissioner for a violation of *this Title* or on any other reasonable grounds, after notice in writing of the proposed suspension, revocation, disqualification or prohibition and the ground for the action.

b. The Commissioner may summon witnesses to appear before the Commissioner to give testimony in a hearing regarding a revocation of a license or registration certificate conducted by the Commissioner or a designated employee. The summons shall be served at least five days before the return date, either by registered mail or personal service. A person who willfully fails to obey the summons shall be guilty of a class B offense, and the vehicle registration or driver's license, or both, shall be revoked. The fine imposed for this violation shall be recovered with costs in an action prosecuted by the Attorney General. The fee for witnesses required to attend before the

Commissioner shall be $1 for each day's attendance and $0.03 for every mile of travel by the nearest generally traveled route in going to and from the place of the hearing. These fees shall be paid when the witness is excused from further attendance, and the disbursements made shall be audited and paid in the manner provided for expenses of the Commission. If the hearing is conducted by a designated employee, the employee shall recommend to the Commissioner in writing whether the license or registration shall be suspended or revoked.

c. The Commissioner shall issue a notice of proposed final suspension or revocation of a license, registration or nonresident reciprocity privilege to operate a motor vehicle held by the individual charged, or temporary order prohibiting the individual from obtaining a license, when a matter is presented to the Commissioner involving an alleged violation of

(1) 39:4-98, where a speed in excess of 20 miles per hour over the authorized speed limit is alleged, and which resulted in the death of another;

(2) 39:4-50, and which resulted in the death of another;

(3) 39:4-96, and which resulted in the death of another;

(4) 39:4-129, where the death of another has occurred, and the Commissioner has not determined to immediately issue a preliminary suspension; or

(5) Any other provision of this title, wherein the death of another occurred and for which the Commissioner determines immediate action is warranted.

d. In a notice of proposed final suspension or revocation the Commissioner shall provide the individual charged with an opportunity for a plenary hearing to contest the proposed final suspension, revocation or other final agency action. Unless the Commission receives, no later than the 10th day after the notice was mailed, a written request for hearing, the proposed final agency action shall take effect on the date specified in the notice.

e. The Commissioner for good cause may, without hearing, immediately issue a preliminary suspension of a license, registration or nonresident reciprocity privilege to operate a motor vehicle held by the individual charged, or temporary order prohibiting the individual from obtaining a license, when a matter is presented to the Commissioner involving an alleged violation of

(1) 39:4-98, where a speed in excess of 20 miles per hour over the authorized speed limit is alleged, and which resulted in the death or serious bodily injury of another;

(2) 39:4-50, and which resulted in the death or serious bodily injury of another;

(3) 39:4-96 or 39:4-97, and which resulted in the death or serious bodily injury of another; or

(4) 39:4-129, where the death or serious bodily injury of another has occurred, and the Commissioner has not determined to immediately issue a preliminary suspension.

For purposes of this subsection, "serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

f. Along with the notice of preliminary suspension, the Commissioner shall issue a notice of proposed final suspension, revocation or other final agency action, and shall afford the individual the right to a preliminary hearing to contest the preliminary suspension and a plenary hearing to contest the proposed final agency action. The preliminary suspension shall remain in effect pending a final agency decision on the proposed final agency action, unless a request for a preliminary hearing is received by the Commission no later than the 10th day after the notice was mailed. The proposed final agency action shall take effect on the date specified in the notice unless a request for a plenary hearing is received by the division no later than the 10th day from the date on which the notice was mailed.

g. Upon receipt of a timely request for a plenary hearing, a preliminary hearing shall be held by an administrative law judge within 15 days of the receipt of the request. The preliminary hearing shall be to determine whether, pending a plenary hearing on the proposed final agency action, a preliminary suspension shall be immediately issued by the judge. Adjournment of such hearing upon motion by the individual charged shall be given only for good cause shown.

h. At the preliminary hearing, the parties shall proceed on the papers submitted to the judge, including the summons, the police reports and the charged individual's prior driving record submitted by the Commission, and any brief affidavits permitted by the judge from persons who shall be witnesses at the plenary hearing, and the parties may present oral argument. Based on: the papers; oral argument; the individual's prior driving record; and the circumstances of the alleged violation, the judge shall determine whether the individual was properly charged with a violation of the law and a death occurred and, if so, whether in the interest of public safety, a preliminary suspension shall be immediately ordered pending the plenary hearing on the proposed suspension or revocation. The administrative law judge shall transmit his findings to the Commissioner.

i. A plenary hearing shall be held no later than the 45th day following the preliminary hearing. Adjournment of the hearing shall be given only for good cause shown. If the hearing is postponed or delayed solely at the instance of the individual charged, the administrative law judge shall immediately issue a preliminary suspension of a license, registration or nonresident reciprocity privilege held by that individual, or if a preliminary suspension or order is in effect, the judge shall continue it. A preliminary suspension or temporary order shall remain in effect pending a final agency decision. If the hearing is postponed or delayed at the instance of anyone other than the individual charged, the judge shall immediately issue an order restoring the individual's license, registration or nonresident reciprocity privilege pending a final agency decision. The period of preliminary suspension shall be deducted from any suspension imposed by the final agency decision in the matter.

j. Whenever a fatal accident occurs in this State, an investigation of the incident, whether performed by the State Police or by local police, shall be completed and forwarded to the Commissioner within 72 hours of the time of the accident.

k. Any determination resulting from any preliminary or plenary hearing held pursuant to this section shall not be admissible at any criminal or quasi-criminal proceedings on the alleged violation or violations.

l. In addition to any other final agency action, the Commissioner shall require a person whose privileges to operate a motor vehicle are suspended or who has been prohibited from obtaining a license, pursuant to this section, to be reexamined to determine the person's ability to operate a motor vehicle prior to regaining or obtaining any driving privileges in this State.

m. In addition to any other requirements imposed by statute or regulation, as a condition for the restoration of a revoked or suspended license issued under C.39:3-10.9 et seq., a person whose commercial driving privileges are revoked or suspended shall successfully complete a commercial driver improvement program. The Commissioner, in accordance with the provisions of the "Administrative Procedure Act," shall promulgate regulations prescribing the scope and content of the program, the qualifications of third parties that may offer a commercial driver improvement program, a fee schedule for persons attending a commercial driver improvement program and such other matters as appropriate and necessary. The successful completion of a commercial driver improvement program pursuant to this subsection shall not entitle a person to any reduction in the points assessed and recorded under C.39:5-30.5 et seq. The Commissioner may also require a person holding a CDL who receives 12 or more points during a 24-month period to complete a commercial driver improvement program successfully or face full suspension of the CDL driving privilege.

Source: 39:5-30.

COMMENT

Subsection (b) designates the penalty according to the new penalty classification system contained in 39A:44-GP1. The level of the offense had been changed from class D to class B by the Commission to bring the penalty in accord with penalties for similar offenses and to address concerns raised by law enforcement officers.

39A:45-E11. Habitual offender

a. As used in this act, “habitual offender" means a person driver’s license is suspended three or more times for violations occurring within a three-year period.

b. The Commissioner may suspend, for a period of no more than three years, the driver’s license of any person who within a period of three years, commits motor vehicle violations, other than a violation of C. 39:6B-2, which ultimately result in the licensee having his or her driver’s license suspended three or more times. Where any suspension is based on an accumulation of points involving more than one conviction, the period of suspension shall be calculated from the date of commission of the latest violation.

c. The notice of proposed suspension shall be mailed to the licensee at the last address of record with the Commission and shall clearly state the reason for the

suspension. The suspension shall become effective 15 days from the date of the mailing of the notice unless the Commissioner, for cause, establishes another date, or the licensee notifies the Commissioner in writing within 10 days of the mailing of the notice to request a hearing to challenge the suspension.

d. The administrative law judge presiding at a hearing to challenge the imposition of a license suspension shall only consider evidence of the actual number of suspensions and the time period during which the violations leading to the suspensions were committed in issuing a suspension for the period provided for by this section. *The judge may admit evidence relevant to the circumstances set out in subsection (e) in considering the appropriateness of any portion of in excess of the three year period suspension issued.* A person who fails without reasonable cause to appear at a hearing to challenge the suspension of a driver's license shall have that person's driver's license suspended forthwith by the director for a fixed minimum period of three years.

e. In determining the appropriateness of issuing a suspension f*or the maximum period of three years established by this section*, the Commissioner may consider the following circumstances:

(1) The latest offense was of such a nature that it evinced an unreasonable disregard by the licensee for the safety and welfare of himself or others;

(2) The number and seriousness of the offenses contained in the prior driving record of the licensee evince a pattern or patterns of unreasonable disregard by the licensee for the safety and welfare of himself or others;

(3) The nature and extent of the driving record of the licensee establish a substantial risk that licensee will commit another offense.

f. A suspension issued pursuant to this section shall not run concurrently with any other suspension. A licensee may apply to the Commissioner for reinstatement of a license following the period of suspension issued.

g. Unless otherwise provided, an habitual offender convicted of operating a motor vehicle while suspended pursuant to this section shall pay a fine of $1,000 and may be sentenced to a term of imprisonment for a period of 30 days. If the habitual offender is involved in an accident resulting in bodily injury to another, the offender shall, in addition to the fine, be sentenced to a term of imprisonment for not less than 45 days.

Source: 39:5-30a; 39:5-30b; 39:5-30c; 39:5-30d; 39:5-30e.

COMMENT

The penalty in subsection (g) has not been included in the classification system. If, after further research, it appears that it is appropriate to do so, the language will be changed.

39A:45-E12. Suspension or revocation of license where driving privilege suspended or revoked in another state

When the reciprocity driving privilege of a New Jersey resident is suspended or revoked by lawful authority in another State upon a conviction of a violation of the motor vehicle laws and the report of the conviction is transmitted by the proper authority in that

state to the Commissioner pursuant to any law providing for reciprocal exchange of such information, the Commissioner may suspend or revoke the driving privilege of the resident in this State, as provided in this chapter. The suspension shall be for a period not less than that for which the privilege was suspended or revoked in the other state nor more than the period for which the driving privilege would have been suspended or revoked for a conviction for a similar offense occurred in this State.

Source: 39:5-30.1

COMMENT

This section…

39A:45-E13. Driver improvement program

a. A moving violation of the motor vehicle law which carries with it a penalty of suspension or revocation of a driver's license may be subject to review by the Commissioner. The Commissioner may permit a driver subject to suspension or revocation to attend a Commission Driver Improvement Program ("DIP") in lieu of all or part of a period of suspension. This discretionary authority does not apply to those sections of the motor vehicle law which require the imposition of a mandatory suspension term.

b. Persons attending a DIP shall pay a fee not to exceed $100, as prescribed in regulations promulgated by the Commissioner.

c. The driver's license of any person failing to pay the prescribed fee shall be subject to suspension or revocation.

Source: 39:5-30.2; 39:5-30.4.

COMMENT

This section…

39A:45-E14. Penalty points

a. The Commissioner may pursuant to the "Administrative Procedure Act," continue to adopt regulations to determine the motor vehicle offenses for which penalty points may be assessed under this chapter, and the amount of points to be assessed for each and to adopt regulations to determine the motorized bicycle offenses for which penalty points may be assessed and the number of points to be assessed for each.

b. The court shall assess points at the time of conviction for any offense committed in this State, and the Commissioner shall, upon receiving notice, assess points for any conviction occurring in another jurisdiction. The court shall transmit a record of all points assessed, along with the record of conviction to the Commissioner, who shall maintain records of all points assessed in a manner. In addition to any requirements the Commissioner may prescribe, the record shall include the respective dates of commission and conviction of the offense or offenses.

c. Whenever a licensee has accumulated six or more points, the Commissioner shall notify the licensee at the last address of record with the Commission of the number of points assessed and the general nature and effect of the point system.

d. Driver's license suspension for points procedure:

(1) Except for good cause, the Commissioner shall suspend for a period between 30 and 180 days, except as provided in subsection x, the driver's license of any person who accumulates

(A) 12 or more points in a period of 2 years or less, or

(B) 15 or more points in a period greater than 2 years, or

(C) Between 12 and 15 points in a period greater than 2 years, unless the licensee notifies the Commission in writing within 10 days of the date of mailing of the proposed notice of suspension of a request to attend a driver improvement course approved by the Commissioner, and satisfactorily completes the course.

(2) The proposed notice of suspension shall be mailed to the licensee at the last address of record with the Commission and shall clearly state the length of the suspension, the reason for the suspension and that the licensee has a right to be heard on the suspension.

(3) The suspension shall become effective 15 days from the date of the mailing of the notice unless the Commissioner for cause establishes another date, or the licensee notifies the director in writing within 10 days of the mailing of the notice of a request to personally appear at a hearing to challenge the suspension.

(4) The administrative law judge presiding at the hearing shall only consider evidence of the actual number of points assessed and the period of time during which such points were accumulated, taking into consideration any point reduction credits earned by the licensee, in issuing a suspension. The judge may consider other relevant evidence in considering the appropriateness of any portion of a suspension issued in excess of 30 days.

(5) A person who fails without reasonable cause to appear at a hearing, or who fails to satisfactorily complete the approved driver improvement course, shall have that person's license to operate a motor vehicle suspended for the period contained in the proposed notice of suspension.

e. At any hearing held pursuant to this chapter, the administrative law judge shall consider as reason for the suspension and the length of the suspension the actual number of points accumulated by the licensee prior to the date of the hearing. It shall not be a defense to or a reason to adjourn any suspension proceeding instituted pursuant to this chapter that:

(1) The Commissioner initially notified the licensee of a less stringent administrative alternative available to the licensee; or

(2) The Commissioner failed to notify the licensee of the number of points the licensee had accumulated.

f. Points recorded against a licensee shall be reduced at the rate of three points for each 12 consecutive months in which the licensee has not committed any violation resulting in the assessment of points or in the suspension of driving privileges. Recorded points shall also be reduced by three points, when the licensee attends and satisfactorily

completes an approved license improvement course except that a licensee may not receive point reduction credits for completing the same or a similar course within two years of having completed the original course. Recorded points shall be reduced by two points if the licensee attends and satisfactorily completes an approved motor vehicle defensive driving course pursuant to C.17:33B-45 except that a licensee may not receive point reduction credits for completion of an approved motor vehicle defensive driving course within five years of having completed a previously approved motor vehicle defensive driving course. No point totals shall be reduced below zero. Computation of the time periods used in granting point reduction credits shall be based upon the respective dates of commission of the offenses for which the licensee was convicted and assessed points.

g. The Commissioner shall, include in the motor vehicle point system a schedule of points to be assessed against a person operating a motor vehicle, except a motor vehicle operated for emergency purposes by a fire department or ambulance or rescue squad, in a manner which causes the destruction of agricultural crops, fences, fields or other agricultural or recreational property. "Recreational property" means any public or private property used as a golf course, park, or other similar purpose. A person who operates a motor vehicle in this manner who is not a licensed driver of this State at the time of the violation, shall have the points assessed against that person's record upon being issued a license to operate a motor vehicle in New Jersey.

Source: 39:5-30.5; 39:5-30.5a; 39:5-30.6; 39:5-30.8; 39:5-30.9; 39:5-30.11.

COMMENT

This section…

39A:45-E15. Subsequent violation

a. Except for good cause, the Commissioner shall suspend for the period provided in this subsection the driver's license of any person who, having had a driver's license suspended pursuant to 39A:45-E14 or having satisfactorily completed an approved driver improvement course, is convicted of a violation committed within one year of the date of restoration of the driving privilege or the completion of the approved driver improvement course. For commission of one violation within one year, the suspension shall be between 45 and 90 days. For a second violation, the suspension shall be between 90 and 180 days.

b. The driver's license suspension procedure pursuant to this section is as follows:

(1) A proposed notice of suspension shall be mailed to the licensee at the last address of record with the Commission. The notice shall clearly state the length of the suspension, the reason for the suspension and that the licensee has a right to be heard on the suspension, which shall become effective 15 days from the date of the mailing of the notice, unless the Commissioner for cause establishes another date or unless the licensee notifies the Commissioner in writing within 10 days of the notice of a request for a hearing to challenge the suspension.

(2) The administrative law judge presiding at a hearing shall only consider evidence of the actual number of points assessed and the period of time during which

such points were accumulated, taking into consideration any point reduction credits earned by the licensee. The judge may consider other relevant evidence in considering the appropriate length of a suspension for each case.

(3) Any person who fails without reasonable cause to appear at a hearing provided for by this section shall have the driver's license suspended forthwith for the term contained in the proposed notice of suspension.

Source: 39:5-30.10.

COMMENT

This section…

39A:45-E16. Suspension of license for drug conviction

a. As used in this section:

(1) "Conviction" means a final adjudication that a violation has occurred, a final judgment on a verdict, a finding of guilt in a tribunal of original jurisdiction, or a conviction following a plea of guilty, non vult or nolo contendere accepted by a court. It also includes an unvacated forfeiture of bail, bond or collateral deposited to secure the person's appearance in court, or the payment of a fine or court costs, or violation of a condition of release without bail, regardless of whether the penalty is rebated, suspended or probated.

(2) "Drug offense" means a conviction or an adjudication under juvenile proceedings for the possession, distribution, manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell, or transfer any substance, the possession of which is prohibited under the federal Controlled Substances Act or a conviction or adjudication of delinquency for any violation of a law substantially similar in nature to N.J.S. 2C:35-1 et al.

(3) "Person" means a natural person who is a resident of New Jersey at the time of the violation resulting in the conviction or adjudication of delinquency or who holds a New Jersey driver's license or permit at the time of the violation resulting in the conviction or adjudication of delinquency.

b. The Commissioner shall suspend, revoke, or postpone the driving privilege in this State for a period between six months and two years of every person convicted of or adjudicated delinquent for a drug offense in a federal court or in the court of any other state, or the District of Columbia. When a person whose license is subject to suspension, revocation, or postponement under this act is less than 17 years old, the period of suspension, revocation or postponement imposed by the Commissioner shall commence immediately and shall run for a period between six months and two years after the date the person reaches the age of 17. If the driving privilege of a person is under revocation, suspension, or postponement for a violation of Title 2C or Title 39 at the time of the imposition of suspension, revocation, or postponement under this section, the revocation, suspension, or postponement imposed pursuant to this section shall commence as of the date of termination of the existing suspension, revocation, or postponement.

c. The proposed notice of suspension, revocation, or postponement shall be mailed to the person at the last address of record with the Commission. The suspension, revocation, or postponement shall become effective 20 days from the date of mailing of the notice, unless the Commissioner establishes another date, or the person notifies the director in writing within 15 days of the mailing of the notice of a request for a hearing to challenge the suspension, revocation, or postponement. A hearing request shall contain a detailed statement of the factual and legal basis upon which the person challenges the suspension.

d. The Commissioner shall be responsible for the receipt of all reports of drug offense convictions submitted to this State by federal courts and courts of any other state or the District of Columbia.

Source: 39:5-30.12; 39:5-30.13; 39:5-30.14; 39:5-30.15.

COMMENT

This section…

39A:45-E17. Revocation of driver's license or registration

a. The Commissioner or a judge before whom a hearing under *this subtitle* is held may revoke the driver's license of a person when that person is convicted of a willful violation of any provision of this subtitle as shall justify such revocation.

b. The Commission has the power to validate a driver's license that has been revoked, or to grant a new license to any person whose driver's license has been revoked.

c. If a driver's license is suspended or revoked, a new license granted to the driver shall be void and of no effect, unless it shall be granted by the Commission.

d. If a registration is been suspended or revoked, a new registration shall be void and of no effect, unless the new registration is made and issued under the direction of the Commission.

e. A person whose driver's license or registration certificate has been suspended or revoked who fails to return the document to the Commissioner, together with any license plates issued, within five days of the date of suspension or revocation, or who fails to surrender it or them upon demand of an authorized representative of the Commission, or police officer who has been directed to secure possession, shall be guilty of a class D offense.

Source: 39:5-31; 39:5-32; 39:5-33; 39:5-34; 39:5-35.

COMMENT

Subsection (e) designates penalty according to the new penalty classification system contained in 39A:44-GP1. The level of the offense had been changed from class E to class D by the Commission to bring the penalty in accord with penalties for similar offenses and to address concerns raised by law enforcement officers.

39A:45-E18. Imprisonment on default of payment of fine

a. Unless otherwise expressly provided in *this subtitle*, a person convicted of a violation of a provision of this subtitle, and upon whom a fine is imposed, shall, in default of payment, be imprisoned in the county where the offense was committed. Imprisonment shall not exceed one day for each $20 of the fine imposed, nor shall imprisonment exceed a period of three months.

b. When a person is imprisoned by reason of default in the payment of a fine or cost imposed and assessed upon conviction of a violation of this subtitle and the court has ordered that the person remain committed until the fine and costs are paid, the person shall be given credit against the amount of such fines and costs at the rate of $20 for each day of such confinement. When the person has been confined for a sufficient number of days to establish credits equal to the aggregate amount of fines and costs, and is not held by reason of any other sentence or commitment, the person shall be discharged from such imprisonment by the officer in charge of the county jail or workhouse.

Source: 39:5-36.

COMMENT

This section…

39A:45-E18. Fees and disposition of money received

a. The Commissioner shall collect a $25 fee from a person who issues or passes to the Commission a check, or similar sight order for the payment of money, which is not honored by the drawee. This fee shall be in addition to all other fees owed by the person to the Commission. The amount sought to be satisfied by such dishonored instrument shall not be deemed paid until the amount and the fee required under this section are paid. This subsection is shall be applicable to any check or similar sight order for the payment of money, made to the Commission.

b. The judge, either in an original proceeding or on appeal for a violation of R.S. 39:4-50, may tax as costs a sum not exceeding $20, to be paid to any physician testifying in the proceeding. This amount, when included in the taxed costs authorized by this chapter, shall be paid as costs are now paid. If the defendant is found not guilty of a violation of R.S. 39:4-50, the costs shall be paid by the prosecutor, except when the Commissioner, a member of the Division of State Police or a police officer has been the prosecutor.

c. Except as otherwise provided by this subtitle, money received in accordance with the provisions of this Title, whether from fines, penalties, forfeitures, registration fees, license fees, or otherwise, shall be accounted for and forwarded to the Commissioner, who shall pay the same over to the State Treasurer, to be credited to the State Highway Fund and used for the purposes of such fund as provided by 52:22-20, State Government, Departments and Officers.

Source: 39:5-36.1; 39:5-39; 39:5-40.

COMMENT

This section…

39A:45-E19. Fines, penalties and forfeitures; disposition

a. All fines, penalties and forfeitures imposed and collected under authority of law for violations of R.S.39:4-63 and R.S.39:4-64 shall be forwarded by the court to the proper financial officer of a county, if the violation occurred within the jurisdiction of that county, or to the municipality in which the violation occurred. These funds shall be used by the county or municipality to help finance litter control activities in addition to or supplementing existing litter pickup and removal activities in the municipality.

b. Except as otherwise provided by subsection (a), fines, penalties and forfeitures imposed and collected under authority of law for any violations of the provisions of this Title, other than those violations in which the complaining witness is the Commissioner, a member of Commission staff, a member of the State Police, a member of the county police or county park police, an inspector of the Board of Public Utilities, or a law enforcement officer of any other State agency, shall be forwarded by the court as follows:

(1) One-half of the total amount collected to the financial officer of the municipalities where the violations occurred, to be used for general municipal use and to defray the cost of operating the municipal court. Up to 25% of the money received by a municipality, but not more than the actual amount budgeted for the municipal court, whichever is less, may be used to upgrade case processing; and

(2) One-half of the total amount collected to the proper financial officer of the county, to be used by the county as a fund for the construction, reconstruction, maintenance and repair of roads and bridges, snow removal, the acquisition and purchase of rights-of-way, and the purchase, replacement and repair of equipment for use on roads and bridges.

c. Fines, penalties and forfeitures imposed and collected for violations of the provisions of this Title, in which the complaining witness is a member of a county police or county park police, shall be forwarded by the court to the financial officer of the county, to be used for general county use and to defray the cost of operating the central municipal court. Whenever any county has deposited moneys collected pursuant to this section in a special trust fund in lieu of expending the same for the purposes authorized by this section, it may withdraw from said special trust fund in any year an amount which is not in excess of the amount expended by the county over the immediately preceding three-year period from general county revenues for said purposes. Such moneys withdrawn from the trust fund shall be accounted for and used as are other general county revenues.

d. $1 shall be added to the amount of each fine and penalty imposed and collected for any violation of the provisions of Title 39 or any other motor vehicle or traffic violation in this State and shall be forwarded to the State Treasurer. Upon the forfeiture of bail, $1 of that forfeiture shall be forwarded to the State Treasurer. The State Treasurer shall annually deposit money so forwarded in the "Body Armor Replacement" fund. The State Treasurer annually shall allocate from money forwarded an amount not to exceed $400,000 to the Department of Personnel to be expended exclusively for the purposes of funding the operation of the "Law Enforcement Officer Crisis Intervention Services" telephone hotline.

e. $1 shall be added to the amount of each fine and penalty imposed and collected for any violation of the provisions of Title 39 or any other motor vehicle or traffic violation in this State and shall be forwarded to the State Treasurer. The State Treasurer shall annually deposit money so forwarded in the "New Jersey Spinal Cord Research Fund". In order to comply with the provisions of Article VIII, Section II, paragraph 5 of the State Constitution, a municipal or county agency which forwards moneys to the State Treasurer pursuant to this subsection may retain an amount equal to 2% of the moneys it collects as compensation for its administrative costs associated with implementing the provisions of this subsection.

f. Any person who collected any fine for any violation of this subtitle and fails to return it same to the Commissioner or the proper financial officer of the county or municipality, within 30 days, is subject to a penalty not exceeding $500 for the first offense, and $1,000 or imprisonment not exceeding 1 year, or both, at the discretion of the court, for any subsequent conviction.

Source: 39:5-41; 39:5-43.

COMMENT

The penalties in subsection (f) have not been included in the classification system. If further research indicates that it is appropriate to do so, they will be included.

39A:45-E20. Reports, records and receipts

a. Every court shall make a report, within three days after the disposition of the case and in the form required by the Commissioner, of:

(1) All cases heard by the court for violation of this title, or any other violation in which a motor vehicle was used in any way;

(2) The conviction of any person of having committed a penal offense or crime in which a motor vehicle was used; and

(3) Any person with a driver's license who is convicted of stealing produce from a farm in this State.

b. The report shall state the nature of the violation, the full facts concerning the use of the motor vehicle, the disposition of the case and any recommendations the judge or magistrate may deem of value to the Commissioner in determining whether action should be taken against the driving, registration, or other privilege of the driver or owner of the motor vehicle.

c. Every court with jurisdiction to hear complaints for violations of this Title shall keep a record of the disposition of all complaints under this subtitle, for which a fine may be imposed. The record shall be open to inspection by the treasurer or auditor of a county, the Commissioner, or the financial officers of the municipalities entitled to fines imposed by the court, or the authorized representative of any of those individuals.

d. A person who collects fines, costs or cash bail for a violation of this subtitle, shall deliver to the defendant a proper itemized receipt. The receipt shall be created either manually or by computer. If payment was made by mail, the defendant is only entitled to a copy of the receipt if the defendant provides the court with a stamped self-

addressed envelope. If a manual receipt is issued, a copy shall be filed with the case. A proper itemized manual receipt is pre-numbered and includes: the name and signature of the person who received the payment, the date the payment was received, the name of the defendant, the amount paid and the complaint or docket number. A proper itemized computer generated receipt is pre-numbered and includes: the identifying code of the person who received the payment, the date and time the payment was received, the name of the defendant, the amount paid and the complaint or docket number. Any outstanding charges against an offender may be immediately dismissed on the offender's presentation of a proper itemized receipt issued pursuant to this section evidencing the payment of the required fines and costs. Properly itemized receipts, for use by municipal courts, may contain supplemental information as appropriate, but shall be on a form approved by the Administrative Director of the Courts.

Source: 39:5-42; 39:5-44; 39:5-45; 39:5-46.

COMMENT

This section…

39A:45-E21. Seizure and sale of stolen motor vehicles

a. The Commission may authorize the seizure of a motor vehicle operated over the highways of this state when it has reason to believe that the motor vehicle has been stolen or is otherwise being operated under suspicious circumstances and may retain it in the name of the Commission until the identity of ownership is established and then order the release of the motor vehicle to its owner.

b. After the expiration of 90 days from the date the motor vehicle came into the possession of the Commission by seizure or otherwise, it shall sell it at public sale, upon notice of the sale being first published for the space of two weeks in one or more newspapers published and circulating in this state, and also by posting the notice in five public places in this state. The newspapers and places of posting shall be designated by the commission. Upon the sale of the motor vehicle all claims for interest in the vehicle shall be forever barred and the proceeds shall become the sole property of the State, to be used as other moneys received under R.S.39:3-1 et seq.

Source: 39:5-47.

COMMENT

This section…

39A:45-E22. Death or injury to victim in case of violation of motor vehicle law or accident

a. In a municipal court case which involves a violation motor vehicle or traffic laws or in any other case which involves, directly or indirectly, a motor vehicle accident, the municipal prosecutor shall inform the municipal court judge in writing during the initial appearance of the defendant before the court of the death of any person or the extent of any personal injury sustained by a person as a result of the violation of the motor vehicle or traffic laws by the defendant or a motor vehicle accident which occurred during the violation of any other law by the defendant.

b. For purposes of this section, "victim" means, unless otherwise indicated, a person who suffers personal physical or psychological injury or death as a result of a motor vehicle accident. In the event of a death, "victim" means the surviving spouse, a child or the next of kin. The victim of a motor vehicle accident shall, upon request be provided with information from the court, in writing, with:

(1) Information about their role in the court process;

(2) Timely advance notice of the date, time and place of the defendant's initial appearance before a judicial officer, submission to the court of any plea agreement, the trial and sentencing;

(3) Timely notification of the case disposition, including the trial and sentencing;

(4) Prompt notification of any decision or action in the case which results in the defendant's provisional or final release from custody; and

(5) Information about the status of the case at any time from the commission of the offense to final disposition or release of the defendant.

(6) When a need is demonstrated, the information in this section shall be provided in *Spanish* as well as English.

c. A victim shall be provided with an opportunity to consult with the prosecutor prior to a dismissal of a case or the filing of a proposed plea negotiation with the court if a victim suffered death or sustained bodily injury or serious bodily injury as defined in 2C:11-1. This section shall not be construed to alter or limit the authority or discretion of the Supreme Court to regulate the practice of plea agreements in municipal court, or alter or limit the authority or discretion of a prosecutor.

Source: 39:5-51; 39:5-52.

COMMENT

This section…

COMPACTS

CHAPTER 48. INTERSTATE COMPACT

39A:48-IC1. Declarations of policy

a. The party States find that:

1. The safety of their streets and highways is materially affected by the degree of compliance with State laws and local ordinances relating to the operation of motor vehicles.

2. Violation of such a law or ordinance is evidence that the violator engages in conduct which is likely to endanger the safety of persons and property.

3. The continuance in force of a license to drive is predicated upon compliance with laws and ordinances relating to the operation of motor vehicles, in whichever jurisdiction the vehicle is operated.

b. It is the policy of each of the party States to:

1. Promote compliance with the laws, ordinances, and administrative rules and regulations relating to the operation of motor vehicles by their operators in each of the jurisdictions where such operators drive motor vehicles.

2. Make the reciprocal recognition of licenses to drive and eligibility therefor more just and equitable by considering the over-all compliance with motor vehicle laws, ordinances and administrative rules and regulations as a condition precedent to the continuance or issuance of any license by reason of which the licensee is authorized or permitted to operate a motor vehicle in any of the party States.

Source: 39:5D-1.

COMMENT

This section…

39A:48-IC2. Conviction

a. As used in this chapter:

(1) "State" means a State, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(2) "Home State" means the State which has issued and has the power to suspend or revoke the use of the license or permit to operate a motor vehicle.

(3) "Conviction" means a conviction of any offense related to the use or operation of a motor vehicle which is prohibited by State law, municipal ordinance or administrative rule or regulation, or a forfeiture of bail, bond or other security deposited to secure appearance by a person charged with having committed any such offense, and which conviction or forfeiture is required to be reported to the licensing authority.

b. The licensing authority of a party state shall report each conviction within its jurisdiction of a person from another party state to the licensing authority of the licensee's home state. The report shall: clearly identify the person convicted; describe the violation specifying the section of the statute, code or ordinance violated; identify the court in which action was taken; indicate whether a plea of guilty or not guilty was entered, or the conviction was a result of the forfeiture of bail, bond or other security; and include any special findings made in connection therewith.

c. The licensing authority in the home State, for the purposes of suspension, revocation or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported as it would if such conduct had occurred in the home State, and shall apply the penalties of the home State or of the State in which the violation occurred, in the case of convictions for:

(1) Manslaughter or negligent homicide resulting from the operation of a motor vehicle;

(2) Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug, or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle;

(3) Any felony in the commission of which a motor vehicle is used;

(4) Failure to stop and render aid in the event of a motor vehicle accident resulting in the death or personal injury of another.

d. For convictions of offenses other than those listed in subsection (c), the licensing authority in the home State shall give effect to the conduct as is provided by the laws of the home State.

e. If the laws of a party State do not provide for violations described in precisely the words employed in subsection (c), a party State shall construe the descriptions appearing in that subsection as applying to and identifying violations of a substantially similar nature and the laws of each State shall contain provisions necessary to ensure that full force and effect is given to this chapter.

Source: 39:5D-2; 39:5D-3; 39:5D-4.

COMMENT

This section…

39A:48-IC3. Application for license

Upon application for a license to drive, the licensing authority in a party State shall ascertain whether the applicant has ever held, or is the holder of, a license to drive issued by any other party State. The licensing authority in the State where application is made shall not issue a license to drive to the applicant if:

a. The applicant has held such a license, but it has been suspended by reason, in whole or in part, of a violation and if such suspension period has not terminated.

b. The applicant has held such a license, but it has been revoked by reason, in whole or in part, of a violation and if such revocation has not terminated, except that after the expiration of one year from the date the license was revoked, a person may make application for a new license if permitted by law. The licensing authority may refuse to issue a license to any applicant if, after investigation, the licensing authority determines that it will not be safe to grant that person the privilege of driving a motor vehicle on the public highways.

c. The applicant is the holder of a license to drive issued by another party State and currently in force unless the applicant surrenders such license.

Source: 39:5D-5.

COMMENT

This section…

39A:48-IC4. Administration of compact

a. As used in this compact:

(1) "Licensing authority" with reference to this State, means the Division of Motor Vehicles, Department of Law and Public Safety.

(2) With reference to this State, "executive head" means the Governor.

b. Except as expressly required by provisions of this compact, nothing contained herein shall be construed to affect the right of any party state to apply any of its other laws relating to licenses to drive to any person or circumstance, nor to invalidate or prevent any driver license agreement or other co-operative arrangement between a party state and a nonparty state.

c. The head of the licensing authority of each party state shall be the administrator of this compact for the state. The administrators, acting jointly, shall have the power to formulate all necessary procedures for the exchange of information under this compact. The administrator of each party state shall furnish to the administrator of each other party state any information or documents reasonably necessary to facilitate the administration of this compact.

d. This compact shall become effective as to any state when it has enacted the same into law. Any party state may withdraw from this compact by enacting a statute repealing the compact, but no withdrawal shall take effect until six months after the executive head of the withdrawing state has given notice of the withdrawal to the executive heads of all other party states. No withdrawal shall affect the validity or applicability by the licensing authorities of states remaining party to the compact of any report of conviction occurring prior to the withdrawal.

e. This compact shall be liberally construed to effectuate its purposes. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and its applicability shall not be affected. If this compact is held contrary to the constitution of any party state, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

f. A court or other agency of this State, or a subdivision thereof, which has jurisdiction to take action suspending, revoking or otherwise limiting a license to drive, shall report such action and the adjudication upon which it is based to the Division of Motor Vehicles within three days on the required forms.

g. If it is determined by the Director of the Division of Motor Vehicles of New Jersey that the provisions of the compact, in full or in part, are not being implemented with respect to violations reported from this State by any other party State, the Director with the approval of the Governor, may suspend the enforcement of the provisions of this agreement as against the party State until such time as the Director determines that implementation by the other party State is being had.

h. The compact administrator shall not be entitled to any additional compensation on account of service as the administrator, but shall be entitled to expenses incurred in connection with the duties and responsibilities as administrator, in the same manner as for expenses incurred in connection with any other duties or responsibilities of the administrator's office or employment.

Source: 39:5D-6; 39:5D-7; 39:5D-8; 39:5D-9; 39:5D-10; 39:5D-11; 39:5D-12; 39:5D-13; 39:5D-14.

COMMENT

This section…

CHAPTER 49. NONRESIDENT VIOLATOR COMPACT

39A:49-NVC1. Findings, policy and purpose of party jurisdictions

a. The party jurisdictions find that:

(1) In most instances, a motorist who is cited for a traffic violation in a jurisdiction other than his home jurisdiction:

(A) Must post collateral or bond to secure appearance for trial at a later date; or

(B) If unable to post collateral or bond, is taken into custody until the collateral or bond is posted; or

(C) Is taken directly to court for his trial to be held.

(2) In some instances, the motorist's driver's license may be deposited as collateral to be returned after he has complied with the terms of the citation.

(3) The purpose of the practices described in subsections 1a. and b. above is to ensure compliance with the terms of a traffic citation by the motorist who, if permitted to continue on his way after receiving the traffic citation, could return to his home jurisdiction and disregard his duty under the terms of the traffic citation.

(4) A motorist receiving a traffic citation in his home jurisdiction is permitted, except for certain violations, to accept the citation from the officer at the scene of the violation and to immediately continue on his way after promising or being instructed to comply with the terms of the citation.

(5) The practice described in subsection a. above causes unnecessary inconvenience and, at times, a hardship for the motorist who is unable at the time to post collateral, furnish a bond, stand trial, or pay the fine, and thus is compelled to remain in custody until some arrangement can be made.

(6) The deposit of a driver's license as a bail bond, as described in subsection 1b. above, is viewed with disfavor.

(7) The practices described herein consume an undue amount of law enforcement time.

b. It is the policy of the party jurisdictions to:

(1) Seek compliance with the laws, ordinances, and administrative rules and regulations relating to the operation of motor vehicles in each of the jurisdictions.

(2) Allow motorists to accept a traffic citation for certain violations and proceed on their way without delay, whether or not the motorist is a resident of the jurisdiction in which the citation was issued.

(3) Extend cooperation to its fullest extent among the jurisdictions for obtaining compliance with the terms of a traffic citation issued in one jurisdiction to a resident of another jurisdiction.

(4) Maximize effective utilization of law enforcement personnel and assist court systems in the efficient disposition of traffic violations.

c. The purpose of this compact is to:

(1) Provide a means through which the party jurisdictions may participate in a reciprocal program to effectuate the policies enumerated in this section in a uniform and orderly manner.

(2) Provide for the fair and impartial treatment of traffic violators operating within party jurisdictions in recognition of the motorist's right of due process and the sovereign status of a party jurisdiction.

Source: 39:5F-1; 39:5F-2; 39:5F-3.

COMMENT

This section…

39A:49-NVC2. Definitions

As used in this compact:

a. "Citation" means any summons, ticket, or other official document issued by a police officer for a traffic violation, containing an order which requires the motorist to respond;

b. "Collateral" means any cash or other security deposited to secure an appearance for trial, following the issuance by a police officer of a citation for a traffic violation;

c. "Compliance" means the act of answering a citation, summons or subpena through appearance at court, or payment of fines and costs, or both;

d. "Court" means a court of law or traffic tribunal;

e. "Driver's license" means any license or privilege to operate a motor vehicle issued under the laws of the home jurisdiction;

f. "Home jurisdiction" means the jurisdiction that issued the driver's license of the traffic violator;

g. "Issuing jurisdiction" means the jurisdiction in which the traffic citation was issued to the motorist;

h. "Jurisdiction" means a state, territory, or possession of the United States, the District of Columbia, Commonwealth of Puerto Rico, Provinces of Canada, or other countries;

i. "Motorist" means a driver of a motor vehicle operating in a party jurisdiction other than the home jurisdiction;

j. "Personal recognizance" means an agreement by a motorist made at the time of issuance of the traffic citation that he will comply with the terms of that traffic citation;

k. "Police officer" means any individual authorized by the party jurisdiction to issue a citation for a traffic violation;

l. "Terms of the citation" means those options expressly stated upon the citation.

Source: 39:5F-4.

COMMENT

This section…

39A:49-NVC3. Appearance and personal recognizance

a. When issuing a citation for a traffic violation, a police officer shall issue the citation to a motorist who possesses a driver's license issued by a party jurisdiction and shall not, subject to the exceptions noted in this chapter, require the motorist to post collateral to secure appearance, if the officer receives the motorist's personal recognizance that the motorist will comply with the terms of the citation.

b. Personal recognizance is acceptable only if not prohibited by law. If mandatory appearance is required, it shall take place immediately following issuance of the citation.

Source: 39:5F-5; 39:5F-6.

COMMENT

This section…

39A:49-NVC4. Report of motorist's failure to comply with citation

a. Upon failure of a motorist to comply with the terms of a traffic citation, the appropriate official shall report the failure to the licensing authority of the jurisdiction in which the citation was issued. The report shall be made in accordance with procedures specified by the issuing jurisdiction and shall contain the information specified in the *Compact Manual* as minimum requirements for effective processing by the home jurisdiction.

b. Upon receipt of the report, the licensing authority of the issuing jurisdiction shall transmit to the licensing authority of the motorist's home jurisdiction the information as specified in the Compact Manual.

c. The licensing authority of the issuing jurisdiction need not suspend the driving privilege of a motorist for whom a report has been transmitted.

d. The licensing authority of the issuing jurisdiction shall not transmit a report on a violation more than six months after the date on which the traffic citation was issued.

e. The licensing authority of the issuing jurisdiction shall not transmit a report on a violation if the date of issuance of the citation predates the most recent of the *effective dates of entry* for the two jurisdictions affected.

Source: 39:5F-7; 39:5F-8; 39:5F-9; 39:5F-10; 39:5F-11.

COMMENT

This section…

39A:49-NVC5. Suspension of driver's license

a. Upon receipt of a report of a failure to comply from the licensing authority of the issuing jurisdiction, the licensing authority of the home jurisdiction shall notify the motorist and initiate a suspension action, in accordance with the home jurisdiction's procedures, to suspend the driver's license until satisfactory evidence of compliance with the terms of the traffic citation has been furnished to the home jurisdiction licensing authority. Due process safeguards will be accorded.

b. The licensing authority of the home jurisdiction shall maintain a record of actions taken and make reports to issuing jurisdictions as provided in the Compact Manual.

Source: 39:5F-12; 39:5F-13.

COMMENT

This section…

39A:49-NVC6. Effect of compact on other laws or agreements; violations not covered

a. Except as expressly required by provisions of this compact, nothing contained herein shall be construed to affect the right of any party jurisdiction to apply any of its other laws relating to license to drive to any person or circumstance, or to invalidate or prevent any driver license agreement or other cooperative arrangements between a party jurisdiction and a nonparty jurisdiction.

b. The provisions of this compact shall not apply to parking or standing violations, highway weight limit violations, or violations of law governing the transportation of hazardous materials.

Source: 39:5F-14; 39:5F-25.

COMMENT

This section…

39A:49-NVC7. Board of compact administrators

a. To administer this compact and serve as a governing body for the resolution of matters relating to the operation, a Board of Compact Administrators is established. The

Board shall be composed of one representative from each party jurisdiction, to be known as the compact administrator. The compact administrator shall be appointed by the chief executive of the jurisdiction and shall serve and be subject to removal in accordance with the laws of the jurisdiction. A compact administrator may provide for the performance of the administrator's duties and functions as a Board member by an alternate. An alternate may not serve on the board unless written notification of the alternate's identity has been given to the Board.

b. Each member of the Board shall be entitled to one vote. No action of the Board shall be binding unless taken at a meeting at which a majority of the total number of votes on the Board are cast in favor. Action by the Board shall be only at a meeting at which a majority of the party jurisdictions are represented.

c. The Board shall elect annually, from its membership, a chairman and vice-chairman.

d. The Board shall adopt bylaws, not inconsistent with the provisions of this compact or the laws of a party jurisdiction, for the conduct of its business and shall have the power to amend and rescind its bylaws.

e. The Board may accept for any purpose under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any jurisdiction, the United States, or any other governmental agency, and may receive, utilize and dispose of same.

f. The Board may contract with, or accept services or personnel from any governmental or intergovernmental agency, persons, firm or corporation, or any private, nonprofit organization or institution.

g. The Board shall formulate all necessary procedures and develop uniform forms and documents for administering the provisions of this compact. All procedures and forms adopted pursuant to Board action shall be contained in the Compact Manual.

Source: 39:5F-15; 39:5F-16; 39:5F-17; 39:5F-18; 39:5F-19; 39:5F-20; 39:5F-21.

COMMENT

This section…

39A:49-NVC8. Entry into compact and withdrawal from compact

a. This compact shall become effective when it has been adopted by at least two jurisdictions.

b. Entry into the compact shall be made by a Resolution of Ratification executed by the authorized officials of the applying jurisdiction and submitted to the chairman of the Board.

c. The resolution shall be in a form and content as provided in the Compact Manual and shall include statements that in substance are as follows:

(1) A citation of the authority by which the jurisdiction is empowered to become a party to the compact.

(2) Agreement to comply with the terms and provisions of the compact.

(3) That compact entry is with all jurisdictions then party to the compact and with any jurisdiction that legally becomes a party to the compact.

d. The effective date of entry shall be specified by the applying jurisdiction, but not be less than 60 days after notice has been given by the chairman or secretary of the Board to each party jurisdiction that the resolution from the applying jurisdiction has been received.

e. A party jurisdiction may withdraw from the compact by official written notice to the other party jurisdictions, but a withdrawal shall not take effect until 90 days after notice of withdrawal is given. The notice shall be directed to the compact administrator of each member jurisdiction. No withdrawal shall affect the validity of this compact as to the remaining party jurisdictions.

Source: 39:5F-22; 39:5F-23; 39:5F-24.

COMMENT

This section…

39A:49-NVC9. Amendment

a. This compact may be amended from time to time. Amendments shall be presented in resolution form to the chairman of the Board and may be initiated by one or more party jurisdictions.

b. Adoption of an amendment shall require endorsement of all party jurisdictions and shall become effective 30 days after the date of the last endorsement.

c. Failure of a party jurisdiction to respond to the compact chairman within 120 days after receipt of the proposed amendment shall constitute endorsement.

Source: 39:5F-26; 39:5F-27; 39:5F-28.

COMMENT

This section…

39A:49-NVC10. Construction; severability

a. This compact shall be liberally construed so as to effectuate the stated purposes.

b. The provisions of this compact shall be severable. If any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party jurisdiction or of the United States or the applicability thereof to any government agency, person, or circumstance, the compact shall not be affected thereby. If this compact shall be held contrary to the constitution of any jurisdiction party thereto, the compact shall remain in full force and effect as to the remaining jurisdictions and in full force and effect as to the jurisdiction affected as to all severable matters.

Source: 39:5F-29.

COMMENT

This section…

Volume III

FINANCIAL PROVISIONS

SERVICE ON NON-RESIDENTS

INSPECTIONS

HOURS OF SERVICE

PURCHASE, SALE AND TRANSFER

FINANCIAL PROVISIONS

CHAPTER 50. MOTOR VEHICLE SECURITY-RESPONSIBILITY LAW

39A:50-SRL1. Definitions

The following words and phrases, when used in this chapter, shall have the meanings set forth below unless the context clearly indicates a different meaning.

a. "Director" means the Director of the Division of Motor Vehicles in the Department of Law and Public Safety.

b. “Judgment” means a judgment of a court of competent jurisdiction of this State or any other state or of a District Court of the United States.

c. "License" means any license, temporary instruction permit or temporary license issued in this State to allow an individual to operate a motor vehicle.

d. "Nonresident's operating privilege" means the privilege conferred on a nonresident by this State to operate a motor vehicle, or use a motor vehicle owned by a non-resident, in New Jersey.

e. “PIP” means personal injury protection.

f. "State" means any state, territory or possession of the United States, the District of Columbia, or any province of the Dominion of Canada.

Source: 39:6-24; 39:6-35.

COMMENT

This section…

39A:50-SRL2. Security and suspension requirements

a. The Director shall promulgate rules to set forth instances in which a deposit of security is necessary.

b. The Director shall determine the amount of security necessary to satisfy a reimbursement, judgment or judgments for damages resulting from an accident as may be recovered against each operator or owner in view of the total insurance protection available to the injured party if, 20 days after the receipt of a report of a motor vehicle accident within this State which resulted in bodily injury or death, or damage to the property of any one person in excess of $500, the Director does not have on file satisfactory evidence that the person who would otherwise be required to file security under subsection (c) has:

(1) Been released from liability;

(2) Been finally adjudicated not to be liable; or

(3) Executed a duly acknowledged written agreement providing for payment of an agreed amount in installments for all claims for injuries or damages resulting from the accident, and in the event of an accident involving an automobile, required to have coverage for PIP benefits pursuant to C. 39:6A-1 et seq., has also reimbursed or executed a duly acknowledged written agreement to pay an agreed amount in installments to reimburse the Unsatisfied Claim and Judgment Fund for the payment of all PIP benefits the fund has made or shall make pursuant to C. 39:6-86.1 and C. 39:6-86.4 by reason of the failure of the person to have the requisite insurance coverage.

c. The Director may, within 90 days after the receipt of a report of a motor vehicle accident filed pursuant to subsection (b), suspend the license of each operator and the registrations of each owner of a motor vehicle involved in such accident. If an operator is a nonresident, the Director may suspend the privilege of operating a motor vehicle in this State, and if the owner is a nonresident the Director may suspend the privilege of using a motor vehicle owned by the nonresident within this State, unless the operator or owner or both deposit security in a sum determined by the Director. Notice of suspension pursuant to this subsection shall be sent by the Director to the operator and owner not less than 10 days prior to the effective date of the suspension stating the amount required as security. If erroneous information is given to the Director with respect to the matters set forth in subsection (d)(1), (2) or (3), the Director may take appropriate action within 90 days after receipt of correct information regarding those matters.

d. This section shall not apply under the conditions stated in 39:6-26 nor to:

(1) An operator or owner, if the owner had in effect, at the time of the accident, a motor vehicle liability policy with respect to the motor vehicle involved in the accident;

(2) An operator, if not the owner of the motor vehicle, if there was in effect at the time of such accident a motor vehicle liability policy or bond with respect to the operation of motor vehicles not owned by the operator;

(3) An operator or owner if the liability of the operator or owner for damages resulting from the accident is, in the Director's judgment, covered by another form of liability insurance policy or bond; or

(4) A person qualifying as a self-insurer under 39:6-52 or any person operating a motor vehicle for such self-insurer.

e. An insurance policy or bond referred to in section (d) shall not be effective under this section unless issued by an insurance company or surety company authorized to do business in this State. If, however, a motor vehicle was not registered in this State, or was registered somewhere other than this State at the effective date of the policy or bond, or the most recent renewal, the policy or bond shall not be effective under this section unless the insurance company or surety company not authorized to do business in this State executes a power of attorney authorizing the Director to accept service on its behalf of notice or process in any action upon the policy or bond arising out of the accident. Every policy or bond is subject, if the accident resulted in bodily injury or death, to a limit, exclusive of interest and costs, of not less than $15,000 because of bodily injury to or death of one person in any one accident and, subject to the limit for

one person, to a limit of not less than $30,000 because of bodily injury to or death of two or more persons in any one accident. Every policy or bond is subject, if the accident has resulted in injury to or destruction of property, to a limit of not less than $5,000 because of injury to or destruction of property of others in any one accident and if policy or bond is applicable to an automobile required to have coverage for PIP benefits pursuant to C. 39:6A-1 et seq., it shall include an amount to cover PIP benefits as required by that act.

Source: 39:6-25.

COMMENT

This section…

39A:50-SRL3. Inapplicability of security and suspension requirements

a. The requirements of security and suspension in 39:6-25 shall not apply:

(1) To the operator or owner of a motor vehicle involved in an accident in which no injury or damage was caused to the person or property of anyone other than the operator or owner;

(2) To the operator or owner of a motor vehicle legally parked at the time of the accident;

(3) To the owner of a motor vehicle if at the time of the accident the vehicle was being operated without permission, express or implied, or was parked by a person who had been operating the motor vehicle without permission;

(4) To the operator if the operator was a chauffeur or operator employed by the owner of the motor vehicle and was operating with the permission of the owner; or

(5) If, prior to the date the Director would otherwise suspend license and registration or nonresident's operating privilege pursuant to 39:6-25, there is filed with the Director satisfactory evidence that the person who would otherwise have to file security:

(A) Has been released from liability;

(B) Has been finally adjudicated not to be liable;

(C) Has executed a duly acknowledged written agreement providing for the payment of an agreed amount in installments, with respect to all claims for injuries or damages resulting from the accident and with respect to an accident involving an automobile, required to have coverage for PIP has also reimbursed or executed a duly acknowledged written agreement to pay an agreed amount in installments to reimburse the Unsatisfied Claim and Judgment Fund for the payments it has made or shall make pursuant to 39:6-86.1 and 39:6-86.4 by reason of the failure of the person to have the requisite insurance coverage in effect.

Source: 39:6-26.

COMMENT

This section…

39A:50-SRL4. Duration of suspension; default in payment of installment

a. A license and registration and nonresident's operating privilege suspended as provided in 39:6-25 shall remain suspended and shall not be renewed nor shall any license or registration be issued to that person until:

(1) The person shall deposit or there shall be deposited on that person's behalf the security required by 39:6-25; or

(2) One year shall have elapsed following the date of such suspension and evidence satisfactory to the Director has been filed confirming that during that period no action for damages arising out of the accident has been instituted; or

(3) Evidence satisfactory to the Director has been filed of a:

(A) Release from liability;

(B) Final adjudication of nonliability; or

(C) Duly acknowledged written agreement, in accordance with 39:6-26(4)(d) and with respect to an automobile required to have coverage for personal injury protection benefits pursuant to 39:6A-1 et seq. has filed evidence satisfactory to the Director that the additional requirements of 39:6-26(4)(d) pertaining to such automobile have also been met. In the event there is a default in the payment of an installment under a duly acknowledged written agreement, then, upon notice of default, the Director shall immediately suspend the license and registration or nonresident's operating privilege of the person defaulting which shall not be restored unless and until the person deposits and maintains security as required under 39:6-25 in an amount determined by the Director or one year has elapsed following the date when the security was required and during that period no action upon the agreement was instituted in a court in this State.

b. *Subsections 5(b) and 5(c)(1) of this section* [Subsection (3)(iii)?] shall not apply to amounts in reimbursement of the Unsatisfied Claim and Judgment Fund which remain unpaid after one year.

Source: 39:6-27.

COMMENT

This section…

39A:50-SRL5. Operator or owner involved in accident without license or nonresident operating privilege

a. An operator or owner of a motor vehicle involved in an accident in this State who has no license or registration, or who is a nonresident, shall not be allowed a license or registration until that person has complied with the requirements of this chapter to the same extent as if, at the time of the accident, that person had a license and registration.

b. When a nonresident's operating privilege is suspended pursuant to 39:6-25 or 39:6-27, the Director shall transmit a certified copy of the record of the action to the official in charge of the issuance of licenses and registration certificates in the State in

which the nonresident resides, if the law of that State provides for action similar to that provided for in subsection (c).

c. Upon receipt of a certification stating that the operating privilege of a New Jersey resident has been lawfully suspended or revoked in another State for failure to deposit security for the payment of judgments arising out of a motor vehicle accident, under circumstances which would require the Director to suspend a nonresident's operating privilege if the accident occurred in this State, the Director shall suspend the license of the resident if the resident was the operator, and all of the resident's registrations if the resident was the owner of a motor vehicle. The suspension shall continue until the resident furnishes evidence of compliance with the law of the other State relating to the deposit of security.

Source: 39:6-28.

COMMENT

This section…

39A:50-SRL6. Security requirements; application; return

a. The security under this chapter shall be in a form and amount as required by the Director but shall not exceed the limits specified in 39:6-25. The person depositing security shall specify in writing the person(s) on whose behalf the deposit is made. At any time while the deposit is in the custody of the Director or State Treasurer, the person depositing it may, in writing, amend the specification of the person(s) on whose behalf the deposit is made to include an additional person or persons; but a single deposit of security may be applicable only on behalf of persons required to furnish security because of the same accident.

b. The Director may reduce the amount of security ordered in any case within six months after the date of the accident if, in the Director's judgment, the amount ordered is excessive. If the security originally ordered has been deposited, the excess over the reduced amount ordered shall be returned to the depositor or the depositor's personal representative immediately, notwithstanding the provisions of 39:6-30.

c. Security deposited in compliance with the requirements of this chapter shall be applicable only to the payment of judgment(s) against the person(s) on whose behalf it was made, for:

(1) Damages arising out of the accident in question in a civil action, begun not later than one year after the date of the accident, or within one year after the date of deposit of security under 39:6-27;

(2) The payment in settlement, agreed to by the depositor, of claim(s) arising out of the accident; or

(3) The reimbursement of the Unsatisfied Claim and Judgment Fund for the payment of personal injury protection benefits pursuant to 39:6-86.1 and 39:6-86.4.

d. The security deposited or any balance remaining shall be returned to the depositor or the depositor's personal representative when evidence satisfactory to the Director has been filed confirming that there has been a release from liability, a final

adjudication of nonliability, or a duly acknowledged agreement in accordance with 39:6-26. In the event of an accident involving an automobile required to have coverage for personal injury protection benefits pursuant to *P.L.1972, c. 70*, the security shall be returned if the depositor has also met the additional requirements of 39:6-26(4)(d) pertaining to the automobile or, after the expiration of one year from the date of the accident or the date of any security under 39:6-27(c), when the Director is given reasonable evidence that there is no: action pending; judgment left unpaid; or reimbursement to the Unsatisfied Claim and Judgment Fund remaining unpaid by the person on whose behalf the deposit was made.

d. Sums deposited with the Director in compliance with this chapter shall be remitted to the State Treasurer and kept separate and apart from all other State funds. The State Treasurer shall be the custodian of the funds and shall make all disbursements in the same manner as other State disbursements are made. The funds may be invested and reinvested in the same manner as other State funds. All earnings received from investment of the funds shall be paid into the General Treasury and become a part of the General State Fund.

Source: 39:6-29; 39:6-30; 39:6-30.1.

COMMENT

This section…

39A:50-SRL7. Failure to satisfy judgment; discharge in bankruptcy

a. If a person fails to pay and satisfy every judgment:

(1) For damages because of personal injury or death, or damage to property in excess of $500, resulting from the ownership, maintenance, use or operation of a motor vehicle, and

(2) Based on an agreement made in settlement of damages arising out of a motor vehicle accident;

within 60 days after its entry, or if an appeal is timely taken, within 60 days after the judgment becomes final, the operator's license and registration certificate(s), other than those of a chauffeur or operator employed by the owner of a motor vehicle and acting as such at the time of the incident resulting in the judgment, shall, upon receiving a certified copy of a transcript of the final judgment from the court showing it to be unsatisfied more than 60 days after it became final, be suspended by the Director.

b. If the Director is satisfied that a judgment debtor or the debtor’s insurance carrier was, within the said 60-day period, ready, willing and able to pay the judgment but was prevented from so doing by reason of the refusal or legal inability of the judgment creditor to accept payment, or that the failure to timely pay the judgment was due to the act or neglect of the judgment debtor's insurance carrier and not to any fault of the judgment debtor, the Director may extend the 60-day limitation prescribed for a reasonable time necessary to complete the formality of payment of the judgment and shall not suspend the judgment debtor's driver's license, operating privilege or certificate of registration.

c. The license and registration certificates of a judgment debtor shall remain suspended and shall not be renewed, nor shall a motor vehicle be registered in the name of that person until every judgment is satisfied or discharged. While a final judgment against a nonresident motor vehicle owner or operator is unsatisfied and subsisting for more than 60 days, the debtor's privilege of operating a motor vehicle in this State, whether owned by the debtor or not, shall be withdrawn and shall not be renewed. No operator's or chauffeur's license shall be issued nor shall a motor vehicle be registered in the debtor's name until every such judgment is satisfied or discharged.

d. If the debtor is relieved of liability for payment by an adjudication of a court, or if the right to enforce the judgment by docketing, revival, or bringing an action has expired without the appropriate action, the debtor's license shall be restored, and one or more motor vehicles may be registered in the debtor's name, upon application to the Division of Motor Vehicles.

e. A discharge in bankruptcy shall relieve the judgment debtor from any of the requirements of this chapter if the underlying judgment was not based on a willful or malicious tort.

f. The court in which the judgment is rendered shall forward to the Director, at the request of the judgment creditor or creditor's attorney, after the expiration of the 60 days a certified copy of the judgment. If the defendant is a nonresident, the Director shall transmit to the officer in charge of the issuance of driver licenses and registration certificates of the state of which the defendant is a resident a certified copy of the judgment.

g. Upon the filing with the court of proof of satisfaction or discharge of a judgment, the nonpayment of which has been previously certified to the Director, the court shall immediately forward notice of satisfaction or discharge to the Director.

h. If after *proof is given* [proof of what??], another judgment is recovered against a defendant for an accident occurring before the proof was given, the license and certificate shall be suspended, and no other license or certificate shall be issued while the judgment remains in existence and unsatisfied.

Source: 39:6-35; 39:6-36.

COMMENT

This section…

39A:50-SRL8. Insolvency or bankruptcy of liability insurer

The Director shall not suspend the driver's license and the registration certificates of the judgment debtor if it appears to the Director's satisfaction that:

a. At the time of a motor vehicle accident resulting in the death of or injury to any person, or damage to property to the extent of $500, the judgment debtor was insured by an insurance company authorized to do business in this State, against public liability for:

(1) Injuries or death to one person to the extent of $15,000;

(2) Injuries or death to more than one person to the extent of $30,000;

(3) Damage to property to the extent of $5,000 arising out of a single motor vehicle accident; and

(4) With respect to an automobile, as defined in 39:6A-2, registered or principally garaged in New Jersey; personal injury protection coverage as provided in 39:6A-1 et seq.; and

b. The judgment has not been paid or the personal injury protection benefits have not been paid because, subsequent to the date of the accident, the insurance company has become insolvent or bankrupt or the Commissioner of Insurance has undertaken control of it for the purpose of liquidation.

Source: 39:6-37.

COMMENT

This section…

39A:50-SRL9. Partial payments and payment in installments

a. Partial payments shall be deemed satisfaction of judgment(s) for the purposes of 39:6-31 to 39:6-36 when:

(1) $10,000 has been credited upon any judgment(s) rendered in excess of that amount for bodily injury to or the death of one person as the result of one accident;

(2) Subject to the limit of $10,000 for one person injured or killed in one accident, the sum of $20,000 has been credited upon any judgment(s) rendered in excess of that amount for bodily injury to or the death of more than one person as the result of one accident; or

(3) $5,000 has been credited upon any judgment(s) rendered in excess of that amount for damage to property as the result of one accident.

b. A judgment debtor to whom this chapter applies may, for the sole purpose of giving authority to the director to authorize the judgment debtor to operate a motor vehicle thereafter, on due notice to the judgment creditor, apply to the court in which the trial judgment was obtained for the privilege of paying the judgment in installments. The court, in its discretion and without prejudice to any other legal remedies which the judgment creditor may have, may so order, fixing the amounts and times of payment of the installments. The director may, in his discretion, while the judgment debtor is not in default in paying the installments, restore, or refrain from suspending his license or registration certificate or certificates, or either or both of them. The license or certificate or certificates, or either or both or all of them, shall be suspended as hereinbefore provided when the director is satisfied that the judgment debtor has failed to comply with the terms of the court order.

Source: 39:6-38; 39:6-39.

COMMENT

This section…

39A:50-SRL10. Certified driving abstract

a. Upon the request of an insurance company, a person furnishing financial responsibility or a surety on a bond, the Director shall furnish such individual or entity a certified abstract of the driving record of a person subject to the provisions of this chapter. If there is no record of a conviction of a violation relating to the operation of motor vehicles or of an injury or damage caused by the person as provided in this chapter, the Director shall so certify.

b. The Director shall collect a fee of $10 for each certified or uncertified abstract issued to a person authorized to receive it by this or any other section.

Source: 39:6-42.

COMMENT

This section…

39A:50-SRL11. Liability insurance policy

a. A motor vehicle liability insurance policy shall not be issued or delivered in this State, as proof of financial responsibility, unless the policy discloses the name, address and business of the insured, the coverage afforded by the policy, the premium charged, the policy period, the limit of liability and the agreement that the insurance is subject to all provisions of this chapter.

b. The motor vehicle liability insurance policy shall be subject to the following provisions which need not be contained therein:

(1) The liability of a company under a motor vehicle liability policy shall become absolute when loss or damage covered by the policy occurs. The satisfaction by the insured of a final judgment of the loss or damage shall not be a condition precedent to the right or duty of the insurance carrier to make payment on account of the loss or damage. No such policy shall be canceled or annulled as respects any loss or damage by any agreement between the carrier and the insured after the insured has become responsible for the loss or damage and any such cancellation or annulment shall be void. Upon the recovery of a final judgment against a person for the loss or damage, if the judgment debtor was at the accrual of the cause of action insured against liability therefor under a motor vehicle liability policy, the judgment creditor shall be entitled to have the insurance money applied to the satisfaction of the judgment. The policy may provide that the insured or a person covered by the policy shall reimburse the company for payments made on account of an accident, claim or suit involving a breach of the terms, provisions or conditions of the policy. If the policy provides for limits in excess of the limits designated in this chapter the insurance carrier may plead against the judgment creditor, with respect to the amount of the excess limits of liability any defenses which it may be entitled to plead against the insured. The policy may further provide for the prorating of the insurance thereunder with other applicable valid and collectible insurance.

(2) The policy, any written application and any rider or indorsement which does not conflict with the provisions of this chapter constitutes the entire contract between the parties.

c. Effective as of the date proof of financial responsibility is furnished and to the extent of the coverage required by this chapter, any policy of motor vehicle liability insurance furnished as proof of financial responsibility, either by the filing of a certificate signed by a duly licensed agent of the company issuing the policy or otherwise, shall be deemed amended to conform with and to contain all the provisions required by this chapter, any provision of the policy or certificate to the contrary notwithstanding.

d. An insurance carrier authorized to issue motor vehicle liability policies as provided for in this chapter may, pending the issuance of the policy, execute an agreement, to be known as a binder; or may, in lieu of the policy, issue an indorsement to an existing policy, each of which shall be construed to provide indemnity or protection in the same manner and to the same extent as the policy.

Source: 39:6-48.

COMMENT

This section…

39A:50-SRL12. Transfer of registration while suspended

a. The owner's registration of a vehicle involved in an accident to which this chapter applies shall not be transferred nor the vehicle to which such registration was issued registered in any other name until the provisions of this chapter relating to the deposit of security are complied with, unless such provisions are inapplicable because of the exceptions stated in 39:6-25, because of other exceptions in this chapter, or until the Director is satisfied that the transfer is proposed in good faith and not for the purpose or with the effect of defeating the purposes of this chapter.

b. If an owner's registration has been suspended, the registration shall not be transferred nor the vehicle to which such registration was issued registered in any other name until the Director is satisfied that the transfer of registration is proposed in good faith and not for the purpose or with the effect of defeating the purposes of this chapter.

c. Nothing in this section shall affect the rights of any conditional vendor, chattel mortgagee or lessor of a vehicle registered in the name of another as owner who becomes subject to the provisions of this chapter.

d. The Director shall suspend the registration of any vehicle transferred in violation of the provisions of this section.

Source: 39:6-49.

COMMENT

This section…

39A:50-SLR13. Enforcement of chapter

a. The Director shall, by means of any printed form the Director provides, inform every person to whom a driver's license or registration certificate is issued of the contents of this chapter.

b. The Director shall administer and enforce the provisions of this chapter, may make regulations necessary for its administration, and shall provide for hearings upon request of persons aggrieved by orders or acts of the Director under this chapter.

c. An order or act of the Director, under this chapter, shall be subject to review by a proceeding in lieu of prerogative writs.

Source: 39:6-50; 39:6-51.

COMMENT

This section…

39A:50-SLR14. Self-insurance

a. The Commissioner has the authority to issue regulations or exercise any power granted by Title 17 with respect to vehicles which are self-insured pursuant to C. 39:6-52, 39:6-53, and 39:6-54.

b. A person in whose name more than 25 motor vehicles are registered or leased may qualify as a self-insurer by obtaining a certificate of self-insurance issued by the Commissioner of Insurance ('Commissioner") as provided in subsection (c).

c. The Commissioner may, upon the application of such a person, issue a certificate of self-insurance when satisfied that the person is possessed and will continue to be possessed of ability to pay judgments obtained against that person.

d. The application shall be on a form prescribed by the Commissioner, and shall include any information the Commissioner deems to be necessary to determine the applicant's eligibility for self-insurance, including information on the number and types of the motor vehicles to be self-insured, the proposed use of the vehicles, and financial information regarding the applicant. The certificate shall be issued for a one-year period and each holder of a certificate shall make application for renewal.

e. If the applicant for a certificate of self-insurance is a corporation, the Commissioner may also include in the certificate any subsidiary corporation under the control of a parent corporation for which the parent corporation guarantees to discharge liability pursuant to this chapter. If the ownership of the parent or a subsidiary corporation changes, that entity shall reapply for a certificate of self-insurance within 30 days of that change. If the parent corporation does not provide a guarantee that it will discharge the subsidiary corporation's liability, the subsidiary shall make separate application and receive independent qualification as a self-insurer.

f. The Commissioner may make the audits or examinations deemed necessary to determine the financial ability of the applicant or certificate holder to discharge obligations as a self-insurer. The reasonable expenses of the audit or examination shall be fixed and determined by the Commissioner, and shall be payable by the applicant or certificate holder upon presentation of a detailed account of expenses.

g. The Commissioner may require the furnishing of a surety bond or evidence of excess insurance.

h. A filing fee of $1,000 shall accompany every application for a certificate of self-insurance and renewal thereof, except that no filing fee is required of a public entity which applies for a certificate or renewal of self-insurance.

i. Upon not less than five days' notice and a hearing pursuant to such notice, the Commissioner may, on reasonable grounds, cancel a certificate of self-insurance. Failure to pay a judgment within 30 days after it becomes final constitutes a reasonable ground for the cancellation of a certificate of self-insurance.

j. No action taken by the Commissioner pursuant to this chapter, no findings of the Commissioner upon which such action is based, nor security filed as provided by this chapter, shall be referred to in any way, or be evidence of negligence or due care of either party, at the trial of any civil action to recover damages.

k. This chapter shall not apply with respect to a motor vehicle owned by the United States, this State, a political subdivision of this State or any municipality in New Jersey. This chapter shall not apply to any motor vehicle subject to the requirements of law requiring insurance or other security on certain types of vehicles, other than the requirements of C. 39:6A-1 et seq. or C. 39:6B-1 et seq. Notwithstanding the provisions of this subsection to the contrary, the Commissioner may issue a certificate of self-insurance to a public entity or group of public entities upon receipt of a resolution from the public entity or group that they have established a self-insurance program or a group self-insurance program.

Source: 39:6-50.1; 39:6-52; 39:6-53; 39:6-54.

COMMENT

This section…

39A:50-SLR14. Prohibited acts

a. A person who shall forge, or, without authority, sign any evidence of proof of financial responsibility, or who files or offers for filing any such evidence of proof, knowing or having reason to believe that it is forged or signed without authority, shall be fined not more than $1,000, imprisoned for not more than one year, or both.

b. A person willfully failing to return license or registration as required in 39:6-44 shall be fined not more than $500, imprisoned not to exceed 30 days, or both.

c. A person who violates a provision of this chapter for which no penalty is provided shall be fined not more than $500, imprisoned not more than 90 days, or both.

d. The provisions of this chapter shall be enforced and penalties for violations recovered in accordance with N.J.S. 2A:58-1 et seq. and, in addition, the following shall be applicable in a proceeding brought for a violation of this chapter:

(1) Municipal courts shall have jurisdiction in addition to the Superior Court;

(2) A complaint may be made on information and belief by the Director, or the police or peace officer of any municipality, county or the State;

(3) A warrant may issue in lieu of summons;

(4) A police or peace officer is empowered to serve and execute process;

(5) The hearing shall be without a jury;

(6) The proceeding may be brought in the name of the Director of the Division of Motor Vehicles or in the name of the State of New Jersey;

(7) Any sums received in payment of any fines imposed in such proceeding shall be paid to the Director of the Division of Motor Vehicles and, in turn, to the State Treasury;

(8) The Director or judge before whom a hearing is had may revoke the license of a person to drive a motor vehicle or the registration certificate of a motor vehicle owned by a person, when the person is guilty of willful violation of any provision of this chapter as shall in the discretion of the Director or judge justify such revocation.

Source: 39:6-55.

COMMENT

This section…

39A:50-SLR15. Expense of administering Motor Vehicle Security-Responsibility Law

a. The Director of the Division of Budget and Accounting in the Department of the Treasury shall, on or before September first each year, ascertain and certify to the Commissioner of Banking and Insurance the total amount of expense incurred by the State in connection with the administration of the Motor Vehicle Security-Responsibility Law during the preceding fiscal year. The expenses shall include, in addition to the direct cost of personal service, the cost of maintenance and operation, the cost of retirement contributions made and workmen's compensation paid for and on account of personnel, rentals for space occupied in State owned or State leased buildings and all other direct and indirect costs of administration.

b. The Commissioner of Banking and Insurance shall, on or before October 15th each year, apportion the amount so certified among the mutual associations and stock companies writing motor vehicle liability insurance within this State or motor vehicle liability bonds, or both. The apportionment shall be based on the proportion that the net premiums received by each of them for insurance and bonds written or renewed on risks in this State during the calendar year immediately preceding, as reported to the Commissioner, bears to the sum total of all net premiums received by all mutual associations and stock companies writing such insurance and bonds, within the State during such year, as so reported. The Commissioner shall certify the sum so apportioned to each association and company on or before November 15th of that year to the Division of Taxation and each mutual association and stock company shall pay the amount certified as apportioned to it to the Division of Taxation on or before December 31st of that year. The sums shall be paid into the State Treasury in reimbursement to the State for the expenses paid.

Source: 39:6-58; 39:6-59.

COMMENT

This section…

CHAPTER 51. UNSATISFIED CLAIM AND JUDGMENT FUND LAW

39A:51-UCJF1. Definitions

a. "Association" means the New Jersey Property-Liability Insurance Guaranty Association created pursuant to C.17:30A-1 et seq.

b. "Commissioner" means the Commissioner of Banking and Insurance.

c. "Unsatisfied Claim and Judgment Fund" or "Fund" means the fund derived from the sources specified in this chapter.

d. "Qualified person" means a resident of this State or the owner of a motor vehicle registered in this State or a resident of another state, territory, or federal district of the United States or province of Canada or of a foreign country, in which recourse is afforded, to residents of this State, of substantially similar character to that provided for by this chapter. No person shall be a qualified person if insured under a policy provision providing coverage for damages sustained by the insured as a result of the operation of an uninsured motor vehicle in a form authorized to be included in automobile liability policies of insurance delivered or issued for delivery in this State, pursuant to the provisions of, or any supplement to, chapter 28 of Title 17 of the Revised Statutes or in a form substantially similar thereto.

e. "Uninsured motor vehicle" means a motor vehicle as to which there is not in force a liability policy meeting the requirements of C.39:6-25 or C.39:6-48, and which is not owned by a holder of a certificate of self-insurance under said law, but shall not include a motor vehicle with a policy in force which is insured pursuant to C.39:6A-3.1.

f. "Person" includes natural persons, firms, copartnerships, associations and corporations.

g. "Insurer" means any insurer authorized in this State to write the kinds of insurance specified in R.S.17:17-1(d) and (e).

h. "Net direct written premiums" means direct gross premiums written on policies, insuring against legal liability for bodily injury or death and for damage to property arising out of the ownership, operation or maintenance of motor vehicles, which are principally garaged in this State, less return premiums thereon and dividends paid to policyholders on such direct business.

Source: 39:6-62.

COMMENT

This section…

39A:51-UCJF2. Creation and maintenance of the fund

a. For the purpose of creating and maintaining the fund:

(1) Commencing on or before December 30, 2003, and on or before December 30 in each year thereafter, the association shall calculate the probable amount which will be needed to carry out its responsibilities under 39:6-86.7, 39:6- 69 and 39:6-86.1 during the ensuing year. In that calculation, the association shall take into consideration the amount presently reserved for pending claims, anticipated payments from the fund during that year and during the two years after that year, anticipated amounts to be reserved for claims pending during that year, and the desirability of maintaining a surplus over and above those anticipated payments and present and anticipated reserves, which surplus shall not exceed the amount actually paid from the fund during the 12 full calendar months immediately preceding the date of calculation. The probable amount needed to carry out the provisions of this section shall be assessed against insurers for that year's contribution to the fund.

(2) When any of the provisions concerning the method and sources of assessments on insurers, the maximum amounts payable from the fund, eligibility or qualifications of claimants, or amounts to be deducted from payments made from the fund are amended by law, the association may, if necessary, rescind any assessment on insurers. The association shall, within 30 days of the adoption of such amendment, recalculate the probable amount which will be needed to carry out 17: 30A-2.1 et al. during the ensuing fiscal year, in accordance with the provisions of subsection (a)(1). If, in the judgment of the association, the estimated balance of the fund at the beginning of the next year will be sufficient to meet those needs, the association shall determine the contributions of insurers, if any, in accordance with the provisions of subsection (a)(1).

Source: 39:6-63.

COMMENT

This section…

39A:51-UCJF3. Unsatisfied claim and judgment fund board; New Jersey property liability insurance guaranty association

a. The Unsatisfied Claim and Judgment Fund Board in the Department of Banking and Insurance, established pursuant to 39:6-61 et seq., is abolished and all its functions, powers and duties, along with the Unsatisfied Claim and Judgment Fund, including all its assets, liabilities and balances, are transferred from the Department of Banking and Insurance to the New Jersey Property-Liability Insurance Guaranty Association, established pursuant to 17:30A-1 et seq. Wherever in any law, rule or regulation, reference is made to the Unsatisfied Claim and Judgment Fund Board, the same shall mean and refer to the New Jersey Property-Liability Insurance Guaranty Association ("Association").

b. The Association may from time to time, adopt and amend a plan of operation, subject to the approval of the Commissioner, necessary or desirable in connection with its functions, duties and responsibilities in administering this chapter.

c. The plan of operation shall provide that the Unsatisfied Claim and Judgment Fund may (1) borrow and separately account for moneys from any source, including, but not limited to, the New Jersey Property-Liability Insurance Guaranty Association and the New Jersey Surplus Lines Insurance Guaranty Fund, in such amounts and on such terms

as the board of directors may determine, are necessary or appropriate and (2) make loans, in such amounts and on such terms as the board of directors may determine are necessary or appropriate, to the New Jersey Property-Liability Insurance Guaranty Association and the New Jersey Surplus Lines Insurance Guaranty Fund.

d. There shall be no liability on the part of and no cause of action of any nature shall arise against the Association, its agents, employees, or the Commissioner or designees for any action taken by them in the performance of their powers and duties under 17:30A-2.1 et al.

Source: 39:6-64c; 39:6-64.1.

COMMENT

This section…

39A:51-UCJF4. Notice of accident and intention to file claim

a. A qualified person, or the personal representative thereof, who suffers damages resulting from bodily injury or death or damage to property arising out of the ownership, maintenance or use of a motor vehicle in this State, and whose damages may be satisfied in whole or in part from the fund, shall, except in cases in which the claim is asserted by actions brought under 39:6-78 pursuant to 39:6-79, within 180 days after the accident, give notice to the Association of an intention to make a claim for damages if otherwise uncollectible. Notice is a condition precedent to the right to apply for payment from the fund and the form and the form and contents of the notice shall be prescribed by the Association.

b. A qualified person may, in lieu of giving notice pursuant to subsection (a), make proof to the court on the hearing of the application for the payment of a judgment that the person:

(1) Was physically incapable of giving notice within the period and that notice was given within 180 days after the person became physically capable to do so or in the event the person did not become so capable, that a notice was given within a reasonable period; or

(2) Gave notice to the Association within 15 days of receiving notification that an insurer had disclaimed on a policy of insurance so as to remove or withdraw liability insurance coverage for the claim against a person or persons who allegedly caused the qualified person to suffer damages.

c. A copy of the complaint shall be furnished to the association if an action has been brought for the enforcement of a claim pursuant to subsection (b). The qualified person shall also notify the Association of any action thereafter instituted for the enforcement of the claim within 15 days after its institution and such notice shall be accompanied by a copy of the complaint.

d. Notwithstanding the provisions of any law relating to the confidential nature of reports or information furnished to the Commission, the Commissioner [*of the MVC*] is authorized to furnish to the Association upon its request, for such purposes as the Association may deem appropriate to administer this chapter, any reports or information filed by any person(s) claiming benefits under this chapter with regard to: an accident; an

operator or owner of a motor vehicle involved in any accident; and any automobile or motor vehicle liability insurance or bond carried by an operator or owner of any motor vehicle.

Source: 39:6-65.

COMMENT

This section…

39A:51-UCJF5. Defense of action against motorist

a. The Association may, through counsel: enter an appearance on behalf of a defendant; file a defense; appear at the trial; or take such other steps as it may deem appropriate on behalf and in the name of the defendant including conducting a defense and taking recourse to any appropriate method of review. All such acts shall be deemed to be the acts of such defendant.

b. All expense incurred by the Association in connection with any review prosecuted or defended by it from a judgment rendered in an action, including its attorneys' fees in connection therewith, shall be borne by the fund.

c. When the Association has assumed the defense of any action, the defendant shall co-operate with the association in the defense of the action. If the defendant fails to do so, the Association may apply to the court for an order directing such co-operation.

d. Nothing contained in this section shall deprive the defendant of the right to also employ his or her own counsel and defend the action.

Source: 39:6-67; 39:6-68.

COMMENT

This section…

39A:51-UCJF6. Application for payment of judgment

a. When a qualified person recovers a valid judgment in a court of competent jurisdiction in this State against any other person, who was the operator or owner of a motor vehicle, for:

(1) Injury to or death of, any person or persons; or

(2) An amount in excess of $500, exclusive of interest and costs, for damage to property, except property of others in charge of the operator or owner or the operator's or owner's employees,

and when that judgment arises out of the ownership, maintenance or use of the motor vehicle in this State, and any amount remains unpaid in the case of bodily injury or death, or any amount in excess of $500 remains unpaid in the case of damage to property, the judgment creditor may apply for a payment from the fund.

b. Such an application may be made upon the termination of all proceedings, including reviews and appeals in connection with the judgment. After that time, the judgment creditor may file a verified claim in the court in which the judgment was entered, and upon 10 days' written notice to the association may apply to the court for an

order directing payment out of the fund. The judgment creditor may seek payment from the fund in the amount unpaid upon the judgment for bodily injury or death, or upon such judgment for damage to property exceeding $500, which does not exceed the maximum amount or limit, exclusive of interest and costs:

(1) Of $15,000 for injury to, or death of, one person, in any one accident;

(2) Subject to such limit for any one person so injured or killed, of $30,000, for injury to, or death of, more than one person, in any one accident, and

(3) Of $5,000 for damage to property in any one accident.

Source: 39:6-69.

COMMENT

This section…

39A:51-UCJF7. Hearing on application for payment of judgment

a. The court shall proceed upon an application for payment of a judgment, in a summary manner, and, at the hearing, the applicant shall be required to show that the applicant:

(1) Is not a person covered with respect to such injury or death by any workers' compensation law, or the personal representative of such a person;

(2) Is not a spouse, parent or child of the judgment debtor, or the personal representative of the spouse, parent or child;

(3) Was not, at the time of the accident, a person (1) operating or riding in a motor vehicle which he or she had stolen or participated in stealing or (2) operating or riding in a motor vehicle without the permission of the owner, and is not the personal representative of such a person;

(4) Was not, at the time of the accident, the owner or registrant of an uninsured motor vehicle, or was not operating a motor vehicle in violation of an order of suspension or revocation;

(5) Complied with all of the requirements of 39:6-65;

(6) Obtained a judgment as set out in 39:6-69 stating the amount thereof and the amount owing thereon at the date of the application;

(7) Caused a writ of execution to be issued on the judgment and the officer executing it has made a return showing that no personal or real property of the judgment debtor liable to be levied upon in satisfaction of the judgment could be found, or that the amount realized on any sale of property under the execution was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due on the judgment after application thereon of the amount realized;

(8) Caused the judgment debtor to make discovery under oath, pursuant to law, concerning the debtor's personal property and as to whether the debtor was at the time of the accident insured under any policy or policies of insurance described in this subsection and that the judgment debtor was not, at the time of the accident, insured

under a policy of automobile liability insurance under which the insurer is liable to pay in whole or in part the amount of the judgment;

(9) Made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of personal or real property or other assets, liable to be sold or applied in satisfaction of the judgment and by such search has discovered no personal or real property or other assets liable to be sold or applied, or that any such assets (describing them) owned by the judgment debtor, specifying that all necessary actions and proceedings for the sale or application were taken, realized an amount insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due on the judgment after application of the amount realized;

(10) Is not making the application by or on behalf of any insurer by reason of the existence of a policy of insurance, whereby the insurer is liable to pay, in whole or in part, the amount of the judgment and that no part of the amount to be paid out of the fund is sought in lieu of making a claim or receiving a payment which is payable by reason of the existence of such a policy of insurance and that no part of the amount so sought will be paid to an insurer to reimburse or otherwise indemnify the insurer in respect of any amount paid or payable by the insurer by reason of the existence of such a policy of insurance;

(11) Has or has not recovered a judgment in an action against any other person against whom the applicant has a cause of action in respect of the damages for bodily injury or death or damage to property arising out of the accident and what amounts, if any, the applicant has received by way of payments upon the judgment, or by way of settlement of such cause of action, in whole or in part, from or on behalf of such other person; and

(12) Has, in order to recover for noneconomic loss, as defined in 39:6A-2 for accidents to which the benefits of 39:6-86.1 and 39:6-86.4 apply, sustained an injury described in 39:6A-8(a).

b. When the applicant satisfies the court that it is not possible to comply with one or more of the requirements enumerated in this section and that the applicant has taken all reasonable steps to collect the amount of the judgment or the unsatisfied part and has been unable to collect it, the court may dispense with the necessity for complying with such requirements.

c. The Association may appear and be heard on application and show cause why the order should not be made.

Source: 39:6-70.

COMMENT

This section…

39A:51-UCJF8. Order for payment of judgment

a. The court shall direct an order to the Association requiring the Association to make payment from the fund of such sum, if any, as the court shall find to be payable on the claim, pursuant to this chapter, if the court finds, upon the hearing, that the applicant has:

(1) Satisfactorily demonstrated the truth of the matters required to be shown by 39:6-70; and

(2) Fully pursued and exhausted all remedies available for recovering damages against all persons mentioned in 39:6-70 by:

(A) Commencing action against all persons against whom the applicant might reasonably be deemed to have a cause of action in respect of such damages and prosecuting each action in good faith to judgment; and

(B) Taking all reasonable steps available to the applicant to collect on every judgment so obtained and by applying the proceeds of any judgment or recovery toward satisfaction of the amount due upon the judgment for payment of which the claim is made.

b. Any amount the plaintiff received or can collect by way of payments upon the judgment or settlement of the cause of action, in whole or in part, from or on behalf of a person other than the judgment debtor, described in 39:6-70, shall be deducted from the amount due upon the judgment for which claim is made.

c. No claim shall be allowed and ordered to be paid out of the fund if the court finds that it is founded upon a judgment which was entered by default unless:

(1) The claimant complied with the requirements of 39:6-65; and

(2) Prior to the entry of the judgment the Association was given notice of intention to enter the judgment and file a claim against the fund and was afforded an opportunity to take the action it deemed advisable.

d. If the court, on a hearing for the allowance of a claim against the fund, finds that:

(1) The claim was not assigned by the Association for defense;

(2) The action on the claim was not fully and fairly defended; or

(3) The judgment was entered on the consent or with the agreement of the defendant,

the court shall allow the claim but order it to be paid out of the fund only in the amount the court determines to be due and payable based on the actual damages for which the defendant was liable to the plaintiff, reduced by any amount received from any person mentioned in 39:6-70(m), notwithstanding that the judgment is for a greater amount.

e. No claim against the fund shall be allowed in a case in which the court finds that the judgment upon which the claim is founded was obtained by fraud, or by collusion of the plaintiff and of any defendant in the action, relating to any matter affecting the cause of action upon which the judgment is founded or the amount of damages assessed.

Source: 39:6-71; 39:6-74; 39:6-76.

COMMENT

This section…

39A:51-UCJF9. Settlement of action against motorist

a. In an action against an operator or owner of a motor vehicle for injury to or death of any person or for damage to property arising out of the ownership, maintenance or use of the vehicle in this State, pending in a New Jersey court, the plaintiff may, upon notice to the Association file a verified petition with the court alleging:

(1) The matters set forth in 39:6-70(a), (b), (c), (d), (e) and (f);

(2) That the petition is not presented on behalf of an insurer under circumstances set forth in 39:6-70(1);

(3) That the plaintiff has entered into an agreement with the defendant to settle all claims set forth in the action and the amount proposed to be paid;

(4) That the proposed settlement has been entered into with the consent of the Superior Court and approved by the Association;

(5) That the defendant has executed and delivered to the Association a verified statement of defendant's financial condition;

(6) That a judgment against the defendant would be uncollectible;

(7) That the defendant has undertaken in writing to repay to the Association the amount defendant would be required to pay under the settlement, *and executed a confession of judgment*.

b. If the court is satisfied of the truth of the allegations in the petition and of the fairness of the proposed settlement, it may enter an order approving the same and directing the Association, upon receipt of the *undertaking and confession of judgment* mentioned above, to make payment to the plaintiff of the amount agreed to be accepted.

c. The Association may settle any claim, without court approval, if satisfied that:

(1) The claimant is not a person of the character described in 39:6-70(a), (b), (c), (d), (e) and (f);

(2) The settlement is not made on behalf of an insurer under circumstances set forth in 39:6-70(e); and

(3) A judgment against the owner or operator of the motor vehicle involved in the accident would be uncollectible, and that the owner or operator consented to the settlement and complied with the terms of this section.

Source: 39:6-72.

COMMENT

This section…

39A:51-UCJF10. Limitation on amounts payable from fund

a. Except with respect to medical expense benefits paid pursuant to C.39:6-73.1, no order shall be made for the payment, and the Association shall make no payment out of the fund, of:

(1) A claim for damage to property for less than $500;

(2) The first $500 of a judgment for damage to property or the unsatisfied portion thereof; or

(3) The unsatisfied portion of any judgment which, after deducting $500 therefrom if the judgment is for damage to property, exceeds the maximum amount or limit:

(A) Of $15,000, exclusive of interest and costs, on account of injury to, or death of, one person in any one accident, and

(B) Subject to such limit for any one person so injured or killed, of $30,000, exclusive of interest and costs, on account of injury to, or death of, more than one person, in any one accident, and

(C) Of $5,000, exclusive of interest and costs, for damage to property in any one accident; provided, that the maximum amounts shall be reduced by any amount received or recovered as specified in 39:6-70(m).

b. A claim for damage to property which includes any sum greater than the difference between the maximum amounts and the sum of $500, and any amount paid out of the fund in excess of the amount so authorized may be recovered by the Association in an action brought *to* it against the person receiving the funds.

c. If medical expense benefits paid by an insurer, in accordance with 39:6A-4(a) or 39:6A-3.1, are in excess of $75,000 on account of personal injury to any one person in any one accident covered under a policy issued prior to January 1, 2004, the Unsatisfied Claim and Judgment Fund shall assume:

(1) The entire excess for a medical expense benefits claim covered under a policy issued before January 1, 1991; and

(2) The excess up to $250,000 for a medical expense benefits claim covered under a policy issued on or after January 1, 1991.

d. The Unsatisfied Claim and Judgment Fund shall reimburse the insurer for medical expense benefits pursuant to (c) in accordance with regulations promulgated by the Commissioner. This provision is not intended to broaden the coverage available to accidents involving uninsured or hit-and-run automobiles, to provide extraterritorial coverage, or to pay excess medical expenses. The Unsatisfied Claim and Judgment Fund shall cease to reimburse an insurer for medical expense benefits under this section for injuries covered under a policy issued on or after January 1, 2004.

Source: 39:6-73; 39:6-73.1.

COMMENT

This section…

39A:51-UCJF11. Assignment of judgments to Association

a. The Association shall not pay any sum from the fund pursuant to an order, in any case in which the claim is founded upon a judgment, except a judgment properly obtained against the Association, until the applicant assigns the judgment to the Association. After such assignment, the Association shall be deemed to have all the

rights of the judgment creditor and shall enforce and collect the full amount of the judgment with interest and costs. If more money is collected upon a judgment than the amount paid out of the fund, the Association shall pay the balance, after reimbursing the fund, to the judgment creditor.

b. Upon assignment of a judgment to the Association the Association may enter into agreement with the defendant for reimbursement of the fund by lump sum or installment payments, including waiver of interest and subordination of the lien of the judgment if the Association determines this to be advantageous in obtaining reimbursement of payments made by the fund. Such agreement may be annexed to an application made pursuant to 39:6-87.

Source: 39:6-77.

COMMENT

This section…

39A:51-UCJF12. "Hit-and-run" cases

a. When the death of, or personal injury to, a person arises out of ownership, maintenance or use of a motor vehicle in this State, but the identity of the motor vehicle, the operator and the owner cannot be ascertained or when it is established that the motor vehicle was, at the time of the accident, in the possession of a person other than the owner without the owner's consent and that the identity of that other person cannot be ascertained, then a qualified person who would have a cause of action against the operator or owner or both for the death or personal injury may instead bring an action against the Association in any appropriate court. No judgment against the Association shall be entered in such an action unless the court is satisfied that:

(1) The claimant has complied with 39:6-65;

(2) The claimant is not covered with respect to such injury or death by any workers' compensation law, or the personal representative of such a person;

(3) The claimant was not at the time of the accident the owner or registrant of an uninsured motor vehicle, or was not operating a motor vehicle in violation of an order of suspension or revocation;

(4) The claimant has a cause of action against the operator or owner of the motor vehicle or against the person who was operating the motor vehicle without the consent of its owner;

(5) All reasonable efforts were made to ascertain the identity of the motor vehicle and of its owner and operator and either the identity of the motor vehicle and its owner and operator cannot be established, or the identity of the person operating the motor vehicle without the owner's consent, cannot be established; and

(6) The action is not brought by or on behalf of an insurer under circumstances set forth in 39:6-70(1).

b. When in an action regarding the death of, or personal injury to, any person, arising out of the ownership, maintenance or use of a motor vehicle in this State,

judgment is rendered for the defendant on the sole ground that such death or personal injury was occasioned by a motor vehicle:

(1) The identity of the motor vehicle, the owner and the operator have not been established; or

(2) Which was in the possession of some person other than the owner or owner's agent without the consent of the owner and the identity of the operator has not been established,

the cause shall be stated in the judgment and the plaintiff may, within 180 days from the date of the entry of the judgment, bring an action against the Association as provided in this section.

Source: 39:6-78; 39:6-79.

COMMENT

This section…

39A:51-UCJF13. Association involvement in "hit-and-run" cases

a. When an action has been commenced in respect of the death or injury of any person arising out of the ownership, maintenance or use of a motor vehicle in this State, the plaintiff may make the association a party if 39:6-78 or 39:6-79 apply, the plaintiff makes the proper application and the court enters the order.

b. In an action brought under 39:6-78 and 39:6-79, the Association may appear and shall for all purposes be deemed to be the defendant. The Association shall have available to it any defenses available to the operator or owner or both if those individuals were parties to the action, but the Association shall be entitled to defend in all cases without asserting any specific facts.

c. In any action brought against the Association pursuant to a court order entered pursuant to 39:6-78, the plaintiff may file a verified petition alleging that the plaintiff has entered into an agreement with the Association to settle all claims in the complaint and the amount proposed to be paid pursuant to the settlement. If the court is satisfied of the fairness of the proposed settlement, it may enter an order approving the settlement and enter a judgment against the Association for the amount agreed to be paid.

d. A judgment against the Association shall be reduced by any amounts the plaintiff received from any person mentioned in 39:6-70(m).

e. When a judgment is obtained against the Association, in an action brought under this *chapter*, upon the final determination of the action, including appeals and reviews, the court shall make an order directing the Association to pay out of the fund to the plaintiff the amount not exceeding $15,000, exclusive of interest and costs, on account of injury to, or death of, one person and, subject to such limits for the death of, or injury to, any one person, does not exceed $30,000, exclusive of interest and costs, on account of the injury to, or death of, more than one person, in any one accident, provided that the maximum amounts shall be reduced by any amount received by the plaintiff as specified in 39:6-70(m).

f. When judgment has been obtained against the Association in an action brought under this *chapter*, the Association shall, upon payment from the fund of the amount of the judgment as provided in this *chapter*, be subrogated to the cause of action of the judgment creditor against the operator and owner of the motor vehicle by which the accident was occasioned. The Association shall bring an action against either or both of those persons for the amount of the damage sustained by the judgment creditor when and in the event that the identity of either or both of such persons is established, and shall recover the same out of any funds which would be payable in respect to the death or injury under any policy of insurance in force at the time of the accident and, in event that more is collected in any such action than the amount paid out of the fund by reason of the judgment, the Association shall pay the balance, after reimbursing the fund, to the judgment creditor.

Source: 39:6-80; 39:6-81; 39:6-82; 39:6-83; 39:6-84; 39:6-85.

COMMENT

This section…

39A:51-UCJF14. Unsatisfied Claim and Judgment Fund benefits

a. When a person qualified to receive payments under this chapter suffers bodily injury or death as a pedestrian, as defined in 39:6A-2, caused by a motor vehicle, *including an automobile as defined in 39:6A-2*, and a motorcycle, or by an object propelled from such vehicle, or arising out of an accident while occupying, entering into, alighting from, or using an automobile, registered or principally garaged in this State for which personal injury protection benefits under the "New Jersey Automobile Reparation Reform Act," or 17:28-1.3, would be payable to such person if personal injury protection coverage were in force, and the damages resulting from the accident or death are not satisfied because personal injury protection coverage was not in effect with respect to such accident, or when a pedestrian suffers bodily injury as provided by C.39:6-86.7, then the Unsatisfied Claim and Judgment Fund ("UCJF") shall provide, under the following conditions, the following benefits:

(1) Medical expenses benefits. Payment of all medical expense benefits in accordance with a benefits plan, subject to the approval of the Commissioner, for reasonable, necessary and appropriate treatment and the provision of services in an amount not exceeding $250,000 per person per accident. In the event of death, payment shall be made to the estate of the decedent. The benefits plan shall set forth the benefits provided by the UCJF, including eligible medical treatments, diagnostic tests and services as well as such other benefits as the UCJF may provide. Medical expense benefit payments are subject to a deductible of $250 on account of injury in any one accident and a copayment of 20% of any benefits payable between $250 and $5,000.

(2) Income continuation benefits. Payment of the loss of income of an income producer as a result of bodily injury disability, subject to a maximum weekly payment of $100. Such sums are payable during the life of the injured person and are subject to an amount or limit of $5,200, on account of injury to any one person in any one accident, except that in no case shall income continuation benefits exceed the net income normally earned during the period in which the benefits are payable.

(3) Essential services benefits. Payment of essential services benefits to an injured person shall be made in reimbursement of necessary and reasonable expenses incurred for such substitute essential services ordinarily performed by the injured person for that individual, the person's family and members of the family residing in the household, subject to a limit of $12 per day. Such benefits shall be payable during the life of the injured person and are subject to an amount or limit of $4,380, on account of injury to any one person in any one accident.

(4) Death benefits. In the event of the death of an income producer as a result of injuries sustained in an accident entitling such person to benefits under this section, the maximum amount of benefits which could have been paid to the income producer, but for that person's death, under subsection (2) shall be paid to the surviving spouse, or in the event there is no surviving spouse, then to the surviving children, and in the event there are no surviving spouse or surviving children, then to the estate of the income producer. In the event of the death of one performing essential services as a result of injuries sustained in an accident entitling that person to benefits under subsection (3), the maximum amount of benefits which could have been paid shall be paid to the person incurring the expense of providing such essential services.

(5) Funeral expenses benefits. All reasonable funeral, burial and cremation expenses, subject to a maximum benefit of $1,000, on account of the death to any one person in any one accident shall be payable to decedent's estate.

b. The UCJF shall provide personal injury protection benefits pursuant to this section to a pedestrian sustaining bodily injury in this State caused by an automobile, other than to a named insured or a member of the named insured's family residing in the named insured's household, if that pedestrian is entitled to personal injury protection coverage under an automobile insurance policy.

c. No benefits shall be paid under this section unless the person applying for benefits has demonstrated that that person is not disqualified by reason of the provisions of 39:6-70(a), (c), (d) or (l), or any other provision of law.

d. A qualified person entitled to receive benefits as provided in this section shall be precluded from receiving such benefits where the person's conduct contributed to the personal injuries or death in any of the following ways:

(1) While committing a *high misdemeanor or felony* or seeking to avoid lawful apprehension or arrest by a police officer; or

(2) While acting with specific intent of causing injury or damage to the qualified person or others.

Source: 39:6-86.1; 39:6-86.3; 39:6-86.7.

COMMENT

This section…

39A:51-UCJF15. Death or injury to unidentifiable operator or owner, or operator using vehicle without consent of owner

a. When the death of or personal injury to a person arises out of the ownership, maintenance or use of an *automobile* in this State, but the identity of the automobile, the operator and the owner cannot be ascertained or it is established that the automobile was, at the time of the accident, in the possession of some person other than the owner without the owner's consent and that the identity of such person cannot be ascertained, any person qualified to receive payments under the provisions of the "Unsatisfied Claim and Judgment Fund Law" shall be entitled to receive payment under 39:6-86.1 and 39:6-86.4, provided that:

(1) The claimant is not a person covered with respect to such injury or death by any workers' compensation law, or the personal representative of such a person;

(2) The claimant was not at the time of the accident the owner or registrant of an uninsured motor vehicle, or was not operating a motor vehicle in violation of an order of suspension or revocation;

(3) The claimant was not at the time of the accident:

(A) A person operating or riding in a motor vehicle which the claimant had stolen or participated in stealing, or

(B) Operating a motor vehicle without the permission of the owner, and is not the personal representative of such a person;

(4) All reasonable efforts have been made to ascertain the identity of the motor vehicle, the owner and the operator and either the identity of the motor vehicle, the owner and the operator cannot be established, or the identity of the operator, who was operating the motor vehicle without the owner's consent, cannot be established; or

(5) The action or claim is not brought by or on behalf of an insurer.

Source: 39:6-86.4.

COMMENT

This section…

39A:51-UCJF16. Payment of benefits

a. The benefits provided in 39:6-86.1 and 39:6-86.4 shall be payable as loss accrues, upon written notice of the loss, including reasonable proof, except that benefits collectible under:

(1) Employees' temporary disability benefit statutes and medicare provided under federal law shall be deducted from the benefits collectible under those sections; and

(2) Any hospital, medical or dental benefit plan or policy coverage with benefits similar to those provided under 39:6-86.1, in an amount not to exceed in the aggregate $2,500 for any one accident, shall be deducted from the benefits collectible under 39:6-86.1 and 39:6-86.4.

b. Evidence of benefit payments collectible under subsection (a) shall not be admissible in a civil action by the claimant for recovery of damages for bodily injury from the fund.

c. The amount of $2,500 shall be deemed to have been exceeded, whether the amount is paid or benefits in that amount are provided to one or more persons eligible for benefits under the hospital, medical or dental plan or policy, for injuries sustained in any one accident.

d. A qualified person seeking to receive benefits as provided in 39:6-86.1 and 39:6-86.4 shall comply with the provisions of 39:6-65 and payment under these sections shall be payable to the qualified person entitled to receive such benefits, as the loss accrues, upon receipt of reasonable proof of such loss and without the need of a judgment as to damages, or a hearing as provided in 39:6-70 or an order for payment as provided in 39:6-71.

e. The Association shall be entitled to recover on behalf of the Unsatisfied Claim and Judgment Fund for payments made by it pursuant to 39:6-86.1 and 39:6-86.4 regardless of fault, from any person who owned or operated the automobile involved in the accident and whose failure to have the required insurance coverage in effect at the time of the accident resulted in the payment of personal injury protection benefits. If the identity of the owner and operator is not ascertained until after personal injury protection benefits have been paid then the Association shall be entitled to recover for such payments, regardless of fault, from the operator if the operator was driving without the owner's permission or from the operator and the owner if the operator was driving with the owner's permission or, in either case, from the insurer if there is an insurance policy providing personal injury protection benefits that was in effect at the time of the accident with respect to such automobile. The Association may bring a summary action in the Superior Court to reduce the right provided by this section to judgment.

Source: 39:6-86.2; 39:6-86.5; 39:6-86.6.

COMMENT

This section…

39A:51-UCJF17. License or registration not restored until fund reimbursed

a. Where the driving or motor vehicle registration privileges of a person have been suspended or cancelled under 39:6-23 et seq. and the Association has paid from the fund any amount in settlement of a claim or towards satisfaction of a judgment against that person, or for the payment of personal injury protection benefits as provided in 39:6-67 and 39:6-70, the cancellation or suspension shall not be removed, nor the driving privileges or registration restored, nor shall any new license or privilege be issued or granted to, or registration be permitted to be made by, that person until that person has:

(1) Repaid in full to the Association the amount *so paid by him* together with interest thereon at 8% per annum from the date of such payment; and

(2) Satisfied all requirements of 39:6-23 et seq. giving proof of ability to respond in damages for future accidents.

b. The court in which a judgment was rendered may, upon 10 days' notice to the Association, make an order permitting payment of the amount of such person's indebtedness to the fund, to be made in installments, or in the event the fund makes personal injury protection benefit payments, such person and the fund by agreement may provide for repayment to the fund to be made in installments. In such case, the person's driving privilege, or registration certificate, if suspended or revoked, or have expired, may be restored or renewed and shall remain in effect unless and until the person defaults in making any installment payment specified in the order. In the event of any such default, the Commission shall upon notice of default suspend the driving privileges or registration certificate until the amount of the indebtedness to the fund has been paid in full.

Source: 39:6-87.

COMMENT

This section…

39A:51-UCJF18. Fund to be held in trust

All sums received by the Association pursuant to any of the provisions of this chapter shall become part of the fund, and shall be held by the Association in trust for the carrying out of the purposes of this chapter and for the payment of the cost of administering this chapter.

Source: 39:6-88.

COMMENT

This section…

39A:51-UCJF19. Penalty for false statements

A person and any agent or servant of that person, who knowingly files with the fund or the Association or either of them, any notice, statement or other document required under this chapter, which is false or untrue or contains any material misstatement of fact shall be subject to a penalty as provided in C.17:33A-5 and damages as provided in C.17:33A-7.

Source: 39:6-90.

COMMENT

This section…

CHAPTER 52. NEW JERSEY AUTOMOBILE REPARATION REFORM

39A:I-1. Definitions

a. "Automobile" means a private passenger automobile of a private passenger or station wagon type that is owned or hired and is neither used as a public or livery conveyance for passengers nor rented to others with a driver; and a motor vehicle with a pickup body, a delivery sedan, a van, or a panel truck or a camper type vehicle used for recreational purposes owned by an individual or by spouses who are residents of the same household, not customarily used in the occupation, profession or business of the insured other than farming or ranching. An automobile owned by a farm family copartnership or corporation, which is principally garaged on a farm or ranch and otherwise meets the definitions contained in this section, shall be considered a private passenger automobile owned by two or more relatives resident in the same household.

b. "Essential services" means those services performed not for income which are ordinarily performed by an individual for the care and maintenance of such individual's family or family household.

c. "Income" means salary, wages, tips, commissions, fees and other earnings derived from work or employment.

d. "Income producer" means a person who, at the time of the accident causing personal injury or death, had an occupation earning or producing income.

e. "Medical expenses" means reasonable and necessary expenses for treatment or services as provided by the policy, including medical, surgical, rehabilitative and diagnostic services and hospital expenses, provided by a health care provider licensed or certified by the State or by another state or nation, and reasonable and necessary expenses for ambulance services or other transportation, medication and other services as may be provided for, and subject to such limitations as provided for, in the policy, as approved by the Commissioner. "Medical expenses" also include any nonmedical remedial treatment rendered in accordance with a recognized religious method of healing.

f. "Hospital expenses" means the cost of treatment and services, as provided in the policy approved by the commissioner, by a licensed and accredited acute care facility which engages primarily in providing diagnosis, treatment and care of sick and injured persons on an inpatient or outpatient basis; the cost of covered treatment and services provided by an extended care facility which provides room and board and skilled nursing care 24 hours a day and which is recognized by the administrators of the federal Medicare program as an extended care facility; and the cost of covered services at an ambulatory surgical facility supervised by a physician licensed in this State or in another jurisdiction and recognized by the Commissioner of Health and Senior Services, or any other facility licensed, certified or recognized by the Commissioner of Health and Senior Services or the Commissioner of Human Services or a nationally recognized system such as the Commission on Accreditation of Rehabilitation Facilities, or by another jurisdiction in which it is located.

g. "Named insured" means the person(s) identified as the insured in the policy and, if an individual, the individual’s spouse, if the spouse is named as a resident of the

same household. If the spouse ceases to be a resident of the household of the named insured, coverage shall be extended to the spouse for the full term of any policy period in effect at the time of the cessation of residency.

h. "Pedestrian" means a person who is not occupying, entering into, or alighting from a vehicle propelled by other than muscular power and designed primarily for use on highways, rails and tracks.

i. "Noneconomic loss" means pain, suffering and inconvenience.

j. "Motor vehicle" means a motor vehicle as defined in 39:1-1, exclusive of an automobile as defined in subsection (a).

k. "Economic loss" means uncompensated loss of income or property, or other uncompensated expenses, including, but not limited to, medical expenses.

l. "Health care provider" or "provider" means persons licensed or certified to perform health care treatment or services compensable as medical expenses and shall include: (1) a hospital or health care facility maintained by a state or any of its political subdivisions, (2) a hospital or health care facility licensed by the Department of Health and Senior Services, (3) other hospitals or health care facilities designated by the Department of Health and Senior Services to provide health care services, or other facilities, including facilities for radiology and diagnostic testing, freestanding emergency clinics or offices, and private treatment centers, (4) a nonprofit voluntary visiting nurse organization providing health care services other than in a hospital, (5) hospitals or other health care facilities or treatment centers located in other states or nations, (6) physicians licensed to practice medicine and surgery, (7) licensed chiropractors, (8) licensed dentists, (9) licensed optometrists, (10) licensed pharmacists, (11) licensed chiropodists, (12) registered bio-analytical laboratories, (13) licensed psychologists, (14) licensed physical therapists, (16) certified nurse-midwives, (17) certified nurse-practitioners/clinical nurse-specialists, (18) licensed health maintenance organizations, (19) licensed orthotists and prosthetists, (20) licensed professional nurses, and (21) providers of other health care services or supplies, including durable medical goods.

m. "Medically necessary" means that the treatment is consistent with the symptoms or diagnosis, and treatment of the injury (1) is not primarily for the convenience of the injured person or provider, (2) is the most appropriate standard or level of service which is in accordance with standards of good practice and standard professional treatment protocols, as such protocols may be recognized or designated by the Commissioner of Banking and Insurance, in consultation with the Commissioner of Health and Senior Services or with a professional licensing or certifying board in the Division of Consumer Affairs in the Department of Law and Public Safety, or by a nationally recognized professional organization, and (3) does not involve unnecessary diagnostic testing.

n. "Standard automobile insurance policy" means an automobile insurance policy with at least the coverage required pursuant to 39:6A-3 and 39:6A-4.

o. "Basic automobile insurance policy" means an automobile insurance policy pursuant to 39:6A-3.1.

Source: 39:6A-2.

COMMENT

This section…

39A:I-2. Compulsory insurance coverage limits

a. Except as provided by 39:6A-3.1, every owner of an automobile registered or principally garaged in this State shall maintain automobile liability insurance coverage, under provisions approved by the Commissioner of Banking and Insurance, insuring against loss resulting from liability imposed by law for bodily injury, death and property damage sustained by any person arising out of the ownership, maintenance, operation or use of an automobile. Such coverage shall be at least in an amount or limit:

(1) Of $15,000, exclusive of interest and costs, on account of injury to, or death of, one person, in any one accident;

(2) Subject to such limit for any one person so injured or killed, of $30,000, exclusive of interest and costs, on account of injury to or death of, more than one person, in any one accident; and

(3) Of $5,000, exclusive of interest and costs, for damage to property in any one accident.

b. All automobile insurance policies issued or renewed on or after *May 19, 1998* shall be issued or renewed including at least the coverage required pursuant to 39:6A-3 and 39:6A-4 unless the named insured elects a basic automobile insurance policy pursuant to 39:6A-3.1 or a special automobile insurance policy pursuant to 39:6A-3.3. Election of a basic or special automobile insurance policy shall be in writing and signed by the named insured on the coverage selection form required by 39:6A-23. The coverage selection form shall contain a statement, clearly readable and in 12-point bold type, in a form approved by the Commissioner, that:

(1) Election of a basic automobile insurance policy will result in less coverage than the $250,000 medical expense benefits coverage mandated prior to 39:6A-1.1 et al. or that election of a special automobile insurance policy will result in coverage only for emergency care; and

(2) Election of a special automobile insurance policy, or a basic automobile insurance policy without the optional $10,000 liability coverage provided for in 39:6A-3.1 may subject the named insured to a claim or judgment for noneconomic loss which is not covered by the insurance policy, and which may place the insured's assets at risk, and in the event the insured is sued, the insurer shall not provide legal counsel.

c. The insurance coverage provided for in 39:6A-3.1 shall be offered by every insurer which writes insurance coverage pursuant to 39:6A-3 and 39:6A-4 for a period of five years *beginning May 19, 1998*. The Commissioner shall require every company writing such insurance coverage to report annually during that five-year period as to the number of policies written pursuant to this subsection in the previous year, the number of policies with the coverage offered pursuant to 39:6A-4 converted to policies with the coverage offered pursuant to 39:6A-3.1 and any other information the Commissioner may require including the age of the policyholders and the territories in which the policyholders reside. The Commissioner shall report to the Governor and the Legislature

regarding the acceptance of the basic automobile insurance policy by the automobile insurance consumers of this State annually for the first four years the basic policy is sold. On or before January 1, 2003, the Commissioner shall make a final, cumulative report to the Governor and the Legislature which includes recommendations as to the continuation of the basic policy.

d. The insurance coverages provided for in 39:6A-3.3 shall be offered or provided pursuant to subsection f. of that section for a period of five years after the effective date of 17:30A-2.1 et al. On or before January 1, 2008, the Commissioner shall make a final report which includes recommendations as to the continuation of the special policy to the Governor and the Legislature.

e. No licensed insurance carrier shall refuse to renew the required coverage stipulated by this act of an eligible person as defined in 17:33B-13 except in accordance with the provisions of 17:29C-7.1 or with the consent of the Commissioner of Banking and Insurance.

Source: 39:6A-3; 39:6A-3.2.

COMMENT

This section…

39A:I-3. Personal injury protection coverage

Except as provided by 39:6A-3.3 and 39:6A-3.1, every standard automobile liability insurance policy issued or renewed on or after *May 19, 1998* shall contain personal injury protection benefits for the payment of benefits without regard to negligence, liability or fault of any kind, to the named insured and members of the insured's family residing in the insured's household who sustain bodily injury as a result of an accident while occupying, entering into, alighting from or using an automobile, or as a pedestrian, caused by an automobile or by an object propelled by or from an automobile, and to other persons sustaining bodily injury while occupying, entering into, alighting from or using the automobile of the named insured, with permission of the named insured. No insurer or health provider providing benefits to an insured shall have a right of subrogation for the amount of benefits paid pursuant to any deductible or copayment under this section. "Personal injury protection coverage" includes:

a. Medical expense benefits. Payment of medical expense benefits in accordance with a benefit plan provided in the policy and approved by the commissioner, for reasonable, necessary, and appropriate treatment and provision of services to persons sustaining bodily injury, in an amount not to exceed $250,000 per person per accident. In the event benefits paid by an insurer pursuant to this subsection are in excess of $75,000 on account of bodily injury to any one person in any one accident, that excess shall be paid by the insurer and shall be reimbursable to the insurer from the Unsatisfied Claim and Judgment Fund pursuant to 39:6-73.1.

(1) The policy form, which shall be subject to the approval of the commissioner, shall set forth the benefits provided under the policy, including eligible medical treatments, diagnostic tests and services as well as such other

benefits as the policy may provide. The commissioner shall set forth by regulation a statement of the basic benefits which shall be included in the policy.

(2) Medical treatments, diagnostic tests, and services provided by the policy shall be rendered in accordance with commonly accepted protocols and professional standards and practices which are commonly accepted as being beneficial for the treatment of the covered injury. Protocols and professional standards and practices and lists of valid diagnostic tests which are deemed to be commonly accepted pursuant to this section shall be those recognized by national standard setting organizations, national or state professional organizations of the same discipline as the treating provider, or those designated or approved by the commissioner in consultation with the professional licensing boards in the Division of Consumer Affairs in the Department of Law and Public Safety. The commissioner, in consultation with the Commissioner of the Department of Health and Senior Services and the applicable licensing boards, may reject the use of protocols, standards and practices or lists of diagnostic tests set by any organization deemed not to have standing or general recognition by the provider community or the applicable licensing boards. Protocols shall be deemed to establish guidelines as to standard appropriate treatment and diagnostic tests for injuries sustained in automobile accidents, but the establishment of standard treatment protocols or protocols for the administration of diagnostic tests shall not be interpreted in such a manner as to preclude variance from the standard when warranted by reason of medical necessity.

(3) The policy form may provide for the precertification of certain procedures, treatments, diagnostic tests, or other services or for the purchase of durable medical goods, as approved by the commissioner, provided that the requirement for precertification shall not be unreasonable, and no precertification requirement shall apply within ten days of the insured event.

(4) The policy may provide that certain benefits provided by the policy which are in excess of the basic benefits required by the commissioner to be included in the policy may be subject to reasonable copayments in addition to the copayments provided for pursuant to subsection e. of this section, provided that the copayments shall not be unreasonable and shall be established in such a manner as not to serve to encourage underutilization of benefits subject to the copayments, nor encourage overutilization of benefits.

(5) The policy form shall clearly set forth any limitations on benefits or exclusions, which may include, but need not be limited to, benefits which are otherwise compensable under workers' compensation, or benefits for treatments deemed to be experimental or investigational, or benefits deducted pursuant to 39:6A-6.

(6) The commissioner may enlist the services of a benefit consultant in establishing the basic benefits level provided in this subsection, which shall be set forth by regulation no later than 120 days following the enactment date of 39:6A-1.1 et al. The commissioner shall not advertise for bids for the consultant as provided in 52:34-8 and 52:34-9.

(7) Notwithstanding the provisions of P.L.2003, c. 18, physical therapy treatment shall not be reimbursable as medical expense benefits pursuant to this subsection unless rendered by a licensed physical therapist pursuant to a referral from a licensed physician, dentist, podiatrist or chiropractor within the scope of their respective practices.

(8) Medical expense benefit payments shall be subject to any deductible and any copayment which may be established as provided in the policy. Upon the request of the commissioner or any party to a claim for benefits or payment for services rendered, a provider shall present adequate proof that any deductible or copayment related to that claim has not been waived or discharged by the provider.

b. Income continuation benefits. The payment of the loss of income of an income producer as a result of bodily injury disability, subject to a maximum weekly payment of $100. Such sum shall be payable during the life of the injured person and shall be subject to an amount or limit of $5,200, on account of injury to any one person in any one accident, except that in no case shall income continuation benefits exceed the net income normally earned during the period in which the benefits are payable.

c. Essential services benefits. Payment of essential services benefits to an injured person shall be made in reimbursement of necessary and reasonable expenses incurred for such substitute essential services ordinarily performed by the injured person for himself, his family and members of the family residing in the household, subject to an amount or limit of $12 per day. Such benefits shall be payable during the life of the injured person and shall be subject to an amount or limit of $4,380, on account of injury to any one person in any one accident.

d. Death benefits. In the event of the death of an income producer as a result of injuries sustained in an accident entitling such person to benefits under this section, the maximum amount of benefits which could have been paid to the income producer, but for his death, under subsection b. of this section shall be paid to the surviving spouse, or in the event there is no surviving spouse, then to the surviving children, and in the event there are no surviving spouse or surviving children, then to the estate of the income producer. In the event of the death of one performing essential services as a result of injuries sustained in an accident entitling such person to benefits under subsection c. of this section, the maximum amount of benefits which could have been paid to such person, under subsection c., shall be paid to the person incurring the expense of providing such essential services.

e. Funeral expenses benefits. All reasonable funeral, burial and cremation expenses, subject to a maximum benefit of $1,000, on account of the death of any one person in any one accident shall be payable to the decedent's estate. Benefits payable under this section shall:

(1) Be subject to any option elected by the policyholder pursuant to section 39:6A-4.3;

(2) Not be assignable, except to a provider of service benefits under this section in accordance with policy terms approved by the commissioner, nor subject to levy, execution, attachment or other process for satisfaction of debts.

Source: 39:6A-4.

COMMENT

This section is unchanged in substance, but has been reordered slightly for ease of review. The last two paragraphs of the original section have been moved. The final paragraph has been moved to the end of the first paragraph for the sake of clarity since it appears to apply to the entire section. The second-to-last paragraph in the original section has been moved and is now subsection (a)(8); since it appears to pertain only to medical expense benefits it is now a part of that section.

The original subsection (a) has been divided into subsections (1) – (8) for ease of review, comprehension and citation.

39A:I-4. Alternate insurance coverage

As an alternative to the mandatory coverages provided in 39:6A-3 and 39:6A-4, any owner or registered owner of an automobile registered or principally garaged in this State may elect a basic automobile insurance policy providing the following coverage. No insurer or provider providing service benefits to an insured shall have a right of subrogation for the amount of benefits paid pursuant to any deductible or copayment under this section:

a. Personal injury protection coverage. Personal injury protection coverage, for the payment of benefits without regard to negligence, liability or fault of any kind, to the named insured and members of his family residing in his household, who sustained bodily injury as a result of an accident while occupying, entering into, alighting from or using an automobile, or as a pedestrian, caused by an automobile or by an object propelled by or from an automobile, and to other persons sustaining bodily injury while occupying, entering into, alighting from or using the automobile of the named insured, with the permission of the named insured. "Personal injury protection coverage" issued pursuant to this section means and includes payment of medical expense benefits, as provided in the policy and approved by the commissioner, for the reasonable and necessary treatment of bodily injury in an amount not to exceed $15,000 per person per accident; except that, medical expense benefits shall be paid in an amount not to exceed $250,000: (1) for all medically necessary treatment of permanent or significant brain injury, spinal cord injury or disfigurement or (2) for medically necessary treatment of other permanent or significant injuries rendered at a trauma center or acute care hospital immediately following the accident and until the patient is stable, no longer requires critical care and can be safely discharged or transferred to another facility in the judgment of the attending physician. In the event benefits paid by an insurer pursuant to this subsection are in excess of $75,000 on account of personal injury to any one person in any one accident covered by a policy issued or renewed prior to January 1, 2004, such excess shall be paid by the insurer and shall be reimbursable to the insurer from the Unsatisfied Claim and Judgment Fund pursuant to 39:6-73.1.

(1) Benefits provided under basic coverage shall be in accordance with a benefit plan provided in the policy and approved by the commissioner. The policy

form, which shall be subject to the approval of the commissioner, shall set forth the benefits provided under the policy, including eligible medical treatments, diagnostic tests and services as well as such other benefits as the policy may provide.

(2) The commissioner shall set forth by regulation a statement of the basic benefits which shall be included in the policy.

(3) Medical treatments, diagnostic tests, and services provided by the policy shall be rendered in accordance with commonly accepted protocols and professional standards and practices which are commonly accepted as being beneficial for the treatment of the covered injury. Protocols and professional standards and practices which are deemed to be commonly accepted pursuant to this section shall be those recognized by national standard setting organizations, national or state professional organizations of the same discipline as the treating provider, or those designated or approved by the commissioner in consultation with the professional licensing boards in the Division of Consumer Affairs in the Department of Law and Public Safety. The commissioner, in consultation with the Commissioner of the Department of Health and Senior Services and the applicable licensing boards, may reject the use of protocols, standards and practices or lists of diagnostic tests set by any organization deemed not to have standing or general recognition by the provider community or the applicable licensing boards. Protocols shall be deemed to establish guidelines as to standard appropriate treatment and diagnostic tests for injuries sustained in automobile accidents, but the establishment of standard treatment protocols or protocols for the administration of diagnostic tests shall not be interpreted in such a manner as to preclude variance from the standard when warranted by reason of medical necessity.

(4) The policy form may provide for the precertification of certain procedures, treatments, diagnostic tests, or other services or for the purchase of durable medical goods, as approved by the commissioner, provided that the requirement for precertification shall not be unreasonable, and no precertification requirement shall apply within ten days of the insured event.

(5) The policy may provide that certain benefits provided by the policy which are in excess of the basic benefits required by the commissioner to be included in the policy may be subject to reasonable copayments in addition to the copayments provided for herein, provided that the copayments shall not be unreasonable and shall be established in such a manner as not to serve to encourage underutilization of benefits subject to the copayments, nor encourage overutilization of benefits.

(6) The policy form shall clearly set forth any limitations on benefits or exclusions, which may include, but need not be limited to, benefits which are otherwise compensable under workers' compensation, or benefits for treatments deemed to be experimental or investigational, or benefits deducted pursuant to 39:6A-6.

(7) The commissioner may enlist the services of a benefit consultant in establishing the basic benefits level provided in this subsection, which shall be set forth by regulation no later than 120 days following the enactment date of this amendatory and supplementary act. The commissioner shall not advertise for the consultant as provided in 52:34-8 and 52:34-9.

(8) Notwithstanding the provisions of P.L.2003, c. 18, physical therapy treatment shall not be reimbursable as medical expense benefits pursuant to this subsection unless rendered by a licensed physical therapist pursuant to a referral from a licensed physician, dentist, podiatrist or chiropractor within the scope of their respective practices.

(9) Medical expense benefits payable under this subsection shall not be assignable, except to a provider of service benefits, in accordance with policy terms approved by the commissioner, nor shall they be subject to levy, execution, attachment or other process for satisfaction of debts. Medical expense benefits payable in accordance with this subsection may be subject to a deductible and copayments as provided for in the policy, if any.

b. Liability insurance coverage. Liability insurance coverage insuring against loss resulting from liability imposed by law for property damage sustained by any person arising out of the ownership, maintenance, operation or use of an automobile in an amount or limit of $5,000, exclusive of interest and costs, for damage to property in any one accident.

c. Optional coverage. In addition to the aforesaid coverages required to be provided in a basic automobile insurance policy, optional liability insurance coverage insuring against loss resulting from liability imposed by law for bodily injury or death in an amount or limit of $10,000, exclusive of interests and costs, on account of injury to, or death of, one or more persons in any one accident.

d. If a named insured has elected the basic automobile insurance policy option and an immediate family member or members or relatives resident in his household have one or more policies with the coverages provided for in 39:6A-3 and 39:6A-4, the provisions of 39:6A-4.2 shall apply.

e. Every named insured and any other person to whom the basic automobile insurance policy, with or without the optional $10,000 liability coverage insuring against loss resulting from liability imposed by law for bodily injury or death provided for in subsection c. of this section, applies shall be subject to the tort option provided in 39:6A-8(a).

f. No licensed insurance carrier shall refuse to renew the coverage stipulated by this section of an eligible person as defined in 17:33B-13 except in accordance with the provisions of 17:29C-7.1 or with the consent of the Commissioner of Banking and Insurance.

Source: 39:6A-3.1.

COMMENT

This section is unchanged in substance, but has been reordered slightly for ease of review. Several paragraphs of the original section have been moved in much the same way as the paragraphs in 39:6A-4.

Since this section presents an alternative to the coverage set forth in 39:6A-4, it has been placed after that section for ease of review.

39A:I-5. Personal injury protection coverage options

a. Personal injury protection coverage options. With respect to personal injury protection coverage provided on an automobile in accordance with C.39:6A-4, the automobile insurer shall provide the following coverage options:

(1) a. Medical expense benefit deductibles in amounts of $500, $1,000, $2,000 and $2,500 for any one accident;

(2) The option to exclude all benefits offered under subsections b., c., d., and e. of section 4;

(3) For policies issued or renewed on or after January 1, 1991, the option that other health insurance coverage or benefits of the insured, including health care services provided by a health maintenance organization and any coverage or benefits provided under any federal or State program, are the primary coverage in regard to medical expense benefits pursuant to 39:6A-4. If health insurance coverage or benefits are primary, an automobile insurer providing medical expense benefits under personal injury protection coverage shall be liable for reasonable medical expenses not covered by the health insurance coverage or benefits up to the limit of the medical expense benefits coverage. The principles of coordination of benefits shall apply to personal injury protection medical expense benefits coverage pursuant to this subsection;

(4) Medical expense benefits in amounts of $150,000, $75,000, $50,000 or $15,000 per person per accident; except that, medical expense benefits shall be paid in an amount not to exceed $250,000 for all medically necessary treatment of permanent or significant brain injury, spinal cord injury or disfigurement or for medically necessary treatment of other permanent or significant injuries rendered at a trauma center or acute care hospital immediately following the accident and until the patient is stable, no longer requires critical care and can be safely discharged or transferred to another facility in the judgment of the attending physician. The coverage election form shall contain a statement, clearly readable and in 12-point bold type, in a form approved by the commissioner, that election of any of the aforesaid medical expense benefits options results in less coverage than the $250,000 medical expense benefits coverage mandated prior to the effective date of P.L.1998, c. 21.

b. If none of the aforesaid medical expense benefits options is affirmatively chosen in writing, the policy shall provide $250,000 medical expense benefits coverage.

c. The insurer shall provide an appropriate reduction from the territorial base rate for personal injury protection coverage for those electing any of the options in subsection (a) of this section.

d. Any named insured who chooses the option provided by subsection (a)(3) of this section shall provide proof that the insured and members of the insured's family residing in the insured's household are covered by health insurance coverage or benefits

in a manner and to an extent approved by the commissioner. Nothing in this section shall be construed to require a health insurer, health maintenance organization or governmental agency to cover individuals or treatment not normally covered under the applicable benefit contract or plan. If it is determined that an insured who selected or is otherwise covered by the option provided in subsection (a)(3) of this section did not have such health coverage in effect at the time of an accident, medical expense benefits shall be payable by the person's automobile insurer and shall be subject to any deductible required by law or otherwise selected as an option pursuant to subsection a. of this section, any copayment required by law and an additional deductible in the amount of $750.

e. An option elected by the named insured in accordance with this section shall apply only to the named insured and any resident relative in the named insured's household who is not a named insured under another automobile insurance policy, and not to any other person eligible for personal injury protection benefits required to be provided in accordance with 39:6A-4.

f. Medical expense benefits payable in any amount between the deductible selected pursuant to subsection (a)(1) of this section and $5,000 shall be subject to the copayment provided in the policy, if any.

g. No insurer or health provider providing benefits to an insured who has elected a deductible pursuant to subsection (a)(1) of this section shall have a right of subrogation for the amount of benefits paid pursuant to a deductible elected thereunder or any applicable copayment.

h. The Commissioner of Banking and Insurance shall adopt rules and regulations to effectuate the purposes of this section and may promulgate standards applicable to the coordination of personal injury protection medical expense benefits coverage.

i. The 1984 amendments to this section shall apply to any accident occurring on or after the effective date of this amendatory and supplementary act involving an automobile insurance policy in force on, or issued on or after that date, under which the named insured has elected a medical expense deductible in accordance with 39:6A-4.3(a). Any additional premium that may be owing on an existing policy by reason of the application of those amendments shall be debited to the account of the named insured and shall be payable at the time of payment of the next policy premium.

Source: 39:6A-4.3; 39:6A-4.4.

COMMENT

This section is unchanged in substance, but has been reordered slightly for ease of review. Subsections (a) – (h) are the former 39:6A-4.3 and subsection (i) is the former 39:6A-4.4. In subsections (a) – (h), larger paragraphs have been divided and unnumbered paragraphs in the original have been given letters and numbers. It is not clear if section (i) still needs to be included in the statute. It does not appear so. If it does not, it will be removed from the draft.

39A:I-6. Effect of failure to maintain required medical expense coverage

a. A person who, at the time of an automobile accident resulting in injuries to that person, is required but fails to maintain medical expense benefits coverage mandated by 39:6A-4, 39:6A-3.1 or 39:6A-3.3 shall have no cause of action for recovery of economic

or noneconomic loss sustained as a result of an accident while operating an uninsured automobile.

b. A person who is convicted of, or pleads guilty to, operating a motor vehicle in violation of 39:4-50, 39:4-50.4a, or a similar statute from any other jurisdiction, in connection with an accident, shall have no cause of action for recovery of economic or noneconomic loss sustained as a result of the accident.

c. A person acting with specific intent of causing injury to that person or others in the operation or use of an automobile shall have no cause of action for recovery of economic or noneconomic loss sustained as a result of an accident arising from such conduct.

Source: 39:6A-4.5.

COMMENT

This section is substantially identical to the original.

39A:I-7. Additional automobiles and reduced premium

a. When a named insured is the owner and only designated operator of two or more automobiles and the only licensed driver residing in the household, the named insured shall be charged a reduced personal injury protection premium for each automobile listed in addition to the principal automobile on the policy in an amount determined by the commissioner for the benefits provided in 39:6A-4.

b. Three years after the initial reduction in such premiums the personal injury protection premium for such additional automobiles shall be determined by the loss experience of the rate filer with respect to the payment of personal injury protection benefits which are attributable to such additional automobiles.

Source: 39:6A-4.1.

COMMENT

This section is substantially identical to the original.

39A:I-8. Primacy of coverages

a. Except as provided in 39:6A-4.3(d), the personal injury protection coverage of the named insured shall be the primary coverage for the named insured and any resident relative in the named insured's household who is not a named insured under an automobile insurance policy of his own.

b. No person shall recover personal injury protection benefits under more than one automobile insurance policy for injuries sustained in any one accident.

Source: 39:6A-4.2.

COMMENT

This section is substantially identical to the original.

39A:I-9. Medical fee schedules for reimbursement of health care providers; review

a. The Commissioner of Banking and Insurance shall, within 90 days after the effective date of 17:33B-1 et al., promulgate medical fee schedules on a regional basis for the reimbursement of health care providers providing services or equipment for medical expense benefits for which payment is to be made by an automobile insurer under personal injury protection coverage pursuant to C.39:6A-1 et seq., or by an insurer under medical expense benefits coverage pursuant to 17:28-1.6. These fee schedules shall be promulgated on the basis of the type of service provided, and shall incorporate the reasonable and prevailing fees of 75% of the practitioners within the region. If, in the case of a specialist provider, there are fewer than 50 specialists within a region, the fee schedule shall incorporate the reasonable and prevailing fees of the specialist providers on a Statewide basis. The commissioner may contract with a proprietary purveyor of fee schedules for the maintenance of the fee schedule, which shall be adjusted biennially for inflation and for the addition of new medical procedures.

b. The fee schedule may provide for reimbursement for appropriate services on the basis of a diagnostic-related (DRG) payment by diagnostic code where appropriate, and may establish the use of a single fee, rather than an unbundled fee, for a group of services if those services are commonly provided together. In the case of multiple procedures performed simultaneously, the fee schedule and regulations promulgated pursuant thereto may also provide for a standard fee for a primary procedure, and proportional reductions in the cost of the additional procedures.

c. A health care provider may not demand or request a payment from a person in excess of those permitted by the medical fee schedules established pursuant to this section. A person shall not be liable to any health care provider for any amount of money which results from the charging of fees in excess of those permitted by the medical fee schedules established pursuant to this section.

Source: 39:6A-4.6.

COMMENT

This section is substantially identical to the original.

39A:I-10. Promulgation of rules and regulations; valid diagnostic tests

a. The professional licensing boards governing health care providers in the Division of Consumer Affairs shall promulgate, pursuant to the "Administrative Procedure Act,", a list of valid diagnostic tests to be used in conjunction with the appropriate health care protocols in the treatment of persons sustaining bodily injury and subject to 39:6A-8(a). Inclusion of a test on the list of valid diagnostic tests shall be based on demonstrated medical value, and a level of general acceptance by the relevant provider community and shall not be dependent for results entirely upon subjective patient response. The initial lists shall be promulgated within 180 days of the effective date of this section and shall be revised from time to time as determined by the respective boards to reflect new testing procedures and emerging technologies enjoying a level of general acceptance within the appropriate provider community. In updating its list, a board may take action at a regularly scheduled meeting, notwithstanding the provisions

of 52:14B-1 et seq. to the contrary, after notice as provided herein. The professional boards, individually or collectively, may enlist the services of a consulting firm to assist in compiling and updating the list. The Commissioner of Banking and Insurance may reimburse the boards for the cost of the services of the consultant. The list of valid diagnostic tests, once approved by the commissioner shall apply only to benefits under 39:6A-4 and 39:6A-3.1. The board or boards hiring a consultant shall not advertise for bids, as provided in 52:34-8 and 52:34-9. Notwithstanding any of the provisions of this section to the contrary, a diagnostic test performed in an acute care facility, or extended care facility recognized by Medicare, shall not be excluded from a list of valid diagnostic tests promulgated pursuant to this section.

b. For the purposes of this section, "action" includes, but is not limited to:

(1) the addition or deletion of a test to the list; or

(2) procedures and standards for the performance of a test.

"Action" shall not include the hearing and resolution of contested cases, licensing matters, personnel matters or any other duties of a professional licensing board.

c. Prior to the adoption of an action by the board, the board shall forward the notice of intended action and a detailed description of the intended action to the Office of Administrative Law for publication in the New Jersey Register. A copy of the text of the intended action shall be available in the Division of Consumer Affairs in accordance with 47:1A-1 et seq.

d. The board may hold a public hearing on any intended action.

e. Whether or not a public hearing is held, the board shall afford all interested persons an opportunity to comment in writing on the intended action. Written comments shall be submitted to the board within the time established by the board in the notice of intended action, which time shall not be less than 10 calendar days from the date of notice. The board shall give due consideration to all comments received. A copy of the submissions shall be filed with the Office of Administrative Law for publication in the New Jersey Register.

f. The board may adopt the intended action immediately following the expiration of the public comment period provided in subsection d. of this section, or the hearing provided for in subsection c. of this section, whichever date is later. The final action adopted by the board shall be submitted for publication in the New Jersey Register to the Office of Administrative Law, and shall be effective on the date of the submission or such later date as the board may establish.

g. Actions filed with the Office of Administrative Law pursuant to this section shall be filed subject to the provisions of subsections (a), (c), (d) and (e) 52:14B-5.

h. Nothing in this section shall be construed to prohibit the board from adopting any action pursuant to 52:14B-1 et seq.).

i. Nothing in this section shall be construed to prohibit the Director of the Division of Consumer Affairs from adopting any rule or regulation pursuant to 52:14B-1 et seq.).

Source: 39:6A-4.7.

COMMENT

This section is substantially identical to the original but has been changed to assign the letter (a) to the initial subsection which was, in the original statute, unlettered.

39A:I-11. Payment of personal injury protection benefits

a. An insurer may require written notice to be given as soon as practicable after an accident involving an automobile with respect to which the policy affords personal injury protection coverage benefits payable under a standard automobile insurance policy pursuant to 34:6A-4, medical expense benefits payable under a basic automobile insurance policy pursuant to 39:6A-3.1 or emergency care medical expense benefits payable under a special automobile insurance policy pursuant to 39:6A-3.3. In the case of claims for medical expense benefits under any of those policies, written notice shall be provided to the insurer by the treating health care provider no later than 21 days following the commencement of treatment. Notification required under this section shall be made in accordance with regulations adopted by the Commissioner of Banking and Insurance and on a form prescribed by the Commissioner of Banking and Insurance. Within a reasonable time after receiving notification required pursuant to this act, the insurer shall confirm to the treating health care provider that its policy affords the claimant personal injury protection coverage benefits as required by 39:6A-4 , medical expense benefits pursuant to 39:6A-3.1 or emergency care medical expense benefits payable under a special automobile insurance policy pursuant to 39:6A-3.3.

b. For the purposes of this section, notification shall be deemed to be met if a treating health care provider submits a bill or invoice to the insurer for reimbursement of services within 21 days of the commencement of treatment.

c. In the event that notification is not made by the treating health care provider within 21 days following the commencement of treatment, the insurer shall reserve the right to deny, in accordance with regulations established by the Commissioner of Banking and Insurance, payment of the claim and the treating health care provider shall be prohibited from seeking any payment directly from the insured. In establishing the standards for denial of payment, the Commissioner of Banking and Insurance shall consider the length of delay in notification, the severity of the treating health care provider's failure to comply with the notification provisions of this act based upon the potential adverse impact to the public and whether or not the provider has engaged in a pattern of noncompliance with the notification provisions of this act. In establishing the regulations necessary to effectuate the purposes of this subsection, the Commissioner of Banking and Insurance shall define specific instances where the sanctions permitted pursuant to this subsection shall not apply. Such instances may include, but not be limited to, a treating medical provider's failure to provide notification to the insurer as required by this act due to the insured's medical condition during the time period within which notification is required.

d. A health care provider who fails to notify the insurer within 21 days and whose claim for payment has been denied by the insurer pursuant to the standards established by the Commissioner of Banking and Insurance may, in the discretion of a judge of the

Superior Court, be permitted to refile such claim provided that the insurer has not been substantially prejudiced thereby. Application to the court for permission to refile a claim shall be made within 14 days of notification of denial of payment and shall be made upon motion based upon affidavits showing sufficient reasons for the failure to notify the insurer within the period of time prescribed by this act.

e. In instances when multiple treating health care providers render services in connection with emergency care, the Commissioner of Banking and Insurance shall designate, through regulation, a process whereby notification by one treating health care provider to the insurer shall be deemed to meet the notification requirements of all the treating health care providers who render services in connection with emergency care.

f. Personal injury protection coverage benefits pursuant to 39:6A-4 and medical expense benefits pursuant to 39:6A-3.1 or emergency care medical expense benefits payable under a special automobile insurance policy pursuant to 39:6A-3.3 shall be overdue if not paid within 60 days after the insurer is furnished written notice of the fact of a covered loss and of the amount of same. If such written notice is not furnished to the insurer as to the entire claim, any partial amount supported by written notice is overdue if not paid within 60 days after such written notice is furnished to the insurer. Any part or all of the remainder of the claim that is subsequently supported by written notice is overdue if not paid within 60 days after such written notice is furnished to the insurer; provided, however, that any payment shall not be deemed overdue where, within 60 days of receipt of notice of the claim, the insurer notifies the claimant or his representative in writing of the denial of the claim or the need for additional time, not to exceed 45 days, to investigate the claim, and states the reasons therefor. The written notice stating the need for additional time to investigate the claim shall set forth the number of the insurance policy against which the claim is made, the claim number, the address of the office handling the claim and a telephone number, which is toll free or can be called collect, or is within the claimant's area code. Written notice to the organization administering dispute resolution pursuant to 39:6A-5.1 and 39:6A-5.2 shall satisfy the notice request for additional time to investigate a claim pursuant to this subsection. For the purpose of determining interest charges in the event the injured party prevails in a subsequent proceeding where an insurer has elected a 45-day extension pursuant to this subsection, payment shall be considered overdue at the expiration of the 45-day period or, if the injured person was required to provide additional information to the insurer, within 10 business days following receipt by the insurer of all the information requested by it, whichever is later. For the purpose of calculating the extent to which any benefits are overdue, payment shall be treated as being made on the date a draft or other valid instrument which is equivalent to payment was placed in the United States mail in a properly addressed, postpaid envelope, or, if not so posted, on the date of delivery.

g. All overdue payments shall bear interest at the percentage of interest prescribed in the Rules Governing the Courts of the State of New Jersey for judgments, awards and orders for the payment of money.

i. All automobile insurers and the Unsatisfied Claim and Judgment Fund shall provide any claimant with the option of submitting a dispute under this section to dispute resolution pursuant to 39:6A-5.1 and C.39:6A-5.2.

Source: 39:6A-5.

COMMENT

This section is substantially identical to the original but has been relettered to accommodate the deletion of subsection (e) which was deleted in 1998.

39A:I-12. Personal injury protection benefits; dispute resolution

a. Any dispute regarding the recovery of medical expense benefits or other benefits provided under personal injury protection coverage pursuant to 39:6A-4, 39:6A-3.1 or 39:6A-3.3 arising out of the operation, ownership, maintenance or use of an automobile may be submitted to dispute resolution on the initiative of any party to the dispute, as hereinafter provided.

b. The Commissioner of Banking and Insurance shall designate an organization, and for that purpose may, at his or her discretion, advertise for proposals, for the purpose of administering dispute resolution proceedings regarding medical expense benefits and other benefits provided under personal injury protection pursuant to 39:6A-4 , medical expense benefits coverage pursuant to 39:6A-3.1 or emergency care medical expense benefits pursuant to 39:6A-3.3. The commissioner shall promulgate rules and regulations with respect to the conduct of the dispute resolution proceedings. The organization administering dispute resolution shall utilize qualified professionals who serve on a full-time basis and who meet standards of competency established by the commissioner. The commissioner shall establish standards of performance for the organization to ensure the independence and fairness of the review process, including, but not limited to, standards relative to the professional qualifications of the professionals presiding over the dispute resolution process, and standards to ensure that no conflict of interest exists which would prevent the professional from performing his or her duties in an impartial manner. The standards of performance shall include a requirement that the organization establish an advisory council composed of parties who are users of the dispute resolution mechanism established herein. The commissioner may contract with a consulting firm for the formulation of the standards of performance of the organization and establishment of qualifications for the persons who are to conduct the dispute resolution proceedings. The commissioner shall not advertise for bids for the consulting firm, as provided in 52: 34-8 and 52:34-9. Compensation to the dispute resolution professionals shall be established by the commissioner and adjusted from time to time as appropriate, with the approval of the commissioner, but shall not be paid on a contingency basis. The organization shall establish a dispute resolution plan, which shall include procedures and rules governing the dispute resolution process and provisions for monitoring the dispute resolution process to ensure adherence to the standards of performance established by the commissioner. The plan, and any amendments thereto, shall be subject to the approval of the commissioner.

c. Dispute resolution proceedings under this amendatory and supplementary act shall include disputes arising regarding medical expense benefits provided under 39:6A-4(a), 39:6A-3.1 or 39:6A-3.3, benefits provided pursuant to subsection (b), (c), (d) or (e) of 39:6A-4, subsection (b), (c), (d) or (e) of 39:6-86.1, and disputes as to additional first party coverage benefits required to be offered pursuant to 39:6A-10. Disputes involving medical expense benefits may include, but not necessarily be limited to, matters

concerning: (1) interpretation of the insurance contract; (2) whether the treatment or health care service which is the subject of the dispute resolution proceeding is in accordance with 39:6A-4 , 39:6A-3.1 or 39: 6A-3.3 or the terms of the policy; (3) the eligibility of the treatment or service for compensation; (4) the eligibility of the provider performing the treatment or service to be compensated under the terms of the policy or under regulations promulgated by the commissioner, including whether the person is licensed or certified to perform such treatment; (5) whether the disputed medical treatment was actually performed; (6) whether diagnostic tests performed in connection with the treatment are those recognized by the commissioner; (7) the necessity or appropriateness of consultations by other health care providers; (8) disputes involving application of and adherence to fee schedules promulgated by the commissioner; and (9) whether the treatment performed is reasonable, necessary, and compatible with the protocols provided for pursuant to 39:6A-1.1 et al. The dispute resolution professionals may review the entire claims file of the insurer, subject to any confidentiality requirement established pursuant to State or federal law. All decisions of the dispute resolution professional shall be in writing, in a form prescribed by the commissioner, shall state the issues in dispute, the findings and conclusions on which the decision is based, and shall be signed by the dispute resolution professional. All decisions of a dispute resolution professional shall be binding. The dispute resolution organization shall provide for the retention of all documents used in dispute resolution proceedings under this section and section 25 of this amendatory and supplementary act, including the written decision, for a period of at least five years, in a form approved by the commissioner, or for such additional time as may be established by the commissioner. The written decisions of the dispute resolution professional shall be forwarded to the commissioner, who shall establish a record of the proceedings conducted under the dispute resolution procedure, which shall be accessible to the public and may be used as guidance in subsequent dispute resolution proceedings.

d. With respect to disputes as to the diagnosis, the medical necessity of the treatment or diagnostic test administered to the injured person, whether the injury is causally related to the insured event or is the product of a preexisting condition, or disputes as to the appropriateness of the protocols utilized by the provider, the dispute resolution professional shall, either at his option or at the request of any party to the dispute, refer the matter to a medical review organization for a determination. The determination of the medical review organization on the dispute referred shall be presumed to be correct by the dispute resolution professional, which presumption may be rebutted by a preponderance of the evidence. Should the dispute resolution professional find that the decision of the medical review organization is not correct, the reasons supporting that finding shall be set forth in the dispute resolution professional's written decision.

e. Any person submitting a matter to the dispute resolution process established herein may submit for review all or a portion of a disputed treatment or treatments or a dispute regarding a diagnostic test or tests or a dispute regarding the providing of services or durable medical goods. Any portion of a treatment or diagnostic test or service which is not under review shall be reimbursed in accordance with 39:6A-5. If the dispute resolution proceeding results in a determination that all or part of a treatment or treatments, diagnostic test or tests or service performed, or durable medical goods

provided are medically necessary and appropriate, reimbursement shall be made with interest payable in accordance with 39:6A-5.

Source: 39:6A-5.1.

COMMENT

This section is substantially identical to the original.

39A:I-13. Medical review organizations; certification standards

a. The commissioner shall establish standards for the certification of medical review organizations, which shall include standards of performance formulated by the commissioner in consultation with the Commissioner of Health and Senior Services. The standards of performance shall set forth procedures to ensure a timely and impartial review of the medical records of the injured person by a medical review organization, including, but not limited to, a review of the necessity or appropriateness of treatments for injuries, including diagnostic tests, sustained in an automobile accident. The commissioner shall establish standards for persons conducting the medical review, including standards with respect to credentials, experience, licensure, fees, and confidentiality. The standards shall include a requirement that all persons performing reviews are New Jersey licensed or certified health care providers, and a requirement that any medical review panel contain a health care provider licensed or certified in the same profession as the treating health care provider and that it contain a sufficient representation of reviewers to judge the appropriateness of treatment or treatments in dispute, including, but not limited to, the medical necessity of such treatments, appropriateness of the protocols used by the treating provider, issues regarding causality and preexisting conditions, the appropriateness and efficacy of diagnostic tests performed in connection with the diagnosis, and whether the diagnostic tests meet the requirements established by the commissioner. The commissioner may contract with a consultant for the formulation of the standards governing the certification of the persons conducting the medical reviews. The commissioner shall not advertise for bids for the consultant, as provided in 52:34-8 and 52:34-9.

b. Before certifying a medical review organization to receive referrals from dispute resolution proceedings, the commissioner shall determine that the organization has a sufficient number of qualified health care providers, by specialty, to perform the reviews, has a satisfactory procedure for maintaining the confidentiality of medical records, is not owned or controlled by an insurer, and has met any other requirements established by the commissioner.

c. The medical review organization shall establish and utilize written review procedures, which shall be filed with the commissioner. Every determination made by a medical review organization shall be in writing and shall be retained by the organization for a period of no less than five years.

d. The medical review organization may review the medical treatment or treatments in dispute to determine whether: (1) the treatment or diagnostic test being given for the injury or the services provided in connection with the injury is medically necessary; (2) the treatment is in accordance with or compatible with medically recognized standard protocols, professional standards, and commonly accepted medical

practice in the same health care discipline as the treating provider; (3) the treatment is consistent with the symptoms or diagnosis of the injury; (4) the treatment or health care service is related to the injury sustained in the insured event, or is required for the diagnosis, evaluation or confirmation of the injury; (5) the treatment is of a palliative, rather than restorative, nature; and (6) medical procedures, treatment, or testing which have been repeated are medically necessary and consistent with standard practice.

e. Cases referred by a dispute resolution professional for medical review shall be referred to appropriate certified medical reviewers affiliated with the certified medical review organization by a dispute resolution organization. The dispute resolution organization shall forward the referrals to certified medical reviewers on a random basis, so that there is a relatively equal apportionment among all medical reviewers. Referrals shall be made in such a manner so as not to disclose to the medical reviewers the identity of the insurer, nor shall the identity of the reviewer be disclosed to the insurer.

f. When appropriate in the context of its review of services or treatments under dispute, a medical reviewer may request and shall receive a written report or copy of the provider's records regarding the case history, treatment dates, or the dates diagnostic tests or other services were performed, and the provider's projected treatment plan. The injured person or provider, as applicable, shall provide or make available to the medical reviewer any pertinent medical records or medical history which the medical reviewer may request. The medical reviewer shall complete its review and make a determination within 20 business days of receipt of all of the requested information from the dispute resolution professional or provider, as the case may be. The medical reviewer shall submit its determination in writing to the referring dispute resolution organization, which shall forward it to the dispute resolution professional.

g. The cost of the proceedings shall be apportioned by the dispute resolution professional. Fees shall be determined to be reasonable if they are consonant with the amount of the award, in accordance with a schedule established by the New Jersey Supreme Court. If the treatment, diagnostic test, or service performed is not determined to be medically necessary or appropriate, the injured person shall not be liable to pay the provider the disputed amount.

Source: 39:6A-5.2.

COMMENT

This section is substantially identical to the original.

39A:I-14. Collateral source

a. The benefits provided in 39:6A-4 and 39:6A-10 , the medical expense benefits provided in 39:6A-3.1 and the benefits provided in 39:6A-3.3 shall be payable as loss accrues, upon written notice of such loss and without regard to collateral sources, except that benefits, collectible under workers' compensation insurance, employees' temporary disability benefit statutes, Medicare provided under federal law, and benefits, in fact collected, that are provided under federal law to active and retired military personnel shall be deducted from the benefits collectible under 39:6A-4 and 39:6A-10 , the medical expense benefits provided in 39:6A-3.1 and the benefits provided in 39:6A-3.3.

b. If an insurer has paid those benefits and the insured is entitled to, but has failed to apply for, workers' compensation benefits or employees' temporary disability benefits, the insurer may immediately apply to the provider of workers' compensation benefits or of employees' temporary disability benefits for a reimbursement of any benefits pursuant to 39:6A-4 and 39:6A-10, medical expense benefits pursuant to 39:6A-3.1 or benefits pursuant to 39:6A-3.3 it has paid.

Source: 39:6A-6.

COMMENT

This section is substantially identical to the original but two distinct subsections have been created.

39A:I-15. Exclusions

a. Insurers may exclude a person from benefits under 39:6A-4 and 39:6A-10, medical expense benefits provided in 39:6A-3. 1 and benefits provided in 39:6A-3.3 if that person's conduct contributed to his or her personal injuries or death occurred in any of the following ways:

(1) while committing a *high misdemeanor or felony* or seeking to avoid lawful apprehension or arrest by a police officer; or

(2) while acting with specific intent of causing injury or damage to him or herself or others.

b. An insurer may also exclude from the benefits provided in 39:6A-4 and 39:6A-10, the medical expense benefits provided in 39:6A-3.1 and benefits provided in 39:6A-3.3 any person having incurred injuries or death, who, at the time of the accident:

(1) was the owner or registrant of an automobile registered or principally garaged in this State that was being operated without personal injury protection coverage;

(2) was occupying or operating an automobile without the permission of the owner or other named insured;

(3) was a person other than the named insured or a member of the named insured's family residing in his household, if that person is entitled to coverage under 39:6A-4 or 39:6A-10, or both, 39:6A-3.1 or 39:6A-3.3, as a named insured or member of the named insured's family residing in his household under the terms of another policy; or

(4) was a member of the named insured's family residing in the named insured's household, if that person is entitled to coverage under 39:6A-4 or 39:6A-10, or both, 39:6A-3.1 or 39:6A-3.3 as a named insured under the terms of another policy.

Source: 39:6A-7.

COMMENT

This section is substantially identical to the original.

39A:I-16. Tort exemptions; limitation on the right to noneconomic loss

One of the following two tort options shall be elected, in accordance with 39:6A-8.1, by any named insured required to maintain personal injury protection coverage pursuant to 39:6A-4:

a. Limitation on lawsuit option. Every owner, registrant, operator or occupant of an automobile to which 39:6A-4, personal injury protection coverage, 39:6A-3.1, medical expense benefits coverage, or 39:6A-3.3 regardless of fault, applies, and every person or organization legally responsible for his acts or omissions, is hereby exempted from tort liability for noneconomic loss to a person who is subject to this subsection and who is either a person who is required to maintain personal injury protection coverage pursuant to 39:6A-4, medical expense benefits pursuant to 39:6A-3.1 or benefits pursuant to 39:6A-3.3, or is a person who has a right to receive benefits under 39:6A-4 , 39:6A-3.1 or 39:6A-3.3, as a result of bodily injury, arising out of the ownership, operation, maintenance or use of such automobile in this State, unless that person has sustained a bodily injury which results in death; dismemberment; significant disfigurement or significant scarring; displaced fractures; loss of a fetus; or a permanent injury within a reasonable degree of medical probability, other than scarring or disfigurement. An injury shall be considered permanent when the body part or organ, or both, has not healed to function normally and will not heal to function normally with further medical treatment. For the purposes of this subsection, "physician" means a physician as defined in 45:9-5.1.

(1) In order to satisfy the tort option provisions of this subsection, the plaintiff shall, within 60 days following the date of the answer to the complaint by the defendant, provide the defendant with a certification from the licensed treating physician or a board-certified licensed physician to whom the plaintiff was referred by the treating physician. The certification shall state, under penalty of perjury, that the plaintiff has sustained an injury described above. The certification shall be based on and refer to objective clinical evidence, which may include medical testing, except that any such testing shall be performed in accordance with medical protocols pursuant to 39:6A-4(a) and the use of valid diagnostic tests administered in accordance with 39:6A-4.7. Such testing may not be experimental in nature or dependent entirely upon subjective patient response. The court may grant no more than one additional period not to exceed 60 days to file the certification pursuant to this subsection upon a finding of good cause.

(2) A person is guilty of a crime of the fourth degree if that person purposefully or knowingly makes, or causes to be made, a false, fictitious, fraudulent, or misleading statement of material fact in, or omits a material fact from, or causes a material fact to be omitted from, any certification filed pursuant to this subsection. Notwithstanding the provisions of 2C:44-1(e), the court shall deal with a person who has been convicted of a violation of this subsection by imposing a sentence of imprisonment unless, having regard to the character and condition of the person, the court is of the opinion that imprisonment would be a serious injustice which overrides the need to deter such conduct by others. If the court imposes a noncustodial or probationary sentence, such sentence shall not become final for 10 days in order to permit the appeal of such sentence by the

prosecution. Nothing in subsection (a) shall preclude an indictment and conviction for any other offense defined by the laws of this State. In addition, any professional license held by the person shall be forfeited according to the procedures established by 2C:51-5); or

b. No limitation on lawsuit option. As an alternative to the basic tort option specified in subsection (a) of this section, every owner, registrant, operator, or occupant of an automobile to which 39:6A-4, personal injury protection coverage, 39:6A-3.1, medical expense benefits coverage, or 39:6A-3.3, regardless of fault, applies, and every person or organization legally responsible for his acts or omissions, shall be liable for noneconomic loss to a person who is subject to this subsection and who is either a person who is required to maintain the coverage mandated by 39:6A-1 et seq. or is a person who has a right to receive benefits under 39:6A-4, as a result of bodily injury, arising out of the ownership, operation, maintenance or use of such automobile in this State.

(1) The tort option provisions of subsection (b) of this section shall also apply to the right to recover for noneconomic loss of any person eligible for benefits pursuant to 39:6A-4, 39:6A-3.1 or 39:6A-3.3 but who is not required to maintain personal injury protection coverage pursuant to 39: 6A-4, medical expense benefits coverage pursuant to 39:6A-3.1 or benefits pursuant to 39:6A-3.3 and is not an immediate family member, as defined in 39:6A-8.1, under a standard automobile insurance policy or basic automobile insurance policy.

(2) The tort option provisions of subsection a. of this section shall also apply to any person subject to 39:6A-4.5 and to every named insured and any other person to whom the benefits of the special automobile insurance policy provided in 39:6A-3.3 or the medical expense benefits of the basic automobile insurance policy pursuant to 39:6A-3.1 apply whether or not the person has elected the optional $10,000 liability coverage insuring against loss resulting from liability imposed by law for bodily injury or death provided for in 39:6A-3.1(c).

c. The tort option provisions of subsections (a) and (b) of this section as provided in this 1998 amendatory and supplementary act shall apply to automobile insurance policies issued or renewed on or after the effective date of 39:6A-1.1 et al. and as otherwise provided by law.

Source: 39:6A-8.

COMMENT

This section is substantially identical to the original but additional subsection lettering and numbering has been added.

39A:I-17. Election of tort option

a. Election of a tort option pursuant to 39:6A-8 shall be in writing and signed by the named insured on the coverage selection form required by 39:6A-23. The form shall state the percentage difference in the premium rates or the dollar savings between the two tort options. The tort option elected shall apply to the named insured and any immediate family member residing in the named insured's household. "Immediate family member" means the spouse of the named insured and any child of the named insured or spouse

residing in the named insured's household, who is not a named insured under another automobile insurance policy.

b. If the named insured fails to elect, in writing, any of the tort options offered pursuant to 39:6A-8, the named insured shall be deemed to elect the tort option of subsection (a) of that section.

c. The tort option elected by a named insured for an automobile policy issued or renewed on or after January 1, 1989 shall continue in force as to subsequent renewal or replacement policies until the insurer or its authorized representative receives a properly executed form electing the other tort option.

d. The tort option elected by the named insured shall apply to all automobiles owned by the named insured and to any immediate family member who is not a named insured under another automobile insurance policy, except that in the case where more than one policy is applicable to the named insured or immediate family member, and the policies have different tort options, the tort option elected by the injured named insured shall apply or, in the case of an immediate family member who is not a named insured and is injured in an accident involving an automobile to which a policy issued to a named insured in the household of the injured immediate family member applies, the tort option elected by that named insured shall apply.

e. Notwithstanding any other provision of law to the contrary, a person, including, but not limited to, an insurer, an insurance producer as defined in 17:22A-2, a servicing carrier or non-insurer servicing carrier acting in that capacity pursuant to 17:30E-1 et seq., and the New Jersey Automobile Full Insurance Underwriting Association created pursuant to 17:30E-1 et seq., shall not be liable in an action for damages on account of the election of a tort option by a named insured or on account of the tort option imposed pursuant to subsection b. of this section or otherwise imposed by law. Nothing in this subsection shall be deemed to grant immunity to any person causing damage as the result of his willful, wanton or grossly negligent act of commission or omission.

f. In the case of automobile insurance policies in force on January 1, 1989, notice of the tort options available pursuant to 39:6A-8 shall be given in accordance with 39:6A-23).

Source: 39:6A-8.1.

COMMENT

This section is substantially identical to the original but the last sentence was assigned letter (f).

39A:I-18. Recovery of personal injury protection benefits from tortfeasor

An insurer, health maintenance organization or governmental agency paying benefits pursuant to subsection (a), (b) or (d) of 39:6A-4.3 , personal injury protection benefits in accordance with 39:6A-4 or 39:6A-10 , medical expense benefits pursuant to 39:6A-3.1 or benefits pursuant to 39:6A-3.3, as a result of an accident occurring within this State, shall, within two years of the filing of the claim, have the right to recover the amount of payments from any tortfeasor who was not, at the time of the accident, required to maintain personal injury protection or medical expense benefits coverage, other than for pedestrians, under the laws of this State, including personal injury

protection coverage required to be provided in accordance with 17:28-1.4, or although required did not maintain personal injury protection or medical expense benefits coverage at the time of the accident. In the case of an accident occurring in this State involving an insured tortfeasor, the determination as to whether an insurer, health maintenance organization or governmental agency is legally entitled to recover the amount of payments and the amount of recovery, including the costs of processing benefit claims and enforcing rights granted under this section, shall be made against the insurer of the tortfeasor, and shall be by agreement of the involved parties or, upon failing to agree, by arbitration.

Source: 39:6A-9.1.

COMMENT

This section is substantially identical to the original.

39A:I-19. Additional personal injury protection coverage

a. Insurers shall make available to the named insured electing the standard automobile insurance policy and covered under 39:6A-4, and, at the insured's option, to resident relatives in the household of the named insured, suitable additional first party coverage for income continuation benefits, essential services benefits, death benefits and funeral expense benefits, but the income continuation and essential services benefits shall cease upon the death of the claimant, and shall not operate to increase the amount of any death benefits payable under 39:6A-4 and such additional first party coverage shall be payable only to the extent that the claimant establishes that the amount of loss sustained exceeds the coverage specified in 39:6A- 4.

b. Insurers may also make available to named insureds electing a standard automobile insurance policy and covered under 39:6A-4, and, at their option, to resident relatives in the household of the named insured or to other persons provided medical expense benefits coverage pursuant to 39:6A-4, or both, additional first party medical expense benefits coverage.

c. The additional coverage shall be offered by the insurer at least annually as part of the coverage selection form applicable to the standard automobile insurance policy and required by 39:6A-23.

d. Income continuation in excess of that provided for in 39:6A-4 shall be provided as an option by insurers for disabilities, as long as the disability persists, up to an income level of $35,000 per year, provided that (1) the excess between $5,200 and the amount of coverage contracted for shall be written on the basis of 75% of said difference, and (2) regardless of the duration of the disability, the benefits payable shall not exceed the total maximum amount of income continuation benefits contracted for. The Commissioner of Banking and Insurance is hereby authorized and empowered to establish, by rule or regulation, the amounts and terms of income continuation insurance to be provided pursuant to this section.

e. Death benefits provided pursuant to this section shall be payable without regard to the period of time elapsing between the date of the accident and the date of death, if

death occurs within two years of the accident and results from bodily injury from that accident to which coverage under this section applies.

Source: 39:6A-10.

COMMENT

This section is substantially identical to the original but subsection lettering has been added.

39A:I-20. Contribution among insurers

If two or more insurers are liable to pay benefits under 39:6A-4 and 39:6A-10 under a standard automobile insurance policy for the same bodily injury, or death, of any one person, the maximum amount payable shall be as specified in 39:6A-4 and 39:6A-10, 39:6A-3.1 and 39:6A-3.3, respectively, if additional first party coverage applies and any insurer paying the benefits shall be entitled to recover from each of the other insurers, only by inter-company arbitration or inter-company agreement, an equitable pro-rata share of the benefits paid.

Source: 39:6A-11.

COMMENT

This section is substantially identical to the original.

39A:I-21. Inadmissibility of evidence of losses collectible under personal injury protection coverage

a. Except as may be required in an action brought pursuant to 39:6A-9.1, evidence of the amounts collectible or paid under a standard automobile insurance policy pursuant to 39:6A-4 and 39:6A-10, amounts collectible or paid for medical expense benefits under a basic automobile insurance policy pursuant to 39:6A-3.1 and amounts collectible or paid for benefits under a special automobile insurance policy pursuant to 39:6A-3.3, to an injured person, including the amounts of any deductibles, copayments or exclusions, including exclusions pursuant to 39:6A-4.3(d), otherwise compensated is inadmissible in a civil action for recovery of damages for bodily injury by such injured person.

b. The court shall instruct the jury that, in arriving at a verdict as to the amount of the damages for noneconomic loss to be recovered by the injured person, the jury shall not speculate as to the amount of the medical expense benefits paid or payable by an automobile insurer under personal injury protection coverage payable under a standard automobile insurance policy pursuant to 39:6A-4 and 39:6A-10, medical expense benefits under a basic automobile insurance policy pursuant to 39:6A-3.1 or benefits under a special automobile insurance policy pursuant to 39:6A-3.3 to the injured person, nor shall they speculate as to the amount of benefits paid or payable by a health insurer, health maintenance organization or governmental agency under 39:6A-4.3(d).

c. Nothing in this section shall be construed to limit the right of recovery, against the tortfeasor, of uncompensated economic loss sustained by the injured party.

Source: 39:6A-12.

COMMENT

This section is substantially identical to the original but subsection lettering has been added.

39A:I-22. Discovery of facts as to personal injury protection coverage

The following applies to personal injury protection coverage benefits payable under a standard automobile insurance policy pursuant to 39:6A-4 and 39:6A-10, medical expense benefits payable under a basic automobile insurance policy pursuant to 39:6A-3.1 and benefits payable under a special automobile insurance policy pursuant to 39:6A-3.3:

a. Every employer shall, if a request is made by an insurer or the Unsatisfied Claim and Judgment Fund providing personal injury protection benefits under a standard automobile insurance policy or medical expense benefits payable under a basic automobile insurance policy against whom a claim has been made, furnish forthwith, in a form approved by the Commissioner of Banking and Insurance, a signed statement of the lost earnings since the date of the bodily injury and for a reasonable period before the injury, of the person upon whose injury the claim is based.

b. Every physician, hospital, or other health care provider providing, before and after the bodily injury upon which a claim for personal injury protection benefits or medical expense benefits is based, any products, services or accommodations in relation to such bodily injury or any other injury, or in relation to a condition claimed to be connected with such bodily injury or any other injury, shall, if requested to do so by the insurer or the Unsatisfied Claim and Judgment Fund against whom the claim has been made, furnish forthwith a written report of the history, condition, treatment, dates and costs of such treatment of the injured person, and produce forthwith and permit the inspection and copying of his or its records regarding such history, condition, treatment dates and costs of treatment. The person requesting such records shall pay all reasonable costs connected therewith.

c. The injured person shall be furnished upon demand a copy of all information obtained by the insurer or the Unsatisfied Claim and Judgment Fund under the provisions of this section, and shall pay a reasonable charge, if required by the insurer and the Unsatisfied Claim and Judgment Fund.

d. Whenever the mental or physical condition of an injured person covered by personal injury protection under a standard automobile insurance policy or medical expense benefits under a basic automobile insurance policy is material to any claim that has been or may be made for such past or future personal injury protection benefits or medical expense benefits, such person shall, upon request of an insurer or the Unsatisfied Claim and Judgment Fund submit to mental or physical examination conducted by a health care provider licensed in this State in the same profession or specialty as the health care provider whose services are subject to review under this section and who is located within a reasonable proximity to the injured person's residence. The injured person shall provide or make available to the provider any pertinent medical records or medical history that the provider deems necessary to the examination. The costs of any examinations requested by an insurer or the Unsatisfied Claim and Judgment Fund shall be borne entirely by whomever makes such request. Such examination shall be conducted within the municipality of residence of the injured person. If there is no qualified health care provider to conduct the examination within the municipality of residence of the injured person, then such examination shall be conducted in an area of the closest

proximity to the injured person's residence. Insurers providing personal injury protection coverage under a standard automobile insurance policy or medical expense benefits under a basic automobile insurance policy are authorized to include reasonable provisions requiring those claiming personal injury protection coverage benefits or medical expense benefits to submit to mental or physical examination as requested by an insurer or the Unsatisfied Claim and Judgment Fund pursuant to the provisions of this section. Failure to submit to a mental or physical examination requested by an insurer or the Unsatisfied Claim and Judgment Fund pursuant to the provisions of this section shall subject the injured person to certain limitations in coverage as specified in regulations promulgated by the commissioner.

e. If requested by the person examined, a party causing an examination to be made, shall deliver to the person examined a copy of every written report concerning the examination rendered by an examining health care provider, at least one of which must set out the findings and conclusions of the health care provider in detail. After such request and delivery, the party causing the examination to be made is entitled upon request to receive from the person examined every written report available to the person examined, or his or her representative, concerning any examination, previously or thereafter made of the same mental or physical condition.

f. The injured person, upon reasonable request by the insurer or the Unsatisfied Claim and Judgment Fund, shall sign all forms, authorizations or releases for information, approved by the Commissioner of Banking and Insurance, which may be necessary to the discovery of the above facts, in order to reasonably prove the injured person's losses.

g. In the event of any dispute regarding an insurer's or the Unsatisfied Claim and Judgment Fund's or an injured person's right as to the discovery of facts about the injured person's earnings or history, condition, treatment, dates and costs of such treatment, or the submission of such injured person to a mental or physical examination subject to the provisions of this section, the insurer, Unsatisfied Claim and Judgment Fund or the injured person may petition a court of competent jurisdiction for an order resolving the dispute and protecting the rights of all parties. The order may be entered on motion for good cause shown giving notice to all persons having an interest therein. Such court may protect against annoyance, embarrassment or oppression and may, as justice requires, enter an order compelling or refusing discovery, or specifying conditions of such discovery; the court may further order the payment of costs and expenses of the proceeding, as justice requires.

Source: 39:6A-13.

COMMENT

This section is substantially identical to the original.

39A:I-23. Limitation of actions

a. Every action for the payment of benefits payable under a standard automobile insurance policy pursuant to 39:6A-4 and 39:6A-10, medical expense benefits payable under a basic automobile insurance policy pursuant to 39:6A-3.1 or benefits payable under a special automobile insurance policy pursuant to 39:6A-3.3, except an action by a

decedent's estate, shall be commenced not later than two years after the injured person or survivor suffers a loss or incurs an expense and either knows or in the exercise of reasonable diligence should know that the loss or expense was caused by the accident, or not later than four years after the accident whichever is earlier, provided, however, that if benefits have been paid before then an action for further benefits may be commenced not later than two years after the last payment of benefits.

b. Every action by a decedent's estate for the payment of benefits provided under a standard automobile insurance policy pursuant to 39:6A-4 and 39:6A-10, medical expense benefits provided under a basic automobile insurance policy pursuant to 39:6A-3.1 or benefits payable under a special automobile insurance policy pursuant to 39:6A-3.3, shall be commenced not later than two years after death or four years after the accident from which death results, whichever is earlier, provided, however, that if benefits had been paid to the decedent prior to his death then an action may be commenced not later than two years after his death or four years after the last payment of benefits, whichever is earlier, provided, further, that if the decedent's estate has received benefits before then an action for further benefits shall be commenced not later than two years from the last payment of benefits.

Source: 39:6A-13.1.

COMMENT

This section is substantially identical to the original.

39A:I-24. Compulsory uninsured motorist protection

Every owner or registrant of an automobile registered or principally garaged in this State shall maintain uninsured motorist coverage as provided in 17:28-1.1.

Source: 39:6A-14.

COMMENT

This section is substantially identical to the original.

39A:I-25. Penalties for false and fraudulent representation

a. In any claim or action arising for benefits payable under a standard automobile insurance policy under 39:6A-4, any claim or action arising for medical expense benefits payable under a basic automobile insurance policy under 39:6A-3.1 or any claim or action arising for benefits payable under a special automobile insurance policy pursuant to 39:6A-3.3 wherein any person obtains or attempts to obtain from any other person, insurance company or Unsatisfied Claim and Judgment Fund any money or other thing of value by (1) falsely or fraudulently representing that such person is entitled to such benefits; (2) falsely and fraudulently making statements or presenting documentation in order to obtain or attempt to obtain such benefits; or (3) cooperates, conspires or otherwise acts in concert with any person seeking to falsely or fraudulently obtain, or attempt to obtain, such benefits may upon conviction be fined not more than $5, 000, or imprisoned for not more than three years or both, or in the event the sum so obtained or attempted to be obtained is not more than $500, may upon conviction, be fined not more than $500, or imprisoned for not more than six months or both, as a disorderly person.

b. In addition to any penalties imposed by law, any person who is either found by a court of competent jurisdiction to have violated any provision of 17:33A-1 et seq. pertaining to automobile insurance or been convicted of any violation of Title 2C of the New Jersey Statutes arising out of automobile insurance fraud shall not operate a motor vehicle over the highways of this State for a period of one year from the date of judgment or conviction.

Source: 39:6A-15.

COMMENT

This section is substantially identical to the original but subsection lettering has been added.

39A:I-26. Written notice – buyer's guide and coverage selection form

a. No new automobile insurance policy shall be issued on or after the 180th day following the effective date of P.L.1985, c. 520, unless the application for the policy is accompanied by a written notice identifying and containing a buyer's guide and coverage selection form. The buyer's guide shall contain a brief description of all available policy coverages and benefit limits, and shall identify which coverages are mandatory and which are optional under State law, as well as all options offered by the insurer.

b. The buyer's guide shall also contain a statement on the possible coordination of other health benefits coverages with the personal injury protection coverage options, the form and contents of which shall be prescribed by the Commissioner of Insurance.

c. The coverage selection form shall identify the range of premium rate credit or dollar savings, or both, and shall provide any other information required by the commissioner by regulation.

d. The applicant shall indicate the options elected on the coverage selection form which shall be signed and returned to the insurer.

e. Any notice of renewal of an automobile insurance policy with an effective date subsequent to July 1, 1984, shall be accompanied by a written notice of all policy coverage information required to be provided under subsections (a)-(d) of this section.

f. Written notices provided by any insurer writing at least 2% of the New Jersey private passenger automobile market, including the New Jersey Automobile Full Insurance Underwriting Association established pursuant to 17:30E-4, shall also contain a statement advising that if the insured or applicant has any questions concerning his automobile insurance policy, including questions as to coverage or premiums, he may contact his producer, or the company directly, by using a toll free number which shall be set forth in the notice. Written notice shall be given to all insureds of any change in the toll free number.

g. A properly completed and executed coverage selection form shall be prima facie evidence of the named insured's knowing election or rejection of any option.

h. Each named insured of an automobile insurance policy shall, at least annually or as otherwise ordered by the commissioner, receive a buyer's guide and coverage selection form.

i. On and after January 1, 1991, each buyer's guide and coverage selection form shall be written in plain language.

Source: 39:6A-23; 39:6A-23.1.

COMMENT

This section is substantially identical to the original but additional subsection lettering has been added, the original subsection (b) has been removed since it was deleted in 1985, and the language calling for the Commissioner of Insurance to promulgate standards within 45 days of the effective date of the section has been removed as no longer necessary. Former 39:6A-23.1 has been deleted as no longer necessary since it called for action to be taken in 1989.

39A:I-27. Construction and severability; repeal of inconsistent provisions

a. This act shall be liberally construed so as to effect the purpose thereof. The provisions of this act shall be severable. If any phrase, clause, sentence or provision of this act is declared to be contrary to the Constitution of this State or of the United States or the applicability thereof to any person, government, agency or circumstance is held invalid, the validity of the remainder of this act and the applicability thereof to any person, government, agency or circumstance shall not be affected thereby.

b. All laws or parts of laws which are inconsistent with the provisions of this act are repealed and superseded to the extent of such inconsistency.

Source: 39:6A-16; 39:6A-17.

COMMENT

This section is substantially identical to the original. Subsection (a) is the former 39:6A-16 and subsection (b) is the former 39:6A-17.

39A:I-28. Mandatory reduction of bodily injury insurance rates

Bodily injury insurance rates in effect on July 1, 1972 shall be reduced by at least 15% and shall become effective upon the effective date of this act.

Source: 39:6A-18.

COMMENT

This section is substantially identical to the original.

39A:I-29. Powers of commissioner of insurance; rules and regulations

a. For the purpose of implementing and enforcing this act, the Commissioner of Insurance shall possess all of those general powers as enumerated in Title 17 of the Revised Statutes.

b. The Commissioner of Insurance is hereby authorized and empowered to prescribe, adopt, promulgate, rescind and enforce such reasonable rules and regulations as may be required to effectuate the purposes of this act.

Source: 39:6A-19; 39:6A-20.

COMMENT

This section is substantially identical to the original. Subsection (a) is the former 39:6A-20, and subsection (b) is the former subsection 39:6A-19.

39A:I-30. New Jersey Automobile Insurance Risk Exchange membership and board of directors

a. There shall be created, within 45 days of the operative date of this act, an unincorporated association, to operate on a nonprofit-nonloss basis, to be known as the New Jersey Automobile Insurance Risk Exchange, with its headquarters to be located within the State of New Jersey.

b. Every insurer licensed to transact private-passenger automobile insurance in this State shall be a member of the exchange and shall be bound by the rules of the exchange as a condition of the authority to transact insurance business in this State. Any insurer which ceases to transact automobile insurance business in this State shall remain liable for any amounts due to the exchange for business transacted prior to the effective date of its cessation of business in the State.

c. The exchange shall adopt a plan of operation which shall become effective upon approval by the Commissioner of Banking and Insurance. The business affairs of the exchange shall be governed by a board of directors to be comprised of 12 members. Nine members shall be appointed, from a list of names submitted by the Commissioner of Banking and Insurance, by the Governor, with the advice and consent of the Senate, of whom two shall represent the Property Casualty Insurers Association of America, or its successor organization; two shall represent the American Insurance Association, or its successor organization; two shall represent the independent companies; two shall represent New Jersey domiciled insurance companies as nominated to the commissioner by the exchange; and one shall be a public member. If no name is submitted by an aforementioned association or company to serve as its representative on the board of the exchange, the exchange shall submit to the commissioner the name of an individual employed by an insurer transacting automobile insurance in this State. Additionally, the Governor, the Speaker of the General Assembly and the President of the Senate shall each appoint one public member. The board shall elect a chairman who shall be a representative of an insurer domiciled in New Jersey. No insurer shall represent more than one organization on the board of directors of the exchange.

d. All appointments made on or after the effective date of this amendatory act shall be for five-year terms. A director shall serve until his successor is appointed. Vacancies on the board of directors of the exchange shall be filled for the remainders of the terms in the same manner as the original appointments. Public members shall be compensated in an amount to be determined by the commissioner, and shall be reimbursed for necessary expenses actually incurred in the performance of their duties.

e. All expenses incurred by the board shall be payable from moneys collected by the exchange.

Source: 39:6A-21.

COMMENT

This section is substantially identical to the original but subsection lettering has been added.

39A:I-31. Powers of exchange

a. The exchange shall be empowered to raise sufficient moneys (1) to pay its operating expenses, and (2) to compensate members of the exchange for claims paid for noneconomic loss, and associated claim adjustment expenses, which would not have been incurred had the tort limitation option provided in 39:6A-8(b) or, in the case of policies issued or renewed on or after January 1, 1989, 39:6A-8(a), been elected by the injured party filing the claim for noneconomic loss.

b. In order to enable the exchange to meet its obligations under subsection a. of this section, every member insurer or servicing carrier of the New Jersey Automobile Full Insurance Underwriting Association shall forward on a monthly basis, within 15 days of the close of the member's accounting month, a charge, to be known as the AIRE charge, in an amount and manner to be prescribed by the board of directors. AIRE charge amounts required to be paid to the exchange in accordance with this subsection shall, in the case of those amounts determined by the board of directors to be applicable during the period from July 1, 1984 to the effective date of P.L.1985, c. 520, be paid to the exchange within 60 days of that date. A 10% per annum penalty charge shall be assessed by the exchange on any overdue AIRE charges.

c. The board of directors shall establish guidelines by which members or servicing carriers and the exchange may verify the tort limitation options elected by claimants.

d. Moneys collected by or otherwise available to the exchange shall be invested as hereinafter provided in 39:6A-22.1.

e. The exchange shall have such powers as may be necessary or appropriate to effectuate the purposes of the exchange.

Source: 39:6A-22.

COMMENT

This section is substantially identical to the original.

39A:I-32. Investment of monies; annual report

a. Moneys collected by or available to the exchange shall be invested by the board of directors in accordance with the liabilities of the fund and the statutory limitations on insurer investments in Title 17 of the Revised Statutes; except that the board shall invest moneys of the exchange in New Jersey or in equity securities or debt obligations of businesses incorporated in New Jersey for operations in the State, if at least equivalent to any alternative investment opportunities outside New Jersey, with respect to risk exposure, rates of return and other investment objectives established by the board.

b. The exchange shall at least annually file a report with the Commissioner of Insurance and the chairmen of the Assembly Banking and Insurance Committee and the Senate Labor, Industry and Professions Committee, or the successors of those committees, setting forth, among other things, the income, claims and investment experience of the exchange. The commissioner shall prescribe, by regulation, the contents and form of the report.

Source: 39:6A-22.1.

COMMENT

This section is substantially identical to the original.

39A:I-33. Arbitration

a. The purpose and intent of this section is to establish an informal system of settling tort claims arising out of automobile accidents in an expeditious and least costly manner, and to ease the burden and congestion of the State's courts.

b. Any cause of action filed in the Superior Court after the operative date of this act, for the recovery of noneconomic loss, as defined in 39:6A-2, or the recovery of uncompensated economic loss, other than for damages to property, arising out of the operation, ownership, maintenance or use of an automobile, as defined in that section, shall be submitted, except as hereinafter provided, to arbitration by the assignment judge of the court in which the action is filed, if the court determines that the amount in controversy is $15,000 or less, exclusive of interest and costs; provided that if the action is for recovery for both noneconomic and economic loss, the controversy shall be submitted to arbitration if the court determines that the amount in controversy for noneconomic loss is $15,000 or less, exclusive of interest and costs.

c. Notwithstanding that the amount in controversy of an action for noneconomic loss is in excess of $15,000, the court may refer the matter to arbitration, if all of the parties to the action consent in writing to arbitration and the court determines that the controversy does not involve novel legal or unduly complex factual issues.

d. No cause of action determined by the court to be, upon proper motion of any party to the controversy, frivolous, insubstantial or without actionable cause shall be submitted to arbitration.

e. The provisions of this section shall not apply to any controversy on which an arbitration decision was rendered prior to the filing of the action.

f. Submission of a controversy to arbitration shall toll the statute of limitations for filing an action until the filing of the arbitration decision in accordance with 39:6A-30.

Source: 39:6A-24; 39:6A-25; 39:6A-26.

COMMENT

This section is substantially identical to the original sections. Subsection (a) is the former 39:6A-24. Subsections (b) – (e) are the former 39:6A-25. The last sentence of 39:6A-25 has been eliminated as no longer necessary. Subsection (f) is the original 39:6A-26.

39A:I-34. Selection and compensation of arbitrators; procedure

a. The number or selection of arbitrators may be stipulated by mutual consent of all of the parties to the action, which stipulation shall be made in writing prior to or at the time notice is given that the controversy is to be submitted to arbitration. The assignment judge shall approve the arbitrators agreed to by the parties, whether or not the designated arbitrators satisfy the requirements of subsection b. of this section, upon a finding that the designees are qualified and their serving would not prejudice the interest of any of the parties.

b. If the parties fail to stipulate the number or names of the arbitrators, the arbitrators shall be selected, in accordance with the Rules of Court adopted by the Supreme Court of New Jersey, from a list of arbitrators compiled by the assignment judge, to be comprised of retired judges and qualified attorneys in this State with at least seven years' negligence experience and recommended by the county or State bar association.

c. Compensation for arbitrators shall be set by the Rules of the Supreme Court of New Jersey. The Supreme Court may also establish a schedule of fees for attorneys representing the parties to the dispute and for witnesses in arbitration proceedings. Attorney's fees may exceed these limits upon application made to the assignment judge in accordance with the Rules of the Court for the purpose of determining a reasonable fee in the light of all the circumstances.

d. The Supreme Court may adopt rules governing offers of judgment by the claimant or defendant prior to the start of arbitration, including the assessment of the costs of arbitration proceedings and attorney's fees, where an offer is made but refused by the other party to the controversy.

e. The arbitrators may, at their initiative or at the request of any party to the arbitration, issue subpoenas for the attendance of witnesses and the production of books, records, documents and other evidence. Subpoenas shall be served and shall be enforceable in the manner provided by law.

f. Notwithstanding that a controversy was submitted pursuant to 39:6A-25 the arbitration award for noneconomic loss may exceed $15,000. The arbitration decision shall be in writing, and shall set forth the issues in controversy, and the arbitrators' findings and conclusions of law and fact.

g. Unless one of the parties to the arbitration petitions the court, within 30 days of the filing of the arbitration decision with the court: (1) for a trial de novo, or (2) for the modification or vacation of the arbitration decision for any of the reasons set forth in chapter 24 of Title 2A of the New Jersey Statutes, or an error of law or factual inconsistencies in the arbitration findings, the court shall, upon motion of any of the parties, confirm the arbitration decision, and the action of the court shall have the same effect and be enforceable as a judgment in any other action.

h. Except in the case of an arbitration decision vacated by the court or offers of judgment made pursuant to court rules, the party petitioning the court for a trial de novo shall pay to the court a trial de novo fee in an amount established pursuant to the Rules of Court, which shall be utilized by the judiciary to pay the costs of arbitration including the fees of the arbitrators.

i. No statements, admissions or testimony made at the arbitration proceedings, nor the arbitration decision, as confirmed or modified by the court, shall be used or referred to at the trial de novo by any of the parties, except that the court may consider any of those matters in determining the amount of any reduction in assessments made pursuant to 39:6A-34.

j. The party having filed for a trial de novo shall be assessed court costs and other reasonable costs of the other party to the judicial proceeding, including attorney's fees,

investigation expenses and expenses for expert or other testimony or evidence, which amount shall be, if the party assessed the costs is the one to whom the award is made, offset against any damages awarded to that party by the court, and only to that extent; except that if the judgment is more favorable to the party having filed for a trial de novo, the court may reduce or eliminate the amount of the assessment in accordance with the extent to which the decision of the court is more favorable to that party than the arbitration decision, and as best serves the interest of justice. The court may waive an assessment of costs required by this section upon a finding that the imposition of costs would create a substantial economic hardship as not to be in the interest of justice.

k. The Supreme Court of New Jersey shall adopt Rules of Court appropriate or necessary to effectuate the purpose of this act. The Administrative Office of the Courts shall not later than March 1 of each year file with the Governor and Legislature a report on the impact of the implementation of this act on automobile insurance settlement practices and costs, and on court calendars and workload.

Source: 39:6A-27; 39:6A-28; 39:6A-29; 39:6A-30; 39:6A-31; 39:6A-32; 39:6A-33; 39:6A-34; 39:6A-35.

COMMENT

This section is substantially identical to the original sections. Subsections (a) and (b) are the former 39:6A-27. Subsections (c) and (d) are the former 39:6A-28. Subsection (e) is the former 39:6A-29. Subsection (f) is the former 39:6A-30. Subsection (g) if the former 39:6A-31. Subsection (h) is the former 39:6A-32. Subsection (i) is the former 39:6A-33. Subsection (j) is the former 39:6A-34. Subsection (k) is the former 39:6A-35.

53. COMPULSORY MOTOR VEHICLE INSURANCE

39A:CI-1. Liability insurance; amount of coverage

a. Every owner or registered owner of a motor vehicle registered or principally garaged in this State shall maintain motor vehicle liability insurance coverage, under provisions approved by the Commissioner of Banking and Insurance, insuring against loss resulting from liability imposed by law for bodily injury, death and property damage sustained by any person arising out of the ownership, maintenance, operation or use of a motor vehicle wherein such coverage shall be at least in: (1) an amount or limit of $15,000, exclusive of interest and costs, on account of injury to, or death of, one person, in any one accident; and (2) an amount or limit, subject to such limit for any one person so injured or killed, of $30,000, exclusive of interest and costs, on account of injury to or death of, more than one person, in any one accident; and (3) an amount or limit of $5,000, exclusive of interest and costs, for damage to property in any one accident.

b. Notwithstanding the provisions of subsection a. of this section, an owner or registered owner of an automobile, as defined in 39:6A-2, registered or primarily garaged in the State may satisfy the requirements of subsection (a) of this section by maintaining a basic automobile insurance policy containing coverages provided pursuant to 39:6A-3.1(a) and (b).

c. Notwithstanding the provisions of subsection a. of this section, an owner or registered owner of an automobile, as defined in 39:6A-2, registered or primarily garaged in the State may satisfy the requirements of subsection (a) of this section by maintaining

a special automobile insurance policy containing coverages provided pursuant to 39:6A-3.3(b).

d. An owner or registrant of a motor vehicle registered or principally garaged in this State who operates or causes to be operated a motor vehicle upon a public road or highway in this State without motor vehicle liability insurance coverage required by this act, and an operator who operates or causes a motor vehicle to be operated and who knows or should know from the attendant circumstances that the motor vehicle is without motor vehicle liability insurance coverage required by this act shall be subject, for the first offense, to a fine of not less than $300 nor more than $1,000 and a period of community service to be determined by the court, and shall forthwith forfeit the right to operate a motor vehicle over the highways of this State for a period of one year from the date of conviction. Upon subsequent conviction, such person shall be subject to a fine of up to $5,000 and shall be subject to imprisonment for a term of 14 days and shall be ordered by the court to perform community service for a period of 30 days, which shall be of such form and on such terms as the court shall deem appropriate under the circumstances, and shall forfeit the right to operate a motor vehicle for a period of two years from the date of the conviction, and, after the expiration of said period, such person may make application to the Director of the Division of Motor Vehicles for a license to operate a motor vehicle, which application may be granted at the discretion of the director. The director's discretion shall be based upon an assessment of the likelihood that the individual will operate or cause a motor vehicle to be operated in the future without the insurance coverage required by this act. A complaint for violation of this act may be made to a municipal court at any time within six months after the date of the alleged offense.

e. Failure to produce at the time of trial an insurance identification card or an insurance policy which was in force for the time of operation for which the offense is charged creates a rebuttable presumption that the person was uninsured when charged with a violation of this section.

f. The Uninsured Motorist Prevention Fund ("fund") is established as a nonlapsing, revolving fund into which shall be deposited all revenues from the fines imposed pursuant to 39:6B-2 and $25 from each fine imposed pursuant to 39:3-29. Interest received on moneys in the fund shall be credited to the fund. The fund shall be administered by the New Jersey Motor Vehicle Commission. Moneys in the fund shall be allocated and used for the purpose of the administrative expenses of the fund and enforcement of the compulsory motor vehicle insurance law, 39:6B-1 et seq. by the New Jersey Motor Vehicle Commission.

Source: 39:6B-1; 39:6B-2; 39:6B-3.

COMMENT

This section is substantially identical to the original sections although the language was modified to be gender neutral. Subsections (a) – (c) are the former 39:6B-1. Subsections (d) and (e) are the former 39:6B-2. Subsection (f) is the former 39:6B-3.

SERVICE ON NON-RESIDENTS

54. SERVICE OF PROCESS UPON NONRESIDENTS

39A:SPN-1. Construction of chapter; director of motor vehicles as agent; effect of service

a. This chapter shall be construed as extending the right and manner of service of process upon nonresidents, and not as limiting any other lawful manner for such service.

b. A person, not being a resident of this State, who shall drive a motor vehicle in this State, whether or not such person shall be licensed to do so in accordance with the laws of this State or of any other State or otherwise; and a person or persons, not being a resident or residents of this State or any corporation or association, not incorporated under the laws of this State and not duly authorized to transact business in this State, who by his, their or its agent or servant, shall cause to be driven in this State, any motor vehicle which is not registered in this State to be driven upon the public highways thereof, pursuant to the laws thereof, whether or not the driver thereof shall be licensed to drive a motor vehicle upon the public highways of this State; shall, by the operation of such motor vehicle, or by causing the same to be operated, within this State, make and constitute the Director of the Division of Motor Vehicles in the Department of Law and Public Safety, his or their agent for the acceptance of process in any civil action or proceeding, issuing out of the Superior Court, or other court of civil jurisdiction, against any such person or persons, corporation or association arising out of or by reason of any accident or collision occurring within this State in which any such motor vehicle, so driven or caused to be driven within this State is involved.

c. The agreement that the Director of the Division of Motor Vehicles in the Department of Law and Public Safety shall be constituted the agent, of a nonresident operator or owner of a motor vehicle, which is involved in any accident in this State, for the acceptance of process in any such action or proceeding, shall be irrevocable and binding upon the executor or administrator of such operator or owner, and service of process shall be made upon the executor or administrator of any such operator or owner dying prior to the commencement of such action or proceeding in the same manner and on the same notice as herein provided for service of process upon such operator or owner, and any such action or proceeding, duly commenced by service upon such an operator or owner under the provisions of this chapter, who shall die thereafter during the pendency of such action or proceeding, shall be continued against his executor or administrator by the court in which the same is pending, upon such application and notice as the court shall prescribe. The operating or causing to be operated of any such motor vehicle within this State shall be the signification of the agreement of such nonresident person operating the same, or of such person or persons or corporation or association for whom such motor vehicle is operated, of his, their or its agreement that any such process against him, or them, or it, or against his or their executors or administrators, which is so served shall be of the same legal force and validity as if served upon him or them personally or upon it in accordance with law within this State.

d. Any resident of this State who shall drive a motor vehicle, or cause a motor vehicle to be driven in this State, whether or not such motor vehicle is registered under

the laws of this State and whether or not such person or the driver of such motor vehicle is licensed to drive a motor vehicle upon the highways of this State, shall by the operation of such motor vehicle, or by causing the same to be operated, within this State, make and constitute the Director of the Division of Motor Vehicles in the Department of Law and Public Safety his agent for the acceptance of process, in any civil action or proceeding, issuing out of the Superior Court or other court of civil jurisdiction of this State against him by reason of an accident or collision in this State in which such motor vehicle, while so driven or caused to be driven, shall be involved if, and in case, such person shall cease to be a resident of this State and service of such process upon him within this State cannot be made by reason of his nonresidence. The operating or causing to be operated of any such motor vehicle within this State shall be his signification of the agreement of such person operating the same or the person for whom such motor vehicle is operated of his agreement that any such process against him which is so served after he becomes a nonresident of this State shall be of the same legal force and validity as if served upon him personally in accordance with law within this State. The agreement that the Director of the Division of Motor Vehicles in the Department of Law and Public Safety shall be constituted the agent, of a resident operator or owner of a motor vehicle who becomes a nonresident, which is involved in any accident in this State, for the acceptance of process in any such action or proceeding, shall be irrevocable and binding upon the executor or administrator of such operator or owner, whether appointed within or without the State, and service of process shall be made upon the said executor or administrator of any such operator or owner dying prior to the commencement of such action or proceeding in the same manner and on the same notice as herein provided for service of process upon such operator or owner, and any such action or proceeding, duly commenced by service upon such an operator or owner under the provisions of this act, who shall die thereafter during the pendency of such action or proceeding, shall be continued against his said executor or administrator by the court in which the same is pending, upon such application and notice as the court shall prescribe.

e. Whenever any collision or accident shall occur in this State and the driver of any motor vehicle involved therein shall be a nonresident and not licensed under the laws of this State to operate a motor vehicle, or a motor vehicle involved in any such collision or accident shall not be registered or licensed under the laws of this State, the magistrate before whom the nonresident owner or operator of such motor vehicle shall be brought shall require such nonresident owner or operator, as a condition to his release on bail or otherwise, to execute a written power of attorney to the director, appointing such director his lawful agent for the acceptance of service of process in any civil action instituted or to be instituted by any resident of this State against such nonresident for or on account of any claim, demand or cause of action arising out of such collision or accident. The power of attorney herein required shall be upon a form prepared and furnished to recorders and other committing magistrates by the director and shall, after the execution thereof, be filed with the director. The requirements of this section shall be in addition to, and not in limitation of any other law concerning the giving of bail or other security.

Source: 39:7-1; 39:7-2; 39:7-2.1; 39:7-7.

COMMENT

This section is substantially identical to the original sections. Subsection (a) is the former 39:7-1. Subsections (b) and (c) are the former 39:7-2. Subsection (d) is the former 39:7-2.1. Subsection (e) is the former 39:7-7.

39A:SPN-2. Manner and methods of service

a. Service of process shall be made, and notice thereof shall be given, under this act in the same manner and with the same effect, the same fees shall be chargeable and payable, continuance may be ordered and the same records shall be kept, as is provided in 39:7-1 et seq.

b. Service of process upon the director shall be made by leaving the original and a copy of the summons and two copies of the complaint, with a fee of $10, in the hands of the director, or someone designated by the director in the director's office office, or, in an action commenced in any county other than Mercer county, then the sheriff or other authorized person may serve the director by mailing such papers to the director by registered mail, with the said fee. Such service shall be sufficient service upon the nonresident chauffeur, operator or owner, if

(1) Notice of such service and a copy of the summons with a copy of the complaint are forthwith sent by registered mail to the defendant by the director, or someone designated by the director in the director's office; and

(2) Defendant's return receipt and the affidavit of the director, or such person in the director's office acting for the director, of the compliance herewith, including a statement of the date of such mailing and of the receipt of the return card, are appended to the original of the summons and the other copy of the complaint and filed in the office of the clerk of the court wherein the action may be pending; or

(3) Notice of such service with a copy thereof and the original and a copy of the summons and two copies of the complaint are forthwith sent by registered mail by the director, or the person in the director's office acting for the director, to the sheriff or other process server in the jurisdiction in which the defendant resides, with directions that such sheriff or process server, or someone acting for the sheriff or process server, shall serve the same upon the defendant in the same manner that service is legally effected in that jurisdiction, and the return of the sheriff or process server, or the person acting for the sheriff or process server in such jurisdiction, shall be appended to or endorsed upon the original summons and a copy of the complaint and returned to the director, and thereafter filed in the office of the clerk of the court wherein the action may be pending in this State; or

(4) Notice of such service and a copy of the summons and complaint may be served on the defendant personally by any official or private individual, wherever such service may be made, and, upon service being so made, an affidavit shall be made by the person effecting such service, showing the person served and the time and place of such service, which affidavit shall be appended to the original summons and one copy of the complaint and returned to the

director, and be thereafter filed in the office of the clerk of the court wherein the action may be pending in this State; or

(5) Notice of such service and a copy of the summons and complaint may be served on the defendant in any other manner that the court in which the cause is pending shall deem sufficient and expedient.

c. From and after April seventh, one thousand nine hundred and thirty, civil process in any action or proceeding arising out of a collision or accident in which any motor vehicle of a nonresident owner, not registered or licensed under the laws of this state, may be served upon such nonresident owner, by service upon any chauffeur or operator of such or any other motor vehicle of such nonresident owner, while such motor vehicle is being operated in this state by such chauffeur or operator. Process in any such action may be also lawfully served upon any such nonresident owner by service thereof upon any person over the age of fourteen years who has the custody of such motor vehicle, whether held by him as security or driven, if a copy of such process is also posted in a conspicuous place upon such motor vehicle.

d. If, by direction of plaintiff, notice of service is given as provided by subsection (b)(3), plaintiff shall, in addition to the fee of $10 required by the first paragraph of this section, deposit with the director sufficient money to effectuate the same.

e. Upon giving notice to the defendant of the service of process as required by this chapter, where service of process is made upon the director, he shall file with the clerk of the court his certificate of the notice given.

f. If notice of service is given as provided by subsection (b)(4), plaintiff shall pay the cost thereof.

Source: 39:7-2.2; 39:7-3; 39:7-8.

COMMENT

This section is substantially identical to the original sections. Subsection (a) is the former 39:7-2.2. Subsections (b) and (d) – (f) are the former 39:7-3. Subsection (c) is the former 39:7-8.

39A:SPN-3. Continuances; fees; records

a. The court in which an action against a chauffeur, operator or owner mentioned in section 39:7-2 of this title is pending may order such continuances as may be necessary to afford the defendant reasonable opportunity to defend the action.

b. The fee of $5 paid by the plaintiff to the director at the time of service and the cost of giving notice as provided in this chapter shall be taxed in plaintiff's costs if he prevails in the action.

c. The director shall keep a record of processes served pursuant to the provisions of this chapter, which shall show the day and hour of such service.

Source: 39:7-4; 39:7-5; 39:7-6.

COMMENT

This section is substantially identical to the original sections. Subsection (a) is the former 39:7-4. Subsection (b) is the former 39:7-5. Subsection (c) is the former 39:7-6.

INSPECTIONS

55. INSPECTION OF MOTOR VEHICLES

39A:IMV-1. Inspection of motor vehicles; exceptions

a. Every motor vehicle registered in this State which is used over any public road, street, or highway or any public or quasi-public property in this State, and every vehicle subject to enhanced inspection and maintenance programs pursuant to 40 C.F.R. § 51.356, except historic motor vehicles registered as such, collector motor vehicles designated as such pursuant to this subsection, and those vehicles over 8,500 pounds gross weight that are under the inspection jurisdiction of the commission pursuant to Titles 27 and 48 (as amended by this legislation) of the Revised Statutes, shall be inspected by designated examiners or at official inspection facilities to be designated by the commission or at licensed private inspection facilities. The commission shall adopt rules and regulations establishing a procedure for the designation of motor vehicles as collector motor vehicles, which designation shall include consideration by the commission of one or more of the following factors: the age of the vehicle, the number of such vehicles originally manufactured, the number of such vehicles that are currently in use, the total number of miles the vehicle has been driven, the number of miles the vehicle has been driven during the previous year or other period of time determined by the commission, and whether the vehicle has a collector classification for insurance purposes.

b. The commission shall determine the official inspection facility or private inspection facility at which a motor vehicle, depending upon its characteristics, shall be inspected. The commission, with the concurrence of the Department of Environmental Protection, may exclude by regulation from this inspection requirement any category of motor vehicle if good cause for such exclusion exists, unless the exclusion is likely to prevent this State from meeting the applicable performance standard established by the United States Environmental Protection Agency. The commission may determine that a vehicle is in compliance with the inspection requirements of this section if the vehicle has been inspected and passed under a similar inspection program of another state, district, or territory of the United States.

Source: 39:8-1.

COMMENT

This section is substantially identical to the original section.

39A:IMV-2. Examiners

The commission may designate and appoint, subject to existing laws, competent examiners of motor vehicles to conduct examinations, other than the periodic inspections required pursuant to subsection b. of this section, of motor vehicles required to be inspected in accordance with the provisions of this chapter. The examiners may be delegated to enforce the provisions of the motor vehicle and traffic law.

Source: 39:8-2.

COMMENT
This section is substantially identical to the original subsection (a) of 39:8-2.

39A:IMV-3. Examiners; rules and regulations; annual inspections; certificates of approval; acquisition of property; random roadside inspections; inspections and audits of licensed private inspection centers; fees

a. The Commission shall adopt:

(1) rules and regulations, pursuant to the "Administrative Procedure Act," that are consistent with 26:2C-8.1 et seq. and with the requirements of the federal Clean Air Act, 42 U.S.C.A. 7401 et seq., with respect to the type and character of the inspections to be made, the facility at which the vehicle shall be inspected, the frequency of inspections of motor vehicles and the approval or rejection of motor vehicles as a result of these inspections. These rules and regulations shall require the use of inspection tests that are designed to meet the enhanced inspection and maintenance requirements of the federal Clean Air Act and that have been proven to be feasible and effective for the inspection of large numbers of motor vehicles, except that these tests shall not include the "I/M 240" test. Nothing in this subsection shall preclude the use of the "I/M 240" test in sampling for performance evaluations only or the use of the test at the option of a private inspection facility. The rules and regulations may distinguish between vehicles based on model year, type, or other vehicle characteristics in order to facilitate inspections or to comply with the federal Clean Air Act. A low mileage vehicle shall not be subject to a tailpipe inspection test utilizing a dynamometer but may be subject to an idle test and a purge and pressure test. For the purpose of this paragraph, "low mileage vehicle" means a motor vehicle that is driven less than 10,000 miles during the biennial inspection period, except that the commission may set the qualifying number of miles for this exemption at a lower number in order to meet the federal enhanced inspection and maintenance performance standard.

(2) to the extent practicable, advanced technologies to facilitate the retrieval of testing and other information concerning motor vehicles, which technologies shall include but not be limited to the use of computer bar codes and personal cards containing encoded information, such as a person's operating license, motor vehicle registration, and motor vehicle insurance, the inspection status of a motor vehicle, and mass transit fares, that can be accessed quickly by a computer. The Department of Environmental Protection and the commission shall investigate advanced testing technologies, including but not limited to remote sensing and onboard diagnostics, and shall, to the extent permitted by law, pursue the use of such technologies, other than the "I/M 240" test, in motor

vehicle emission inspections required by the United States Environmental Protection Agency pursuant to the federal Clean Air Act.

b. Except as modified by the commission to distribute evenly the volume of inspections, all motor vehicles required by the commission, in accordance with the provisions of R.S.39:8-1, to be inspected under this chapter shall be inspected biennially, except that (i) after certification by the commission of the federal approval by the Environmental Protection Agency of the State waiver request, model year 2000 and newer motor vehicles shall be inspected no later than four years from the last day of the month in which they were initially registered and thereafter biennially; and (ii) classes of vehicles that require more frequent inspections, such as school buses, shall be inspected at such shorter intervals as may be established by the commission after consultation with the Department of Environmental Protection. At any time, the commission may require the owner, lessee, or operator of a motor vehicle to submit the vehicle for inspection.

c. The commission shall furnish to designated examiners or to other persons authorized to conduct inspections or to grant waivers official certificates of approval, rejection stickers or waiver certificates, the form, content and use of which it shall establish. The certificates of approval, rejection stickers and waiver certificates shall be of a type, such as a windshield sticker or license plate decal, that can be attached to the vehicle or license plate in a location that is readily visible to anyone viewing the vehicle. If a certificate of approval cannot be issued, the driver shall be provided with a written inspection report describing the reasons for rejection and, if appropriate, the repairs needed or likely to be needed to bring the vehicle into compliance with applicable standards.

d. The commission may, with the approval of the State House Commission, purchase, lease or acquire by the exercise of the power of eminent domain any property for the purpose of assisting it in carrying out the provisions of this chapter. This property may also be used by the commission for the exercise of the duties and powers conferred upon it by the other chapters of this Title.

e. For the purpose of implementing the motor vehicle inspection requirements of the federal Clean Air Act and subject to the approval of the Attorney General, the State Treasurer, prior to January 1, 1997, may:

(1) Purchase, lease or acquire by eminent domain any property for vehicle inspection purposes. Any other provision of law to the contrary notwithstanding, no further approval shall be required for transactions authorized by this paragraph, except that a proposed purchase, lease or acquisition by eminent domain shall require the approval of the Joint Budget Oversight Committee, and shall be submitted to the Joint Budget Oversight Committee, which shall review the proposed purchase, lease or acquisition by eminent domain within 15 business days; and

(2) Sell or lease, or grant an easement in, any property acquired, held or used for vehicle inspection purposes or any other suitable property held by the State that is not currently in use or dedicated to another purpose. For the purpose of this paragraph and notwithstanding any provision of 52:20-1 et seq. to the contrary, the sale or lease of, or the granting of an easement in, real property

owned by the State shall be subject to the approval of the State House Commission, which shall meet at the call of the Governor to act on a proposed sale or lease or grant of an easement pursuant to this paragraph. A member of the State House Commission may permit a representative to act on that member's behalf in considering and voting on a sale or lease or grant of an easement pursuant to this paragraph. Any other provision of law to the contrary notwithstanding, any moneys derived from a sale, lease or granting of an easement by the State pursuant to this paragraph shall not be expended unless approved by the Joint Budget Oversight Committee for the purpose of purchasing, leasing or acquiring property pursuant to paragraph (1) of this subsection, except that any moneys derived therefrom and not approved for that purpose shall be appropriated to the Department of Transportation to provide for mass transit improvements.

f. The commission shall conduct roadside examinations of motor vehicles required to be inspected, using such inspection equipment and procedures, and standards established pursuant to 26:2C-8.1, including, but not limited to, remote sensing technology, as the commission shall deem appropriate to provide for the monitoring of motor vehicles pursuant to this subsection. At least 20,000 vehicles or 0.5 percent of the total number of motor vehicles required to be inspected under this chapter, whichever is less, shall be inspected during each inspection cycle by roadside examination teams under the supervision of the commission. The commission may require any vehicle failing a roadside examination to be inspected at an official inspection facility or a private inspection facility within a time period fixed by the commission. Failure to appear and pass inspection within the time period fixed by the commission shall result in registration suspension in addition to any other penalties provided in this Title. The commission shall conduct an aggressive roadside inspection program to ensure that all motor vehicles that are required to be inspected in this State are in compliance with State law.

g. The commission, and, when appropriate, the Department of Environmental Protection, shall conduct inspections and audits of licensed private inspection facilities, official inspection facilities and designated examiners to ensure accurate test equipment calibration and use, and compliance with proper inspection procedures and with the provisions of 39:8-41 et al. and any regulations adopted pursuant thereto by the commission or by the Department of Environmental Protection. These inspections and audits shall be conducted at such times and in such manner as the commission, upon consultation with the Department of Environmental Protection, shall determine in order to provide quality assurance in the performance of the inspection and maintenance program.

i. The commission shall make a charge of $2.50 for the initial inspection for each vehicle subject to inspection, which amount shall be paid to the commission or its representative when payment of the registration fees fixed in chapter 3 of this Title is made which inspection charge shall be considered a service charge and shall be subject to the calculation of proportional revenue remitted to the commission pursuant to 39:2A-36; provided however, that on and after January 1, 1999, a school bus as defined pursuant to 39:3B-20 and having a registration period commencing on or after January 1, 1999, shall

be subject to an inspection fee for each in-terminal or in-lieu-of terminal inspection in accordance with the following schedule:

(1) School Bus Specification Inspection $50 per bus;

(2) School Bus Inspection $25 per bus;

(3) School Bus Reinspection $25 per bus subject to the conditions set forth below.

The specification inspection is required when a school bus is put into service in New Jersey, whether a new bus or a bus from another state. The specification inspection is conducted to ensure that the school bus meets New Jersey specification standards. The school bus inspection fee shall be charged to the operator for each in-terminal or in-lieu-of terminal inspection. School Vehicle Type I and School Vehicle Type II buses shall be inspected semiannually. Retired school buses shall be inspected annually. No school bus inspection fee shall be charged for any reinspection conducted by the commission if the reinspection is conducted on the same day as the inspection that necessitated the reinspection. If an additional trip is required by the commission's inspectors, a fee of $25 per bus shall be charged. School bus inspection fees shall be paid to the commission or the commission's designee subject to the terms and conditions prescribed by the commission and shall be considered service charges of the commission and not subject to the calculation of proportional revenue remitted to the commission pursuant to 39:2A-36. Any law or rule or regulation adopted pursuant thereto to the contrary notwithstanding, a registration fee authorized pursuant to chapter 3 of Title 39 of the Revised Statutes shall not be increased for the purpose of paying any costs associated in any manner with the establishment, implementation or operation of the motor vehicle inspection and maintenance program established pursuant to 39:8-41 e t al.

j. The commission shall establish by regulation a fee to cover the costs of inspecting any vehicle that is required, or has the option, under federal law to be inspected in this State but is registered in another state or is owned or leased by the federal government. In determining these costs, the commission shall include all capital and direct and indirect operating costs associated with the inspection of these vehicles including, but not limited to, the costs of the actual inspection, the creation and maintenance of the vehicle inspection record, administrative, oversight and quality assurance costs and the costs associated with reporting inspection information to the owner, the federal government and agencies of other states. All fees collected pursuant to this subsection shall be paid to the State Treasurer and deposited in the "Motor Vehicle Inspection Fund" established pursuant to subsection (k).

k. There is established in the General Fund a special dedicated, non-lapsing fund to be known as the "Motor Vehicle Inspection Fund," which shall be administered by the State Treasurer. The State Treasurer shall deposit into the "Motor Vehicle Inspection Fund" $11.50 from each motor vehicle registration fee received by the State. This fee shall be considered a service charge of the commission and shall be subject to the calculation of proportional revenue remitted to the commission pursuant to 39:2A-36. The Legislature shall annually appropriate from the fund an amount necessary to pay the reasonable and necessary expenses of the implementation and operation of the motor vehicle inspection program. The State Treasurer shall:

(1) Pay to a private contractor or contractors contracted to design, construct, renovate, equip, establish, maintain and operate official inspection facilities under a contract or contracts entered into with the State Treasurer pursuant to 39:8-44(a) from the fund the amount necessary to meet the costs agreed to under the contract or contracts; and

(2) Transfer from the fund to the commission as provided pursuant to 39:2A-36 and the Department of Environmental Protection the amounts necessary to finance the costs of administering and implementing all aspects of the inspection and maintenance program, and to the Office of Telecommunications and Information Systems in the Department of the Treasury the amount necessary for computer support upgrades;

Moneys remaining in the fund and any unexpended balance of appropriations from the fund at the end of each fiscal year shall be reappropriated for the purposes of the fund. Any interest earned on moneys in the fund shall be credited to the fund.

Source: 39:8-2.

COMMENT

This section is substantially identical to the original subsections (b) – (j) of 39:8-2.

39A:IMV-4. Uniforms; powers of director; reports concerning inspections

a. The Division of Motor Vehicles in the Department of Law and Public Safety shall provide uniforms for its employees engaged in examining and inspecting motor vehicles at official inspection stations, and shall pay for such uniforms out of any available appropriations.

b. During the 12 calendar months following the effective date of this act the Director of the Division of Motor Vehicles in the State Department of Law and Public Safety shall provide for the keeping open of such of the motor vehicle inspection stations as the director shall designate from 8:00 A.M. to 8:00 P.M. on all the days of the week except Sundays. The director shall make and enforce such rules, regulations and directions as may be necessary to effectuate the purposes of this chapter.

c. In addition to the powers now vested in the Director of the Division of Motor Vehicles under 39:8-2 for the acquisition of property by the power of eminent domain, the Director, upon or after exercising the right of condemnation by instituting an action in the Superior Court in the manner provided by 20:3-1 et seq. may in advance of making compensation therefor take immediate possession of and occupy, use and improve the property, notwithstanding any other law.

d. Every designated examiner, official inspection facility or private inspection facility shall make such reports to the director concerning inspections made and the results thereof, and in such form and at such time, as the director may require. The director may furnish to the examiners and inspection facilities forms for such reports. The director may require the use of electronic media for the gathering and transmission of inspection data and reports when the director deems it appropriate or when electronic media are required by federal law.

e. Every motor vehicle repair facility that is registered pursuant to 39:8-53 shall make such reports to the director concerning emission repairs made and the results thereof, as the director may require. The director may furnish to registered motor vehicle repair facilities forms to be completed by them in documenting emission repairs to motor vehicles, which forms shall be presented by the operator of the vehicle to an emission inspector at the time of vehicle reinspection.

Source: 39:8-2.1; 39:8-2.2; 39:8-2.3; 39:8-5.

COMMENT

This section is substantially identical to the original sections. Subsection (a) is the former 39:8-2.1. Subsection (b) is the former 39:8-2.2. Subsection (c) is the former 39:8-2.3. Subsections (d) and (e) are the former 39:8-5.

39A:IMV-5. Director's power to make rules and regulations and hire

a. The director may promulgate such rules and regulations as may be necessary to effectuate the purposes of this chapter except that the rules and regulations shall not require the use of the "I/M 240 test".

b. The director may employ, subject to existing laws, such persons as the director requires for the administration and enforcement of this chapter and the director may fix their compensation.

Source: 39:8-4.1; 39:8-10; 39:8-57.

COMMENT

Subsection (a) is the former 39:8-4.1. Subsection (b) is the former 39:8-10.

39A:IMV-6. Inspections; certificates of approval; adjustments, corrections or repairs to be made; rejection sticker

a. No certificate of approval shall be issued by an examiner, official inspection facility or private inspection facility until the motor vehicle inspected successfully passes all emission tests required by the director and the mechanism, brakes and equipment of the motor vehicle inspected have been found to be in a proper and safe condition and complying with the laws of this State. Notwithstanding the issuance or non-issuance of a certificate of approval, the obligation to ensure that a vehicle is in a proper and safe condition rests with the owner, operator or lessee, as appropriate, of the vehicle.

b. If inspections as required by 39:8-1 disclose the necessity for adjustments, corrections or repairs, the director shall cause a rejection sticker to be issued.

c. The director may require the owner of a motor vehicle requiring an adjustment, correction or repair that is not emission-related to have that adjustment, correction or repair made and then have the vehicle reinspected at an official inspection facility or at a licensed private inspection facility within the period designated by the director.

d. The director may cause a certificate of approval to be issued for a motor vehicle needing an adjustment, correction or repair that is not emission-related in order to conform to the requirements of chapter 3 and chapter 8 of this Title, but which, in the director's determination, is nevertheless safe. In such cases the director shall issue notice

to the vehicle owner to have the adjustment, correction or repair made within a specified period of time, subject to the penalties of 39:8-9.

e. The director shall require the owner of a motor vehicle requiring an adjustment, correction or repair that is emission-related to have that adjustment, correction or repair made and thereafter have the vehicle reinspected at an official inspection facility or at a private inspection facility, as determined by the director, within the period designated by the director.

f. During the period designated by the director, any police officer who shall exhibit his badge or other sign of authority may stop any motor vehicle and require the owner or operator to display an official certificate of approval for the motor vehicle being operated.

g. Except as otherwise provided pursuant to 39:3-5, the director may suspend, revoke or deny the registration of a motor vehicle registered or required to be registered in this State, or the reciprocity privilege of a motor vehicle registered in another state, if the motor vehicle is subject to the inspection requirement of this State and operated or parked on any public road, street or highway or any public or quasi-public property in this State, and:

(1) Does not have displayed upon it a current certificate of approval, current rejection sticker or current waiver certificate issued in accordance with this chapter; or

(2) Has not successfully passed inspection or been granted a waiver within the time period prescribed by the director; or

(3) Is shown by the inspection to be incapable of being placed in a proper condition to make its use safe on the highway or incapable of being brought within the emission standards or requirements established by law or regulation, and for which a certificate of approval or waiver certificate cannot be issued.

h. The director may rule that a certificate of approval shall serve as a prerequisite for obtaining a registration for the following registration period.

Source: 39:8-3; 39:8-4; 39:8-6; 39:8-7; 39:8-8.

COMMENT

This section is substantially identical to the original sections. Subsection (a) is the former 39:8-3. Subsections (b) – (e) are the former 39:8-4. Subsection (f) is the former 39:8-6. Subsection (g) is the former 39:8-7. Subsection (h) is the former 39:8-8.

39A:IMV-7. Enforcement of chapter

a. The enforcement of this chapter shall be vested in the director and the police or peace officers of any municipality, any county or the State.

b. An owner or lessee who:

(1) Fails or refuses to have a motor vehicle examined within the time period prescribed by the director; or

(2) After having had it examined, fails or refuses to place or display a certificate of approval , rejection sticker or waiver certificate upon the windshield or other location on the vehicle as may be prescribed by the director; or

(3) Fails or refuses to place the motor vehicle in proper condition after having had the same examined ; or

(4) In any manner, fails to conform to the provisions of this chapter or the regulations adopted by the director pursuant thereto, shall be guilty of violating the provisions of this chapter, and shall be subject to a fine of not less than $100 or more than $200 or to imprisonment for not more than 30 days, or to both such fine and imprisonment.

c. A person who fraudulently obtains a certificate of approval, rejection sticker or waiver certificate, or displays or has in his possession a fictitious, altered, or stolen certificate of approval, rejection sticker or waiver certificate shall be subject to a fine of $500 for each such certificate or sticker.

d. The provisions of this chapter shall be enforced and all penalties for the violation thereof shall be recovered in accordance with the provisions of 2A:58-1 et seq., and in addition to the provisions and remedies therein contained, the following provisions and remedies shall be applicable in any proceeding brought for a violation of any of the provisions of this chapter:

(1) The several municipal courts shall have jurisdiction of such proceeding, in addition to the courts prescribed in 2A:58-1 et seq.;

(2) The complaint in any such proceeding may be made on information and belief by the director, or any police or peace officer of any municipality, any county or the State;

(3) A warrant may issue in lieu of summons;

(4) Any police or peace officer shall be empowered to serve and execute process in any such proceeding;

(5) The hearing in any such proceeding shall be without a jury;

(6) Any such proceeding may be brought in the name of the Director of the Division of Motor Vehicles in the Department of Law and Public Safety or in the name of the State of New Jersey;

(7) Any sums received in payment of any fines imposed in any such proceeding shall be paid to the Director of the Division of Motor Vehicles and shall be paid by him to the State Treasurer, who shall deposit one-half of such sums in the "Motor Vehicle Inspection Fund" established pursuant to subsection j. of 39:8-2, and who shall pay the remaining one-half of such sums to the county or municipality initiating the complaint or summons or, if initiated by State law enforcement personnel, to the State Treasury;

(8) The director or judge before whom any hearing under this chapter is had may revoke the registration certificate of any motor vehicle owned or leased by any person, when such person shall have been found to be in violation of any

of the provisions of this chapter as shall in the discretion of the director or judge justify such revocation.

e. The director may order the suspension of the registration or reciprocity privilege of any motor vehicle found to be in violation of any of the provisions of this chapter. If the owner or lessee fails to surrender the license plates for that vehicle to the division within 45 days of the mailing of an order requiring their surrender, the director may order the confiscation of the license plates of the vehicle that is in violation. An order of license plate confiscation issued by the director shall include an order imposing a civil penalty of $200 on the owner or lessee of the vehicle. This civil penalty shall be paid to the State Treasurer, who shall deposit one-half of the amount in the "Motor Vehicle Inspection Fund" established pursuant to 39:8-2(j) and pay the remaining one-half to any municipality or county whose law enforcement, police or peace officers confiscated the plates in accordance with the order of the director, or if the plates were confiscated by State law enforcement personnel, to the State Treasury. A civil penalty imposed pursuant to this subsection shall be in addition to any other penalty provided by this chapter.

Source: 39:8-9.

COMMENT

This section is substantially identical to the original section.

39A:IMV-8. Private inspection centers

a. The director may, after appropriate inquiry and investigation, license to operate private inspection centers as many qualified and properly equipped persons engaged in the business of motor vehicle repairs and service as are necessary, to conduct initial motor vehicle inspections, and to certify that the specific items for which a vehicle was initially rejected have been adjusted, corrected or repaired by him or under his direction, and that the condition of the items conforms to the standards established by law or regulation. The certification shall be evidenced by a private inspection approval sticker placed on the vehicle as prescribed by the director.

b. A licensee shall inspect and certify or reject a motor vehicle presented to him for an initial inspection. Certification shall indicate that the licensee or his employee has inspected the motor vehicle as prescribed by the director and has found that the motor vehicle conforms to the standards established by law or regulation.

c. A licensee shall reinspect and certify or reject any previously rejected vehicle presented to him for adjustment, correction or repair, and any vehicle presented by an owner who himself has made the necessary adjustment, correction or repair. Such certification shall indicate that the licensee or his employee has reinspected the items for which a vehicle has been rejected, as prescribed by the director, and has found that the condition of the items conforms to the standards established by law or regulation.

d. A licensee may charge any owner whose vehicle was adjusted, corrected or repaired by or under the direction of the licensee an amount for certification to be determined by the director.

e. A licensee may charge any owner who himself has made the necessary adjustments, corrections or repairs an amount for reinspection computed at the hourly

rate charged by the licensee for normal on premises repairs, and an amount for certification. The director shall determine the average length of time required to reinspect a specific rejected item, which shall be the maximum time for which a licensee may charge, and shall determine the charge for certification.

f. Licensees shall post a schedule of charges for initial inspection, reinspection and for certification in a prominent place on the premises, and shall file a copy thereof with the director.

g. A licensee may charge an owner whose motor vehicle has been initially inspected by or under the direction of the licensee an amount to be determined by the director.

h. No licensed private inspection center shall require, as a condition of performing the inspection, that any needed repairs or adjustments be done by the person or at the facility of the person performing the inspection.

i. No service or adjustment shall be performed on the vehicle at the licensed private inspection center where the vehicle was initially inspected unless the customer signs a written acknowledgment and waiver indicating that he understands his right to have service and adjustment done elsewhere and expressly waives his right.

j. The director may license any person who is the owner or lessee of 10 or more motor vehicles to initially inspect, reinspect and certify those vehicles if such person has available to him the equipment, facilities and qualified employees, or other qualified person under his control by contract, necessary to make the required initial inspection, adjustments, corrections or repairs. When the licensee, or his employee, or other qualified person under his control conducts an initial inspection, he shall certify that he or his employee or other qualified person under his control by contract has inspected the motor vehicle as prescribed by the director and has found that the motor vehicle conforms to the standards established by law or regulation. When a motor vehicle is reinspected, the licensee shall certify that the items for which a vehicle was initially rejected have been adjusted, corrected or repaired by him or under his direction and that the condition of the items conforms to the standards established by law or regulation. The certification shall be evidenced by a private inspection approval sticker placed on the vehicle as prescribed by the director.

k. Any inspection or reinspection conducted pursuant to this section relating to emissions from a motor vehicle powered with diesel fuel that is also subject to the provisions of 39:8-59 et al. shall be conducted in accordance with the provisions of that act.

l. Every private inspection center license issued on or after May 1 in any year shall be valid through June 30 of the following year.

m. An application or renewal for a private inspection center license shall be in such form and shall contain such information as the director may prescribe, and shall be accompanied annually by a nonrefundable $25 fee, which shall be remitted to the General Treasury. The director shall require a licensee to have in effect at all times liability insurance or such other proof of financial responsibility as he may prescribe, and may require such other qualifications of a licensee and his premises as are necessary.

n. The director shall provide each licensee as many numbered private inspection approval stickers as may be required, and may charge the licensee $1 for each sticker. There shall be no refund or credit for expired or unused private inspection approval stickers. Every licensee shall keep such records of inspections, reinspections and approval stickers issued as the director may prescribe, shall make such records available to the director upon demand, shall institute such safeguards to secure the stickers from theft, loss or fraudulent use as the director may prescribe, shall return any unused expired stickers to the director, and shall upon request account to the director for all stickers.

o. A person who affixes a private inspection approval sticker to a motor vehicle without having reinspected the specific item for which the vehicle was initially rejected, or without having determined that the condition of the item conforms to standards established by law or regulation, shall be guilty of violating the provisions of this chapter, and shall be fined not less than $1,000 or more than $1,500 and shall have the license suspended for a period of at least one year but not more than three years for a first offense or not less than $2,000 or more than $3,500 and shall have the license permanently revoked for a subsequent offense. This section shall be enforced pursuant to 39:8-9.

p. A person who charges a fee for repair work not performed or performed unnecessarily and affixes a private inspection approval sticker shall be punished under the terms of 56:8-1 et seq., and any regulation adopted thereunder.

q. The director may deny, suspend or revoke a private inspection center license or refuse renewal thereof for cause, including but not limited to one or more of the following:

(1) Violation of any provision of this act or of any regulation adopted thereunder, including a finding of guilt made pursuant to 39:8-18;

(2) Fraud or misrepresentation in securing the license or in the conduct of the licensed activity;

(3) Making initial inspection or reinspection service charges in excess of those posted on the licensed premises and filed with the director;

(4) Conviction of a crime involving moral turpitude;

(5) Violation of 56:8-1 et seq. or of any regulation adopted thereunder;

(6) Other good cause.

r. The director may suspend a license for such period as he deems fit, pursuant to the "Administrative Procedure Act". If the director determines that the public interest requires suspension of a license pursuant to this act prior to hearing, the director may do so, provided that the licensee is afforded the opportunity to request in writing a hearing within 10 days of the effective date of the suspension, and an administrative adjudication shall be held as soon thereafter as possible.

s. The suspension or revocation of a private inspection center license shall not of itself be cause for the denial, suspension or revocation of any other business license held by the private inspection center licensee, issued by the State or any of its political subdivisions.

t. Any licensee who discontinues operation of a private inspection center, or whose license has been suspended or revoked, or whose renewal thereof has been denied, shall forthwith deliver to the director the license, all unused private inspection approval stickers, all reinspection records and other items issued to the licensee or required by the director to be kept in connection with the operation of the private inspection center. Any person who fails to deliver these items to the director is a disorderly person.

u. Any person who shall display or cause or permit to be displayed any sign, mark, or advertisement as a private inspection center when a license has not been issued by the director or is not then in effect, or who shall transfer or attempt to transfer a private inspection center license is a disorderly person.

v. All reinspection centers licensed pursuant to 39:8-11 et seq. shall be redesignated as private inspection centers with the authority to make initial motor vehicle inspections, reinspections and repairs to the extent and under the conditions permitted herein. All reinspection center licenses shall be renewed as if they were private inspection center licenses upon their expiration.

w. All licensed private inspection centers shall use emissions test equipment which has been certified by the Department of Environmental Protection. The department shall adopt standards for the certification of the equipment, which shall include but not be limited to all of the following:

(1) An automated system to control test sequencing, the automatic pass or fail decision, and the format for the test report and recorded magnetic tape file;

(2) An exhaust gas analysis portion;

(3) A device to accept and record vehicle identification information; and

(4) A device to provide a printed record of the test results to the consumer.

x. A licensee or his employee shall not perform initial inspections or reinspections and make repairs for compensation pursuant to this act unless qualified by the completion of training courses prescribed by the division, in cooperation with the Department of Environmental Protection, through regulations which establish standards for the training and certification of mechanics employed at private inspection centers.

Source: 39:8-11; 39:8-12; 39:8-13; 39:8-14; 39:8-15; 39:8-16; 39:8-17; 39:8-18; 39:8-19; 39:8-20; 39:8-21; 39:8-37; 39:8-38; 39:8-39.

COMMENT

This section is substantially identical to the original sections. Subsection (a) is the former 39:8-11. Subsection (b) is the former 39:8-12. Subsections (c) – (i) are the former 39:8-13. Subsections (j) and (k) are the former 39:8-14. Subsection (*l*) is the former 39:8-15. Subsection (m) is the former 39:8-16. Subsection (n) is the former 39:8-17. Subsections (o) and (p) are the former 39:8-18. Subsections (q) – (s) are the former 39:8-19. Subsection (t) is the former 39:8-20. Subsection (u) is the former 39:8-21. Subsection (v) is the former 39:8-37. Subsection (w) is the former 39:8-38. Subsection (x) is the former 39:8-39.

39A:IMV-9. Federal clean air mandate compliance act

a. This section shall be known and may be cited as the "Federal Clean Air Mandate Compliance Act."

b. The Legislature finds and declares that:

(1) the federal Clean Air Act requires states that have been determined to be in nonattainment for certain ambient air quality standards to take extraordinary measures to reduce air emissions; and that among these measures is an enhanced motor vehicle inspection and maintenance program.

(2) the standards established by the United States Environmental Protection Agency are based on computer modeling and not on scientific testing; that the requirements of the Environmental Protection Agency regulations therefore may not achieve the federal emission reduction goals for New Jersey; and that officials of the Environmental Protection Agency are no longer mandating that the State program require the use of the "I/M 240" test and have recently expressed a greater flexibility in allowing states to make certain decisions in the implementation of this enhanced inspection and maintenance program.

(3) the inspection and maintenance program being imposed by the Environmental Protection Agency pursuant to the federal law will be expensive and burdensome on the citizens of this State, but that the alternative to adopting this program is a series of federal sanctions that would result in the loss of federal highway monies, more stringent permitting criteria for industry and the imposition of an air pollution control program by the Environmental Protection Agency.

(4) it would not adopt this enhanced motor vehicle inspection and maintenance program if the federal government were not forcing such action by the threat of the above-mentioned sanctions.

(5) it shall take this opportunity to improve the existing motor vehicle inspection system by authorizing competitive contracting for or privatization of motor vehicle inspections and making other necessary legislative reforms to the provisions of Title 39 of the Revised Statutes.

(6) an enhanced inspection and maintenance program shall be adopted, that this inspection and maintenance program shall be as consumer-friendly as possible and shall not use the "I/M 240" test, except as hereinafter specified, and that advanced testing technologies, including but not limited to remote sensing, shall be investigated and used for emission testing to the extent permitted by the Environmental Protection Agency.

c. As used in this chapter:

(1) "Certificate of Approval" means a document, in a form determined by the director, issued in accordance with guidelines set by the division certifying that a motor vehicle complies with the requirements of Title 39 and Title 26 of the Revised Statutes and the regulations regarding the inspection of motor vehicles adopted pursuant thereto;

(2) "Director" means the Director of the Division of Motor Vehicles in the Department of Law and Public Safety;

(3) "Division" means the Division of Motor Vehicles in the Department of Law and Public Safety;

(4) "Federal Clean Air Act" means the federal "Clean Air Act," 42 U.S.C. § 7401 et seq., and any subsequent amendments or supplements to that act;

(5) "Gross weight" means gross vehicle weight rating, as that term is defined in 39:3-10.11;

(6) "Official inspection facility" means a test-only inspection facility that is operated by the division or that the State Treasurer has contracted for pursuant to 39:8-44; and

(7) "Private inspection facility" means an inspection facility licensed by the director pursuant to 39:8-45.

d. The State Treasurer shall either:

(1) Assign to the State the full responsibility for the design, construction, renovation, equipment, establishment, maintenance, and operation of official inspection facilities and other aspects of the inspection and maintenance program, including safety inspections;

(2) Enter into a contract or contracts with a private contractor or contractors for the design, construction, renovation, equipment, establishment, maintenance, and operation of official inspection facilities and other aspects of the inspection and maintenance program, including safety inspections; or

(3) Assign to the State partial responsibility and enter into a contract or contracts with a private contractor or contractors for the remaining responsibility for the design, construction, renovation, equipment, establishment, maintenance, and operation of official inspection facilities and other aspects of the inspection and maintenance program, including safety inspections.

The State Treasurer shall choose one of the options pursuant to this subsection based on a determination of the best interests of the citizens of New Jersey. At least seven business days prior to the award of a contract that includes the operation or maintenance of an official inspection facility pursuant to this section, the State Treasurer shall issue a notice of intent to award the contract and shall submit to the Legislature the notice of intent and a report describing the option chosen, which shall include an economic analysis of the three options listed in this subsection with respect to the operation or maintenance portion of the contract.

e. (1)A contract authorized by this section may, subject to the provisions of 39:8-2(f), include the purchase, lease or sale of an interest in real or personal property. The State Treasurer is authorized to exercise all authority of the Directors of the Division of Purchase and Property and of the Director of Property Management and Construction to award the contract or contracts authorized by this section as a single contract, multiple branch contracts or multiple single contracts. Any contract awarded pursuant to this section shall be awarded in accordance with 52:34-6 et seq. and any rules and regulations promulgated

pursuant to that act. 52:32-2 shall not apply to any contract authorized by this section.

(2) Notwithstanding the provisions of chapter 35 of Title 52 of the Revised Statutes, the State Treasurer is not required to limit bids to persons who are prequalified. The State Treasurer is authorized to require each person who submits a bid for a contract pursuant to this section to submit statements under oath in response to a questionnaire that develops fully that person's financial ability, adequacy of plant and equipment, organization, prior experience and any other facts pertinent and material to qualification, including qualification of any subcontractors, for the contract sought. Any such questionnaire required shall be standardized with respect to, and shall be set forth in, each invitation to bid.

(3) Any other provision of law to the contrary notwithstanding, and subject to guidelines for conflict of interest established by the Attorney General, for the purposes of this section a State officer or employee or a group of State officers or employees may enter into a contract or contracts as a private contractor. A State officer or employee having any duties or responsibilities in connection with the evaluation or awarding of a contract pursuant to this section shall not individually or through any person or entity acting on behalf of that officer or employee bid on or enter into a contract as a private contractor.

(4) A contractor for the operation of an official inspection facility, or any of its officers or employees, may not be engaged in the business of selling, maintaining, or repairing motor vehicles or selling motor vehicle replacement or repair parts. A contractor's employees shall not be deemed employees of the State for any purpose.

f. A contract for the operation of an official inspection facility shall provide for motor vehicle inspection services that are consumer-friendly to the maximum extent feasible. A contract shall at a minimum specify that:

(1) New or relocated inspection facilities shall be sited close to population centers, but in locations that remain convenient for suburban and rural residents;

(2) An inspection facility shall be open for inspections, exclusive of holidays, at least 55 hours each week, including hours prior to 9:00 am or after 5:00 pm on weekdays and hours on the weekend, except that the facility may lessen or expand these hours based on the results of a survey of persons who use the facility for motor vehicle inspections;

(3) An inspection facility shall maintain a climate-controlled waiting area for persons whose motor vehicles are being inspected;

(4) At least one lane at each inspection facility shall be reserved to the extent practicable for reinspections, although this lane may be opened to initial inspections whenever there are no reinspections being performed;

(5) The number of inspection lanes provided for in the contract to be constructed may be increased to meet the standards set by the director pursuant to subsection d. of this section only if the contractor can show that this increase is more cost-effective than extending the hours of operation;

(6) A toll-free telephone number and a network of computerized signs shall be established, and public service announcements shall be aired to advise motorists of the length of lines at inspection facilities. Periodic surveys concerning hours and methods of operation shall be conducted. Each motor vehicle operator who arrives at a facility for an inspection shall be provided with a written document containing the following statement: "The motor vehicle emission test being conducted at this facility has been imposed on the residents of this State by an act of the Congress of the United States and the regulations of the United States Environmental Protection Agency." In addition, the written document shall include the name and address of the Administrator of the federal Environmental Protection Agency and of each member of Congress elected from this State. A contractor shall spend not less than one percent of its operating budget to provide an ongoing public information program; and

(7) All qualified full-time employees whose employment with the division is terminated as a result of 39:8-41 et al. shall be offered full-time employment. If more than one contract for the operation of official inspection facilities is awarded, each contractor shall offer full-time employment to a percentage of the number of such employees that is equal to the percentage of the total number of inspection lanes that will be operated by that contractor.

g. The director shall adopt, pursuant to the "Administrative Procedure Act," regulations to establish the conduct of inspections by any person who has entered into a contract with the State pursuant to subsection a. of this section, and may issue directives or guidelines or enter into contracts or agreements for the oversight and regulation of any person who has entered into a contract with the State pursuant to subsection a. of this section. The director shall establish standards that are designed to achieve average wait times of 30 minutes or less and to keep the overall operating cost of the facilities to a minimum. The director shall develop a system of incentives that are designed to achieve average wait times of 15 minutes or less. Data generated at any official inspection facility shall be the property of the State and shall be fully accessible to the division at any time.

h. If a dispute over contract compliance, performance or termination cannot be resolved by the State Treasurer and the private contractor pursuant to the procedures set forth in a contract entered into pursuant to the provisions of this section, either party to the contract may file with the Superior Court a request either for an order either to terminate the contract or for an order for other appropriate relief to the dispute. Any provision of 59:13- 5 to the contrary notwithstanding, the State Treasurer may consent to the filing of such a request prior to the expiration of 90 days from the date that the notice of claim is received. The court may take such action as it may deem necessary to facilitate the expeditious resolution of the dispute and an expeditious response to the request, including ordering the parties to undertake dispute resolution, mediation, or arbitration as provided in 59:13-7. Within 90 days after the filing of a request, the court shall either grant the request or deny the request. If the request is granted, the court shall order such appropriate relief measures or remedies as it deems appropriate and necessary.

i. (1) A person whose employment with the Division of Motor Vehicles is terminated as a result of a contract entered into pursuant to subsection a. of this section, who does not accept an offer of employment with a contractor pursuant to

paragraph (7) of subsection c. of this section, and who undergoes counseling pursuant to 34:15D-7, may apply for a training grant pursuant to 34:15D-6.

(2) Any provision of 34:15D-1 et al. to the contrary notwithstanding, the Workforce Development Program in the Department of Labor may provide a training grant to each person who applies pursuant to paragraph (1) of this subsection for a training grant to pay for employment and training services as provided pursuant to 34:15D-6.

j. The chief administrator:

(1) after appropriate inquiry and investigation, may license persons to operate private inspection facilities to inspect initially, reinspect and certify all motor vehicles that are subject to inspection pursuant to 39:8-1. A person shall not be licensed unless qualified to conduct the inspections and reinspections, and in possession of the necessary equipment.

(2) by regulation with the concurrence of the Department of Environmental Protection, may establish a limited number of distinct classes of licenses, may restrict the activities authorized by each distinct class of license, including restrictions as to the vehicles that may be inspected or reinspected, and may restrict the services that holders of each class may perform in addition to the activities authorized by the license. These regulations shall permit private inspection facilities to perform initial inspections on motor vehicles four years old or newer and, to the maximum extent feasible, permit private inspection facilities to perform initial inspections on motor vehicles that are more than four years old and to repair and reinspect all motor vehicles.

b. The chief administrator:

(1) may license as a private inspection facility any person that is the owner or lessee of 10 or more motor vehicles to initially inspect, reinspect and certify vehicles that the person owns or leases.

(2) by regulation with the concurrence of the Department of Environmental Protection, may restrict the activities authorized by a license issued pursuant to this subsection, including restrictions as to the vehicles that may be inspected or reinspected, and may restrict the services that holders of this license may perform in addition to the activities authorized by the license.

k. The chief administrator shall require a private inspection facility licensee to have in effect at all times liability insurance or such other proof of financial responsibility as the chief administrator may prescribe; and may require a performance bond.

l. The chief administrator shall prescribe the form and content of the application for a private inspection facility license, and may charge a nonrefundable application fee not to exceed $20. The chief administrator may charge a license fee, not to exceed $250, to be paid by a person for each year or part of a year in which that person holds a private inspection facility license. All fees collected pursuant to this subsection shall be paid to the State Treasurer and deposited in the "Motor Vehicle Inspection Fund" established pursuant to 39:8-2(j).

m. For the purposes of this section, each applicant for a license shall submit to the chief administrator the applicant's name, address, fingerprints and written consent for a criminal history record background check to be performed. The chief administrator is hereby authorized to exchange fingerprint data with and receive criminal history record information from the State Bureau of Identification in the Division of State Police and the Federal Bureau of Investigation consistent with applicable State and federal laws, rules and regulations, for purposes of facilitating determinations concerning licensure eligibility. The applicant shall bear the cost for the criminal history record background check, including all costs of administering and processing the check. The Division of State Police shall promptly notify the chief administrator in the event a current holder of a license or prospective applicant, who was the subject of a criminal history record background check pursuant to this section, is arrested for a crime or offense in this State after the date the background check was performed.

n. A private inspection facility licensee:

(1) when it conducts an initial inspection, shall either reject the vehicle or certify that the vehicle was inspected pursuant to chapter 8 of Title 39 of the Revised Statutes and was found to conform to the standards established by law and regulation. When a vehicle is reinspected, the private inspection facility licensee shall either reject the vehicle or certify that the items for which a vehicle was initially rejected conform to the standards established by law and regulation. The certification shall be evidenced by a private inspection certificate of approval placed on the vehicle as prescribed by the director.

(2) may charge an amount approved by and on file with the director for initial inspection, reinspection, and certification of a vehicle, which amount shall be subject to any maximum limits that may be established by the director by regulation. The director may establish maximum amounts that may be charged for initial inspection or reinspection based on the average length of time required to inspect a vehicle or reinspect a specific rejected item.

(3) shall post a schedule of charges for initial inspection, reinspection and certification in a prominent place on the premises, and shall file a copy thereof with the director.

(4) shall not require, as a condition of performing an inspection, that any needed repairs or adjustments be done by the licensee or at a specific facility identified by the licensee or by an agent thereof.

o. The director shall provide each private inspection facility with as many certificates of approval and rejection stickers as may be required and may charge the private inspection facility licensee a fee of $1 for each certificate or sticker, which fee shall be refunded for any expired or unused certificates or stickers. All fees collected pursuant to this subsection shall be paid to the State Treasurer and deposited in the "Motor Vehicle Inspection Fund" established pursuant to 39:8-2(j). Every private inspection facility licensee shall:

(1) Keep such records of inspections and reinspections and of certificates and stickers issued in such form as the director may determine;

(2) Make such records available to the director upon demand;

(3) Institute such safeguards to secure the certificates and stickers from theft, loss or fraudulent use as the director may prescribe;

(4) Return any unused expired certificates or stickers to the director; and

(5) Upon request account to the director for all certificates and stickers.

p. An owner or operator of a private inspection facility that for any reason, including but not limited to theft, destruction, loss, or damage, does not upon request either promptly return or properly account for a certificate or sticker shall be liable to a civil penalty of not less than $100 for each such certificate or sticker, to be collected in a civil action commenced by the director. Any penalty imposed pursuant to this subsection may be collected with costs in a summary proceeding pursuant to "the penalty enforcement law," 2A:58-1 et seq. The Superior Court and the municipal court shall have jurisdiction to enforce the provisions of "the penalty enforcement law" in connection with this subsection. Any fine collected pursuant to this subsection shall be paid to the State Treasurer and deposited in the "Motor Vehicle Inspection Fund".

q. A person who is employed by or under contract with a private inspection facility and who affixes a certificate of approval or a waiver certificate to a motor vehicle without having properly inspected the vehicle or without having determined that the condition of the vehicle conforms to standards established by law or regulation shall be liable to a civil penalty of not less than $500, to be collected in a civil action commenced by the director. Any penalty imposed pursuant to this section may be collected with costs in a summary proceeding pursuant to "the penalty enforcement law," 2A:58-1 et seq. The Superior Court and the municipal court shall have jurisdiction to enforce the provisions of "the penalty enforcement law" in connection with this section. A private inspection facility licensee shall be severally liable for any violation of this section by any person employed by or under contract with the private inspection facility licensee. Any fine collected pursuant to this section shall be paid to the State Treasurer and deposited in the "Motor Vehicle Inspection Fund". In addition to any civil penalty imposed, the director may suspend the license of a private inspection facility that violates this section for a period of not less than six months. The director may also file an action in Superior Court to enjoin any violation of this section.

r. The director may, pursuant to the "Administrative Procedure Act," deny, suspend or revoke a private inspection facility license or refuse renewal thereof for cause, including but not limited to one or more of the following:

(1) Violation of any provision of 39:8-41 et al. or of any rule or regulation adopted pursuant thereto;

(2) Fraud or misrepresentation in securing the license or in the conduct of the licensed activity;

(3) Making initial inspection or reinspection service charges in excess of those posted on the licensed premises and filed with the director;

(4) Conviction of a crime involving fraud or moral turpitude;

(5) Violation of 56:8-1 et seq. or of any regulation adopted thereunder;

(6) Failure to successfully complete any training or testing requirements that are a prerequisite to licensure;

(7) Fraudulently, willfully or negligently performing an improper inspection on a motor vehicle;

(8) Failure to pay a fee required by law; or

(9) Other good cause.

s. If the director determines that the public interest requires immediate suspension of a private inspection facility license prior to hearing, the director may do so, provided that the private inspection facility licensee is afforded the opportunity to request in writing a hearing within 10 days of the effective date of the suspension, and an administrative adjudication shall be held as soon thereafter as possible. The ordered suspension shall become final if a written request is not received by the director within 10 days of service of the notice or the scheduled suspension or order of suspension as the case may be. If the director determines it necessary to suspend a license prior to hearing and the private inspection facility licensee files a request for a hearing within the time prescribed by this section, the director may hold a preliminary hearing to determine whether sufficient cause exists to continue such suspension until a plenary hearing can be conducted.

t. A private inspection facility or an official inspection facility shall use emission testing equipment that has been certified by the Department of Environmental Protection. The Department of Environmental Protection shall adopt standards for the certification of the equipment, which may include but shall not be limited to any of the following:

(1) An automated system to control test sequencing, the automatic pass or fail decision, and the format for the test report and electronic medium for storage and transmission of test results;

(2) An exhaust gas analysis portion;

(3) A device to accept and record vehicle identification information;

(4) A device to provide a printed record of the test results to the owner or lessee; and

(5) A chassis dynamometer.

u. All licenses issued pursuant to 39:8-11 shall expire and be of no force and effect on or after January 1, 1996, unless extended by the director. All licensed private inspection centers shall deliver to the director the license, all unused private inspection approval stickers, all inspection records and other items issued to the licensee or required by the director to be kept in connection with the operation of the private inspection center.

v. A person shall not conduct any emission inspection required by the director on a motor vehicle unless that person is licensed as an emission inspector by the director. The director may establish a fee not to exceed $50 for the licensure and relicensure of emission inspectors and shall establish standards and requirements for the licensure and relicensure of emission inspectors including, at a minimum, the successful completion of

emission training and testing requirements determined by the director in consultation with the Department of Environmental Protection as a prerequisite to licensing. Any license issued pursuant to this section shall be valid for the period set by the director, which shall not be longer than two years. The successful completion of refresher training and testing, at a minimum, shall be required prior to license renewal. All fees collected pursuant to this subsection shall be turned over to the State Treasurer and deposited in the "Motor Vehicle Inspection Fund".

w. The director may deny, suspend or revoke any license authorized to be issued by this section or refuse renewal thereof for cause, including but not limited to one or more of the following:

(1) Violation of any provision of 39:8-41 et al. or of any regulation adopted pursuant thereto;

(2) Fraud, misrepresentation or misstatement in securing the license or in the conduct of the licensed activity;

(3) Conviction of a crime involving fraud or moral turpitude;

(4) Violation of 56:8-1 et seq. or of any regulation adopted pursuant thereto;

(5) Failure to successfully complete any training or testing requirements that are a prerequisite to licensure;

(6) Failure to pay any fee required by law; or

(7) Other good cause.

x. The director:

(1) shall adopt, after consultation with the Division of Consumer Affairs in the Department of Law and Public Safety, rules and regulations for the registration of facilities authorized to perform emission-related repairs on vehicles that fail a required emission test. A facility or business shall not correct, adjust or repair, for compensation, any motor vehicle that has failed an emission test required by the director unless it has first obtained from the director a motor vehicle repair facility registration authorizing the facility or business to repair vehicles that have failed an emission test required by the director. The director may establish an annual registration fee, which shall not exceed $50, to defray the cost of registering these businesses and facilities. All fees collected pursuant to this section shall be paid to the State Treasurer and deposited in the "Motor Vehicle Inspection Fund".

(2) may deny, suspend or revoke any registration issued pursuant to this section, or refuse renewal thereof, for performance by a registered business or facility of an improper repair on a motor vehicle or for other good cause.

(3) may establish or approve a repair technician certification program for persons who perform, for compensation, emission-related repairs on vehicles that fail a required emission test.

y. The Department of Education, in consultation with the Department of Environmental Protection, shall develop and make available a course of instruction, to be offered at State community colleges and other appropriate educational institutions, for the purpose of training repair technicians in the diagnosis and repair of motor vehicle emission control systems.

z. A person who displays or causes or permits to be displayed any sign, mark, or advertisement, or otherwise identifies that person as a private inspection facility, a registered motor vehicle repair facility or an emission inspector when not holding a valid license or registration issued by the director, or who inspects a motor vehicle without being licensed as a private inspection facility, or who conducts an emission inspection without being licensed as an emission inspector, or who performs for compensation an emission-related repair on a motor vehicle that has failed an emission test without being registered as a motor vehicle emission repair facility, or who transfers or attempts to transfer a valid license or registration, shall be subject to a fine of not less than $1,000 or imprisonment for not more than 30 days, or both. Any fine collected under the provisions of this section shall be paid to the State Treasurer and deposited in the "Motor Vehicle Inspection Fund".

aa. The director, either directly or through an agent, may grant a waiver from the requirement that a vehicle satisfy emission standards. A waiver shall be valid for one inspection cycle. The waiver may be issued to any vehicle that cannot successfully pass the emission tests upon reinspection, provided the vehicle owner or lessee demonstrates compliance with the following to the satisfaction of the director or agent:

(1) All available warranty coverage for vehicle emission systems has been used to obtain needed repairs on the vehicle or written denial of warranty coverage in a form and manner prescribed by the director has been provided; and

(2) The owner has expended, within 30 days prior to an emission test that is failed on or after January 1, 1998 or following the failed emission test, the amount for emission related repairs specified in rules and regulations adopted by the United States Environmental Protection Agency pursuant to the federal Clean Air Act; and

(3) The repairs made on the vehicle were appropriate to the cause of the emission test failure; and

(4) The repairs were made by a registered motor vehicle repair facility or by the owner of the vehicle provided he possesses a nationally recognized certification for emission-related diagnosis and repair; and

(5) The vehicle complies with the safety inspection requirements of this chapter and the rules adopted by the director; and

(6) Any other requirements established by the director by regulation; and

(7) Any other requirements established by the Department of Environmental Protection with the concurrence of the director.

bb. The owner or lessee of a motor vehicle that is subject to inspection pursuant to 39:8-1 and that is included in either a "Voluntary Emissions Recall" as defined at 40

C.F.R. § 85.1902(d) or any amendment thereto or in a remedial plan determination made pursuant to section 207(c) of the federal Clean Air Act or any amendment thereto, for which owner notification occurs after the effective date of 39:8-41 et al., shall obtain the required repairs within the time period established by the director, in consultation with the Department of Environmental Protection, in order to obtain a certificate of approval. The director shall allow the owner or lessee of a motor vehicle which is subject to recall a minimum of 60 days in which to comply with such recall notice. It shall be the responsibility of the owner and lessee of a vehicle to submit proof of required repairs in response to such recall notice in a form and manner determined by the director. The director shall suspend the registration privileges or deny an application for registration for any vehicle that has failed to receive necessary repairs in response to a "Voluntary Emissions Recall" or to a remedial plan determination within the time period established by the director in consultation with the Department of Environmental Protection.

Source: 39:8-41; 39:8-42; 39:8-43; 39:8-44; 39:8-45; 39:8-46; 39:8-47; 39:8-48; 39:8-49; 39:4-50; 39:8-51; 39:8-52; 39:8-53; 39:8-54; 39:8-55; 39:8-56;

COMMENT

This section is substantially identical to the original sections. Subsection (a) is the former 39:8-41. Subsection (b) is the former 39:8-42. Subsection (c) is the former 39:8-43. Subsections (d) – (i) are the former 39:8-44. Subsections (j) – (m) are the former 39:8-45. Subsection (n) is the former 39:8-46. Subsections (o) and (p) are the former 39:8-47. Subsection (q) is the former 39:8-48. Subsections (r) and (s) are the former 39:4-49. Subsection (t) is the former 39:4-50. Subsection (u) is the former 39:8-51. Subsections (v) and (w) are the former 39:8-52. Subsections (x) and (y) are the former 39:8-53. Subsection (z) is the former 39:8-54. Subsection (aa) is the former 39:8-55. Subsection (bb) is the former 39:8-56. 39:8-57 was eliminated as duplicative or earlier provisions and 39:8-59 was eliminated as no longer necessary.

39A:IMV-10. Diesel inspections

a. The Legislature:

(1) finds and declares that exhaust emissions from diesel buses, heavy-duty diesel trucks, and other diesel-powered motor vehicles contribute significantly to air pollution problems within the State; that such emissions diminish the quality of life and health of our citizens; and that the technology and state of the art in determining and controlling the level of unacceptable exhaust emissions from diesel buses, heavy-duty diesel trucks, and other diesel-powered motor vehicles are continually being advanced and that the procedures, test methods and standards for determination of such unacceptable levels must be reflective of those advances.

(2) therefore determines that it is in the public interest to establish a program regulating exhaust emissions from diesel buses, heavy-duty diesel trucks, and certain other diesel-powered motor vehicles.

b. As used in this section:

(1) "Diesel bus" means any diesel-powered autobus or motorbus of any size or configuration, whether registered in this State or elsewhere, that is designed or used for intrastate or interstate transportation of passengers for hire or otherwise on a public road, street or highway or any public or quasi-public

property in this State, and shall include, but need not be limited to: autobuses under the jurisdiction of the commission pursuant to Titles 27 or 48 of the Revised Statutes; autobuses of the New Jersey Transit Corporation and its contract carriers that are under the inspection jurisdiction of the commission; autobuses that are subject to federal motor carrier safety regulations; autobuses under the authority of the Interstate Commerce Commission or its successor agency; school buses, as defined pursuant to 39:1-1; hotel, casino, charter, and special buses; and any other diesel-powered autobus or motorbus as determined by rule or regulation adopted by the commission in consultation with the Department of Transportation;

(2) "Diesel-powered motor vehicle" means a vehicle, whether registered in this State or elsewhere, that is self-propelled by a compression ignition type of internal combustion engine using diesel fuel and that (1) is designed or used for transporting persons or property on any public road, street or highway or any public or quasi-public property in this State, (2) is greater than 8,500 pounds gross vehicle weight, (3) is not a diesel bus or heavy-duty diesel truck, and (4) is not a heavy-duty diesel truck or other diesel-powered motor vehicle owned and operated by a county, municipality, fire district, or duly incorporated nonprofit organization for first aid, emergency, ambulance, rescue, or fire-fighting purposes. Diesel-powered motor vehicle shall also mean a vehicle that is designed or used for construction or farming purposes and is greater than 8,500 pounds gross vehicle weight, except that the commission, in consultation with the Department of Environmental Protection, may exempt from the requirements of this act diesel-powered motor vehicles that are registered as construction vehicles under Titles 39 and 41 of the Revised Statutes or that are greater than 8,500 pounds gross vehicle weight and are designed or used for construction or farming purposes;

(3) "EPA" means the United States Environmental Protection Agency;

(4) "Gross vehicle weight rating" or "GVWR" means the value specified by the manufacturer as the loaded weight of a single or combination (articulated) vehicle. The GVWR of a combination (articulated) vehicle, commonly referred to as the "gross combination weight rating" or "GCWR," is the GVWR of the power unit plus the GVWR of the towed unit or units;

(5) "Heavy-duty diesel truck" means any diesel-powered motor vehicle, whether registered in this State or elsewhere, with a GVWR of 18,000 or more pounds that is designed or used for the transporting of property on any public road, street or highway or any public or quasi-public property in this State. Heavy-duty diesel truck shall not mean a heavy-duty diesel truck owned and operated by a county, municipality, fire district, or duly incorporated nonprofit organization for first aid, emergency, ambulance, rescue, or fire-fighting purposes;

(6) “Periodic inspection program" or "periodic inspection" means a program in which diesel buses, heavy-duty diesel trucks, and other diesel-

powered motor vehicles registered in this State are periodically inspected in accordance with the provisions of this act;

(7) "Person" means a corporation, company, association, society, firm, partnership, or joint stock company, or an individual, and shall also include the State and all of its political subdivisions and any agencies, authorities, corporations, or instrumentalities of the State or any political subdivision thereof; and

(8) "Roadside enforcement program" or "roadside inspection" means a roadside examination program conducted pursuant to this act for the inspection of exhaust emissions, emission control apparatus and such other items as the Department of Environmental Protection, in consultation with the commission and the Commissioner of Transportation, prescribes, of diesel buses, heavy-duty diesel trucks, and other diesel-powered motor vehicles along any public road, street or highway or any public or quasi-public property in this State or at such other locations as may be designated by the commission in consultation with the Commissioner of Transportation.

c. The Department of Environmental Protection, in consultation with the commission and the Department of Transportation, shall adopt rules and regulations pursuant to the "Administrative Procedure Act," establishing exhaust emissions standards and test methods, and standards for emission control apparatus and related items, in accordance with 26:2C-8.1 et seq. or as may be authorized or provided otherwise by federal law, rule or regulation, for diesel buses, heavy-duty diesel trucks, and other diesel-powered motor vehicles. The test methods shall be accurate, objective, and capable of being performed routinely in the periodic inspection program and the roadside enforcement program. In adopting such standards and test methods, the Department of Environmental Protection may consider, but need not necessarily adopt, exhaust control technology current at the time of adoption of the rules and regulations, as well as guidance, standards, directives, and other information issued by the EPA, any other state, or any governmental agency, scientific research entity, or industry. The Department of Environmental Protection may provide that the standards and test methods vary according to the age of the vehicle or according to other relevant factors, and the department may provide exemptions based upon good cause, including, but not limited to, whether the vehicle has been tested within the previous six months or other reasonable period of time in accordance with the law of another state or jurisdiction and has been found to be in compliance with the exhaust emissions standards of the state or jurisdiction in which the vehicle was tested. The provisions of this act shall not apply to any heavy-duty diesel truck or other diesel-powered motor vehicle owned and operated by a county, municipality, fire district, or duly incorporated nonprofit organization for first aid, emergency, ambulance, rescue, or fire-fighting purposes.

d. No owner or lessee of a diesel bus, heavy-duty diesel truck, or other diesel-powered motor vehicle shall operate, or cause or allow the operation of, that diesel bus, heavy-duty diesel truck, or other diesel-powered motor vehicle in this State in violation of the standards established by the Department of Environmental Protection and determined in accordance with test methods and procedures established pursuant to this act.

e. The owner and the lessee, if any, of a heavy-duty diesel truck operated in violation of 39:8-62 shall be jointly and severally liable for a civil penalty of: $700 for the first violation, except as otherwise provided in this subsection; and $1,300 for the second or subsequent violation, except as otherwise provided in this subsection. A second or subsequent violation is one that occurs within one year of the occurrence of a previous violation committed with respect to the same heavy-duty diesel truck, without regard to the date of the hearing that adjudicated the violation and without regard to the identity of the defendant against whom it was adjudicated. The complaint and summons shall state whether the charges pertain to a first violation or to a second or subsequent violation, but if the complaint and summons fail to allege a second or subsequent violation, the civil penalty imposed shall be that for a first violation. The penalty for a first violation may be reduced to $150 and the penalty for a second or subsequent violation may be reduced to $500 if the defendant provides a certification of the repairs to the vehicle that is satisfactory to the court and in compliance with emissions standards. Notwithstanding any other provision of law or any rule or regulation to the contrary, repairs to effect a reduction of penalty under the provisions of this subsection shall be made before the hearing date or within 45 days of the occurrence of the violation, whichever is sooner. A defendant who is permitted to waive appearance and plead guilty by mail shall also be permitted to submit the certification of repairs by mail; provided that if the court deems the certification to be inadequate, it shall afford the defendant the option to withdraw the defendant's guilty plea. The commission may, by rule or regulation:

(1) specify the manner of the repairs and the certification necessary to effect a reduction of penalty;

(2) provide that information pertaining to penalties, the repairs that may effect a reduction of penalty, and the certification necessary to substantiate those repairs and compliance with emissions standards be served with the complaint and summons; and

(3) prescribe a form for certifying repairs and compliance with emissions standards, with instructions as to how the form should be completed and certified. The commission may provide that the form be served with the complaint and summons.

f. The owner and the lessee, if any, of a diesel bus operated in violation of section 4 of this act shall be jointly and severally liable for a civil penalty determined by a penalty schedule that the commission, in consultation with the Commissioner of Transportation, shall adopt by rule or regulation pursuant to the "Administrative Procedure Act," but in no event shall the penalties established thereby exceed the penalties established by subsection a. of this section for heavy-duty diesel trucks. The penalty schedule may provide for a reduction of penalty if the defendant provides a certification of the repairs to the vehicle that is satisfactory to the court and in compliance with emissions standards. Notwithstanding the provisions of this subsection to the contrary, the New Jersey Transit Corporation shall not be liable for any civil penalty assessed for a violation of any provision of this act if the diesel bus that is the subject of the violation is operated by a lessee or contractor, or an employee or agent of a lessee or contractor, of the New Jersey Transit Corporation. However, if a diesel bus that is the subject of a violation is leased by the New Jersey Transit Corporation from another

person, and the diesel bus is operated by the New Jersey Transit Corporation or an employee thereof, the New Jersey Transit Corporation as lessee, and not the owner of the diesel bus, shall be liable for any civil penalty assessed for the violation. The commission, in consultation with the Commissioner of Transportation, may, by rule or regulation:

(1) specify the timing and manner of the repairs and compliance with emissions standards, and the certification necessary to effect a reduction of penalty.

(2) provide whether information pertaining to repairs and compliance with emissions standards, and whether a form to certify those repairs and that compliance, should be served with the complaint and summons.

g. The owner and the lessee, if any, of a diesel-powered motor vehicle operated in violation of 39:8-62 shall be jointly and severally liable for a civil penalty determined by a penalty schedule that the commission shall adopt by rule or regulation pursuant to the "Administrative Procedure Act," but in no event shall the penalties established thereby exceed the penalties established by subsection a. of this section for heavy-duty diesel trucks. The penalty schedule may provide for a reduction of penalty if the defendant provides a certification of the repairs to the vehicle that is satisfactory to the court and in compliance with emissions standards. The commission may, by rule or regulation, specify the timing and manner of the repairs and compliance with emissions standards, and the certification necessary to effect a reduction of penalty. The commission may, by rule or regulation, provide whether information pertaining to repairs and compliance with emissions standards, and whether a form to certify those repairs and that compliance, should be served with the complaint and summons.

h. The commission, in consultation with the Department of Environmental Protection and the Department of Transportation and with the approval of the Attorney General, shall establish and implement a periodic inspection program and a roadside enforcement program to implement the standards and test methods adopted pursuant to 39:8-61 of this act. These programs shall be designed to measure exhaust emissions and to inspect emission control apparatus and related items on diesel buses, heavy-duty diesel trucks, and other diesel-powered motor vehicles. The programs shall include, at a minimum, diesel buses and heavy-duty diesel trucks subject to the rules and regulations adopted pursuant to 39:8-61; provided that the commission, in consultation with the Department of Transportation, may exempt vehicles from either program for good cause, which may include that vehicles belonging to an exempted class are, by law, subject to emissions testing in another program.

i. The commission, in consultation with the Department of Environmental Protection and with the approval of the Attorney General, may, by rule or regulation, expand the periodic inspection program and the roadside enforcement program to include other diesel-powered motor vehicles that are subject to the rules and regulations adopted pursuant to 39:8-61.

j. The commission, in consultation with the Commissioner of Transportation, may, by rule or regulation, impose upon every owner and lessee of a diesel bus, heavy-duty diesel truck, or other diesel-powered motor vehicle subject to periodic inspection the

obligation to have the vehicle periodically inspected in a manner determined by the commission in consultation with the Commissioner of Transportation, to effect repairs or to abstain from operating or to limit the operation of a rejected vehicle or a vehicle overdue for inspection, and may take other action necessary or appropriate for implementation of the periodic inspection program. The commission, in consultation with the Commissioner of Transportation, may, by rule or regulation, impose upon every owner and lessee of a diesel bus, heavy-duty diesel truck, or other diesel-powered motor vehicle subject to roadside inspection the obligation to abstain from operating or to limit the operation of a vehicle that has been tested and found to be in violation of the rules and regulations adopted pursuant to 39:8-61, or to effect repairs, and may take other action necessary or appropriate for implementation of the roadside enforcement program. A school bus, as defined pursuant to 39:1-1, shall be exempt from the roadside enforcement program. However, nothing in this section allowing or mandating exemptions from the periodic inspection program or the roadside enforcement program shall be construed to limit any other enforcement actions permitted by law.

k. The commission shall exercise all authority, including but not limited to administrative, implementation, enforcement, and penalty authority, in connection with the periodic inspection program for diesel buses and the roadside enforcement program for diesel buses that are under the jurisdiction of the commission pursuant to Titles 27 and 48 or any other law, rule, or regulation. The commission shall consult with the Department of Environmental Protection and the Department of Transportation in conducting the periodic inspection program for diesel buses and the roadside enforcement program for diesel buses that are under the jurisdiction of the commission. Any periodic inspection that may be required pursuant to this act for a diesel bus under the jurisdiction of the commission shall be conducted only in conjunction with any periodic safety inspection required for that diesel bus pursuant to law, rule, or regulation. Any suspension of registration privileges with respect to diesel buses for a violation of this act or any rule or regulation adopted pursuant thereto shall be implemented by the commission.

l. a. The commission, in consultation with the Department of Environmental Protection and the Department of Transportation, shall establish procedures by which test methods established pursuant to 39:8-61 shall be conducted in the periodic inspection program and in the roadside enforcement program.

m. The commission, in consultation with the Department of Transportation and with the approval of the Attorney General, may, by rule or regulation, require that personnel from, and agents of, the commission and the Department of Transportation, and personnel from the Division of State Police, who perform the test methods utilized in the roadside enforcement program, and licensees and persons employed by licensees who perform the tests and test methods utilized in the periodic inspection program in accordance with the provisions of 39:8-69 be trained to do so and be examined, periodically if the rule or regulation so provides, to ensure that their training and competence are adequate. Testing in the roadside enforcement program may be conducted by personnel from the commission, or the Division of State Police, or by agents appointed by or under contract with the commission.

n. The commission, in consultation with the Department of Environmental Protection and the Department of Transportation and with the approval of the Attorney General, shall designate one or more test methods among those established pursuant to section 3 of this act that shall be utilized in the roadside enforcement program established pursuant to 39:8-64. The commission, in consultation with the Department of Transportation and with the approval of the Attorney General, shall establish a form or forms upon which the results of these designated tests or test methods shall be reported in the ordinary course. The form shall contain:

(1) a statement or statements establishing the following:

(A) the type of test performed; the result achieved;

(B) that the person completing the form is the person who performed the test;

(C) that the tester has been certified by the commission as having adequate training and competence to perform the test;

(D) that the tester is an employee or agent of the State and was acting in an official capacity when the tester performed the test; and

(E) any other information that the commission may prescribe.

(2) a certification subscribed by the person performing the test and certifying that that person did perform the test in a proper manner and believes the test results to be valid and accurate.

The presentation of a form prepared in accordance with the provisions of this subsection to a court by any party to a proceeding shall be evidence that all of the requirements and provisions of this subsection have been met and that the form has been prepared in accordance with the provisions of this subsection. The form shall be admissible evidence as proof of the statements contained therein in any civil penalty proceeding brought pursuant to the provisions of this act or any rule or regulation adopted pursuant thereto. A copy of the form shall be served, if practicable, with the complaint and summons upon the defendant or the defendant's agent for service of process; and, in any event, shall be served upon such person at least 20 days before the hearing. Whenever the form is served upon a defendant or a defendant's agent, together with the complaint and summons, the law enforcement officer serving the form shall execute and file with the court a proof of service on a form prescribed by the Administrative Director of the Courts and in a manner consistent with the Rules Governing the Courts of the State of New Jersey. The form shall not be admissible if it is not served at least 20 days before the hearing, provided that the court, upon a showing of good cause and that the defendant is not prejudiced, may postpone the hearing, subject to the Rules Governing the Courts of the State of New Jersey.

o. A roadside inspection of a diesel bus to enforce standards adopted pursuant to 39:8-61 shall be conducted only in conjunction with a roadside safety inspection that is conducted pursuant to law, rule or regulation.

p. The Superintendent of the State Police, in consultation with and subject to the approval of the Attorney General, shall provide State Police officers to assist the

commission in conducting the roadside enforcement program and the pilot roadside enforcement program. The State Police officers shall have authority to direct diesel buses, heavy-duty diesel trucks, or other diesel-powered motor vehicles from the roadway for the purpose of inspection, and shall perform other police duties necessary for or helpful to the implementation of the programs. The State Police officers shall maintain records of these inspections and shall forward the information concerning the number of inspections, and the type of violations and the number of each type of violation to the Department of Environmental Protection.

q. In addition to any other penalties that may be applicable, the operator of a diesel bus, heavy-duty diesel truck, or other diesel-powered motor vehicle who fails to comply with any direction given pursuant to 39:8-67 or who refuses to submit or resists submitting a vehicle under the operator's control for roadside inspection, or who fails to comply with any other obligation imposed upon that person as part of the roadside enforcement program shall be jointly and severally liable with the owner and the lessee, if any, of the vehicle for a civil penalty of $500. The owner and the lessee, if any, of a diesel bus, heavy-duty diesel truck, or other diesel-powered motor vehicle subject to periodic inspections who violates any rule or regulation adopted pursuant to 39:8-64 pertaining to periodic inspections shall be liable for a civil penalty determined by a penalty schedule that the commission, in consultation with the Commissioner of Transportation, shall adopt by rule or regulation pursuant to the "Administrative Procedure Act," but in no event shall a penalty established thereby exceed $500. Notwithstanding the provisions of this section to the contrary, the New Jersey Transit Corporation shall not be liable for any civil penalty assessed for a violation of this section if the diesel bus that is the subject of the violation is operated by a lessee or contractor, or an employee or agent of a lessee or contractor, of the New Jersey Transit Corporation. However, if a diesel bus that is the subject of a violation of this section is leased by the New Jersey Transit Corporation from another person, and the diesel bus is operated by the New Jersey Transit Corporation or an employee thereof, the New Jersey Transit Corporation as lessee, and not the owner of the diesel bus, shall be liable for any civil penalty assessed for the violation.

r. The commission, in consultation with the Department of Transportation and after appropriate inquiry and investigation, shall issue licenses to operate diesel emission inspection centers to as many qualified and properly equipped persons, including owners or lessees of diesel buses, heavy-duty diesel trucks, or other diesel-powered motor vehicles, as the commission determines shall be necessary to conduct periodic inspections. A licensee shall inspect and pass or reject a diesel bus, heavy-duty diesel truck, or other diesel-powered motor vehicle presented to the licensee for inspection. Passing shall indicate that the licensee or the licensee's employee has inspected the diesel bus, heavy-duty diesel truck, or other diesel-powered motor vehicle as prescribed by the commission and has found that the vehicle conforms to the standards established by law and rule or regulation. The commission, in consultation with the Department of Transportation and with the approval of the Attorney General, may establish by rule or regulation adopted pursuant to the "Administrative Procedure Act," an application fee for the licensing of diesel emission inspection centers, which fee shall not exceed $250 per year.

s. For the purpose of documenting compliance with periodic inspection requirements, the commission shall furnish official inspection forms to licensed diesel emission inspection centers. The commission shall require each diesel emission inspection center and each owner or lessee of a diesel bus, heavy-duty diesel truck, or other diesel-powered motor vehicle subject to periodic inspection to keep such records and file such reports regarding these inspections as the commission shall deem necessary. The commission may conduct such audits or inspections of these centers as the commission deems appropriate.

t. The commission may deny, suspend or revoke a diesel emission inspection center license or refuse renewal thereof for cause, including, but not limited to, one or more of the following:

(1) Violation of any provision of this act or of any rule or regulation adopted pursuant thereto; or

(2) Fraud or misrepresentation in securing a license or in the conduct of the licensed activity; or

(3) Conviction of a crime demonstrating that the applicant or licensee is unfit; or

(4) Improper, negligent, or fraudulent inspection of a diesel bus, heavy-duty diesel truck, or other diesel-powered motor vehicle; or

(5) Other good cause.

u. In addition to any other civil or criminal penalties that may be applicable, a person licensed by the commission to operate a diesel emission inspection center who commits fraud or misrepresentation in securing a license or in the conduct of the licensed activity or who improperly or negligently or fraudulently conducts an inspection of a diesel bus, heavy-duty diesel truck, or other diesel-powered motor vehicle shall be liable for a civil penalty of $1,500. In addition to any other civil or criminal penalties that may be applicable, a person licensed by the commission to operate a diesel emission inspection center who otherwise violates any provision of this act or of any rule or regulation adopted pursuant thereto shall be liable for a civil penalty of $500.

v. Any person who violates any provision of 39:8-60 to 39:8-80 or any rule or regulation adopted pursuant thereto shall be liable for a civil penalty. The amount of the penalty shall be that specified in the other sections of this act or in the rules or regulations adopted pursuant to this act; but if no amount is otherwise specified, then the amount shall be $200. Additionally, the commission may suspend the registration privileges of a vehicle registered in this State that is operated in violation of this act or any rule or regulation adopted pursuant thereto.

Source: 39:8-59; 39:8-60; 39:8-61; 39:8-62; 39:8-63; 39:8-64; 39:8-66; 39:8-67; 39:8-68; 39:8-69; 39:8-70.

COMMENT

This section is substantially identical to the original sections. Subsection (a) is the former 39:8-59. Subsection (b) is the former 39:8-60. Subsection (c) is the former 39:8-61. Subsection (d) is the former 39:8-62. Subsections (e) – (g) are the former 39:8-63. Subsections (h) – (k) are the former 39:8-64. 39:8-65 was eliminated as no longer necessary. Subsections (*l*) – (o) are the former 39:8-66. Subsection

(p) is the former 39:8-67. Subsection (q) is the former 39:8-68. Subsections (r) - (u) are the former 39:8-69. Subsection (v) is the former 39:8-70.

39A:IMV-11. Proceedings on violations of diesel provisions

a. A complaint and summons charging a violation of this act or any rule or regulation adopted pursuant thereto and seeking the imposition of a civil penalty in accordance with the provisions of this act or any rule or regulation adopted pursuant to this act shall be a ticket in the form prescribed by the Administrative Director of the Courts pursuant to the Rules Governing the Courts of the State of New Jersey and may contain information advising the persons to whom it is issued of the manner in which and time within which an answer to the alleged violation is required. The ticket may also advise that penalties may result from a failure to answer, that the failure to answer or appear shall be considered an admission of liability, and that a default judgment may be entered. Service of the ticket shall be subject to the Rules Governing the Courts of the State of New Jersey. The ticket may be served personally upon the operator of a vehicle, and the owner's or the lessee's name may be recorded on the ticket, together with the plate number and state or jurisdiction as shown by the registration plates of the vehicle and the make or model of the vehicle. A ticket may be served upon the owner or the lessee of the vehicle by affixing the ticket to the vehicle in a conspicuous place. A ticket may be served by mail upon the owner or the lessee of the vehicle on file with the commission, or the licensing authority of another jurisdiction by mailing the ticket to the vehicle owner or lessee by regular or certified mail to the address on file with the commission, or the licensing authority of another jurisdiction. Service of a ticket by regular or certified mail shall have the same effect as if the ticket were served personally, subject to the Rules Governing the Courts of the State of New Jersey.

b. Subject to the Rules Governing the Courts of the State of New Jersey:

(1) the ticket shall contain sufficient information to identify the person or persons charged; and

(2) the ticket shall inform them of the nature, date, time and location of the alleged violation; and

(3) the original of the ticket shall be signed by the complaining witness, who shall certify to the truth of the facts set forth therein.

Any person may serve as the complaining witness. For the purposes of the certification, the complaining witness may rely upon information from the commission, or the Division of State Police, upon official reports, and upon any form prepared in accordance with 39:8-66(c). The original ticket or a true copy of the ticket shall be considered a record kept in the ordinary business of the commission and shall be prima facie evidence of the facts contained therein.

c. Any operator who drives a vehicle in this State when the owner or lessee of that vehicle causes, authorizes, or otherwise permits such operation shall be the owner's or lessee's agent for service of any ticket, process, or penalty or other notice against the owner or lessee arising out of any alleged violation of this act or any rule or regulation adopted pursuant thereto. The owner and the lessee, if any, of a vehicle driven by any

operator in this State shall be the operator's agent or agents for service of any ticket, process, or penalty or other notice arising out of any alleged violation of 39:8-68 pertaining to a roadside inspection. Subject to the Rules Governing the Courts of the State of New Jersey, any service of ticket, process, or penalty or other notice served on an operator who operates in this State, or on an owner or lessee of the vehicle, shall also constitute service upon the remaining persons, so long as the ticket, process, or penalty or other notice advises the person actually served of that person's responsibility to notify the remaining persons.

d. Subject to the Rules Governing the Courts of the State of New Jersey, judicial proceedings under this act may be instituted on any day of the week, and the institution of the proceedings on a Sunday or a holiday shall not be a bar to the successful prosecution thereof. Subject to the Rules Governing the Courts of the State of New Jersey, any process served on a Sunday or holiday shall be as valid as if served on any other day of the week.

e. A municipal court before which proceedings pursuant to this act are instituted shall, subject to the Rules Governing the Courts of the State of New Jersey, immediately, upon expiration of the time for a defendant to answer or appear, mail notice as provided in the Rules with respect to a resident or non-resident. The notice shall be upon a form approved by the Administrative Director of the Courts that informs the defendant of the following: the infraction charged; the time and date of the infraction; the amount of penalties due; the defendant's right to have a hearing; and that a civil judgment may be entered against the defendant for failure to answer or appear or pay the amount of penalties due. Upon failure to answer or appear in response to the notice, the court shall give notice of that fact to the commission in a manner prescribed by the commission, and money judgment shall be entered and execution shall issue in accordance with the Rules Governing the Courts of the State of New Jersey. If the judgment has been docketed in the Superior Court pursuant to 39:8-73 execution shall be under the jurisdiction of that court. In no case of an unsatisfied judgment shall an arrest warrant or execution against the body of the defendant issue unless otherwise provided by the Rules Governing the Courts of the State of New Jersey. If notice has been given under this subsection of a person's failure to respond to a failure to appear notice and if the person appears or if the case is dismissed or otherwise disposed of, the court shall promptly give notice to that effect to the commission.

f. If the defendant is the owner or lessee of a vehicle that is the subject of the violation and if the defendant fails to respond to a failure to appear notice, the judge or the commission may suspend the registration privileges of the defendant in this State. The commission shall keep a record of a suspension ordered by the court pursuant to this subsection. If the registration privileges of the defendant have been suspended pursuant to this subsection and if the defendant appears or the case is disposed of and if the defendant satisfies all penalties and costs that are owing, the court shall forward to the commission a notice to restore the defendant's registration privileges. Upon receiving a notice to restore and upon the defendant's payment of the restoration fee in accordance with 39:3-10a, the commission shall record the restoration and notify the defendant of the restoration.

g. An action for the recovery of a civil penalty for violation of this act or any rule or regulation adopted pursuant to this act shall be within the jurisdiction of and may be brought before the municipal court in the municipality where the offense was committed or where the defendant may be found, or where the measurement of emissions was physically made. The municipal prosecutor shall proceed in the matter on behalf of the State, unless the county prosecutor or the Attorney General assumes responsibility for the prosecution. The civil penalties provided by this act or any rule or regulation adopted pursuant thereto shall be recovered in the name of the commission, as appropriate, and any money collected by the court in payment of a civil penalty shall be conveyed to the State Treasurer for deposit into the State General Fund. The civil penalties provided by this act or any rule or regulation adopted pursuant thereto shall be collected and enforced by summary proceedings pursuant to 2A:58-10 et seq. If the ticket has not been marked to indicate that a court appearance is required, the defendant shall have the option to waive trial, enter a plea of guilty, and pay the penalty, either by mail or in person, to the violations clerk, subject to the Rules Governing the Courts of the State of New Jersey.

h. The court administrator of the municipal court shall docket in the Superior Court a municipal court judgment imposing a civil penalty pursuant to this act, or any rule or regulation adopted pursuant thereto, that remains unpaid at the time of the judgment's entry in the municipal court. The court administrator shall give notice of the docketing to the commission in a manner prescribed by the commission. The provisions and procedures of 2B:12-26 shall apply to the docketing, except that the court administrator of the municipal court, rather than the commission, shall effect the docketing; provided that nothing in this act shall be construed to prohibit the commission or its designee from docketing the judgment on behalf of the commission and in accordance with 2B:12-26 if the court administrator of the municipal court fails to do so or if the commission or its designee chooses to do so for any other reason. No fee shall be charged to docket the judgment. The docketing shall have the same force and effect as a civil judgment docketed in the Superior Court, and the commission and its designee shall have all of the remedies and may take all of the proceedings for the collection thereof that may be had or taken upon recovery of a judgment in an action, but without prejudice to any right of appeal.

i. If the defendant is the owner or lessee of a vehicle that is the subject of the violation, and if the defendant fails to pay a civil penalty imposed pursuant to this act or any rule or regulation adopted pursuant thereto, the commission may suspend the registration privileges of the defendant in this State.

j. Any vehicle that is registered or present in this State and for which a civil penalty has been assessed pursuant to this act or any rule or regulation adopted pursuant thereto may be placed out of service by the commission or the Division of State Police if the civil penalty remains unpaid after the date on which it became due and owing. A vehicle placed out of service pursuant to this act by either the commission or the Division of State Police shall not be operated until all civil penalties that are due and owing are paid to the commission. When a vehicle is placed out of service pursuant to this act, an administrative out-of-service order shall be prepared on a form or forms specified by the commission and a copy served upon the operator of the vehicle or upon the owner or lessee of the vehicle. The operator of a vehicle served with an out-of-service order

pursuant to this act shall report the issuance of the out-of-service order to the owner and the lessee, if any, of the vehicle within 24 hours. When a vehicle is placed out of service pursuant to this act it shall be the responsibility of the owner or lessee of that vehicle to arrange for the prompt removal of that vehicle, by means other than operating the vehicle, and to pay all costs associated therewith. The vehicle shall be removed to a secure storage place where the commission and the Division of State Police can readily confirm its non-operation. If the owner or lessee fails to comply, or is otherwise incapable of complying with this subsection, the commission or the Division of State Police may make such arrangements for the removal of the vehicle to a secure storage place where the commission and the Division of State Police can readily confirm its non-operation, with all attendant charges and expenses to be paid by the owner, lessee, or bailee. No entity of government of this State or any political subdivision thereof shall be held liable for costs associated with or incurred in the enforcement of this subsection. Upon payment by cashier's check or money order, or in such other form as may be determined by the commission, subject to law or the Rules Governing the Courts of the State of New Jersey, of all unpaid civil penalties and attendant storage charges and expenses for a vehicle that has been placed out of service, the commission shall remove the out-of-service order. Any person who operates, and any owner or lessee who causes or allows to be operated, a vehicle in violation of an out-of-service order prepared and served in accordance with the provisions of this subsection shall be liable for a civil penalty of $1,500, and, if the person has the vehicle registered in this State, the commission may suspend the registration privileges of the vehicle.

k. The commission shall exercise all duties, powers and responsibilities set forth in this section with respect to the periodic inspection program for diesel buses and the roadside enforcement program for diesel buses under the jurisdiction of the commission as set forth in 39:8-64(b).

l. Notwithstanding any other provisions of this title to the contrary, all fees and other monies that the commission, or the State Treasurer receives pursuant to the provisions of this act or any rule or regulation adopted pursuant thereto shall be paid to the Commercial Vehicle Enforcement Fund established pursuant to 38:8-75; except that monies received for attendant storage charges and expenses as provided in 39:8-73(c) of shall be paid to the entity that incurred those charges and expenses.

m. There is established in the General Fund a separate, nonlapsing, dedicated account to be known as the "Commercial Vehicle Enforcement Fund" (CVEF). That Fund shall be administered by the commission . All fees and other monies collected pursuant to this act or any rule or regulation adopted pursuant thereto shall be forwarded to the State Treasury for deposit into the CVEF account. The commission shall receive 40 percent of this fund annually, which monies shall be considered revenue of the commission. All remaining fees and other monies deposited in the CVEF account shall be used to fund the costs of administering the programs and activities of the Department of Law and Public Safety, the Department of Transportation, the commission and the Department of Environmental Protection established or specified in this act and in 39:3-20(f), subject to the approval of the Director of the Division of Budget and Accounting in the Department of the Treasury. A municipality may be eligible for periodic grants from the CVEF in such amounts as the commission, in consultation with the Commissioner of

Transportation, may determine pursuant to rule or regulation to subsidize costs of prosecuting and trying actions pursuant to this act.

n. The State Treasurer shall establish a receivable account for the sole purpose of defraying the expenses incurred for program implementation and administration of this act. The receivable account shall be relieved by monies deposited into the CVEF.

Source: 39:8-71; 39:8-72; 39:8-73; 39:8-74; 39:8-75; 39:8-76.

COMMENT

This section is substantially identical to the original sections. Subsections (a) – (f) are the former 39:8-71. Subsection (g) is the former 39:8-72. Subsections (h) - (k) are the former 39:8-73. Subsection (*l*) is the former 39:8-74. Subsection (m) is the former 39:8-75. Subsection (n) is the former 39:8-76. 39:8-77 was eliminated as duplicative. 39:8-78 was eliminated as no longer necessary.

HOURS OF SERVICE

56. HOURS OF SERVICE LAW

39A:HS-1. Hours of duty limited; violations of section

a. This section shall be known, and may be cited, as the "hours of service law of 1936."

b. It shall be unlawful for any person to operate, or to require or permit any person to operate, any commercial motor vehicle weighing 26,000 pounds or less that is operated exclusively in intrastate commerce after the operator has been continuously on duty for a longer period than 12 hours, or after the operator has been on duty for more than 12 hours in the aggregate during any 16 consecutive hours. When the operator has been continuously on duty for 12 hours or has been on duty for 12 hours in the aggregate during any 16 consecutive hours, that person shall have at least 10 consecutive hours off duty. The periods of release from duty provided for in this section shall be spent at a place and under circumstances where rest and relaxation from the strain of the duties of driving may be obtained; provided, however, that in case of accident or emergency, the operator of a commercial motor vehicle may complete his run or tour of duty, and neither the operator nor the person who requires or permits that person to drive for a longer period shall be deemed to have violated the provisions of this section.

c. Nothing in this section shall apply to a vehicle designed to transport 16 or more passengers, including the driver, or a vehicle used in the transportation of hazardous materials and required to be placarded in accordance with 49 CFR s. 172.500 et seq., or a vehicle that displays a hazardous materials placard.

d. Any person violating any provision of this chapter shall, upon summary conviction by a court of competent jurisdiction, be sentenced to pay a fine of $25 for the first offense; and for each subsequent violation shall be sentenced to pay a fine of $50.

e. The provisions of this chapter shall be enforced and all penalties for the violation thereof shall be recovered in accordance with 2A:58-1 et seq., and in addition to the provisions and remedies therein contained, the following provisions and remedies shall be applicable in any proceeding brought for a violation of any of the provisions of this chapter:

(1) The several municipal courts shall have jurisdiction of such proceeding, in addition to the courts prescribed in "the penalty enforcement law";

(2) The complaint in any such proceeding may be made on information and belief by the director or any police or peace officer of any municipality, any county or the State;

(3) A warrant may issue in lieu of summons;

(4) Any police or peace officer shall be empowered to serve and execute process in any such proceeding;

(5) The hearing in any such proceeding shall be without a jury;

(6) Any such proceeding may be brought in the name of the Director of the Division of Motor Vehicles in the Department of Law and Public Safety or in the name of the State of New Jersey;

(7) Any sums received in payment of any fines imposed in any such proceeding shall be paid to the Director of the Division of Motor Vehicles and shall be paid by him into the State treasury;

(8) The director or judge before whom any hearing under this chapter is had may revoke the license of any person to drive a motor vehicle or the registration certificate of any motor vehicle owned by any person, when such person shall have been guilty of such willful violation of any of the provisions of this chapter as shall in the discretion of the director or judge justify such revocation.

Source: 39:9-1; 39:9-2; 39:9-4.

COMMENT

This section is substantially identical to the original sections. Subsection (a) is the former 39:9-1. Subsections (b) and (c) are the former 39:9-2. Subsections (d) and (e) are the former 39:9-4. References to imprisonment for failure to pay the fines imposed in (d) were removed as inconsistent with other provisions of the statute.

PURCHASE, SALE AND TRANSFER

57. PURCHASE, SALE AND TRANSFER OF MOTOR VEHICLES

39A:PST-1. Title; definitions; interpretation and enforcement

a. This chapter may be known and cited as the "motor vehicle certificate of ownership law."

b. As used in this chapter unless other meaning is clearly apparent from the language or context, or unless inconsistent with the manifest intention of the Legislature:

(1) "Abstract" means the duplicate copy of the original certificate of ownership recording any encumbrance or upon which the existence of a security interest is noted.

(2) "Assignment" means the execution of a prescribed form transferring ownership of a motor vehicle from the person named therein to the purchaser.

(3) "Buyer" includes purchaser, debtor, lessee, bailee, transferee, and any person buying, attempting to buy, or receiving a motor vehicle subject to a security interest, lease, bailment or transfer agreement, and their legal successors in interest.

(4) "Certificate of ownership" means the document issued in conformance with this chapter, certifying ownership of a motor vehicle, other than manufacturer's or importer's certificate of origin.

(5) "Contract" means conditional sale agreement, bailment, lease, chattel mortgage, trust receipt or any other form of security or possession agreement executed prior to January 1, 1963, wherein and whereby possession of a motor vehicle is delivered to the buyer and title therein is to vest in the buyer at a subsequent time upon the payment of part or all of the price, or upon the performance of any other condition or happening of any contingency, or upon the payment of a sum substantially equivalent to the value of the motor vehicle, by which contract it is agreed that the buyer is bound to become, or has the option of becoming, the owner of the motor vehicle upon full compliance with the terms of the contract.

(6) "Dealer" means the agent, distributor or authorized dealer of the manufacturer of the new motor vehicle, and who has an established place of business.

(7) "Debtor" means the person who owes payment or other performance of the obligation secured by a security interest in a motor vehicle.

(8) "Director" means the Director of Motor Vehicles, his deputy or duly authorized agent.

(9) "Gross vehicle weight rating" means the value specified by the manufacturer as the loaded weight of the single or combination vehicle and, if the manufacturer has not specified a value for a towed vehicle, means the value specified for the towing vehicle plus the loaded weight of the towed unit.

(10) "Manufacturer" means the person who originally manufactured the motor vehicle.

(11) "Manufacturer's or importer's certificate of origin" means the original written instrument or document required to be executed and delivered by the manufacturer to his agent or a dealer, or a person purchasing direct from the manufacturer, certifying the origin of the vehicle.

(12) "Manufacturer's number" means the original manufacturer's vehicle identification number die stamped upon the body, or frame, or either or both of them, of a motor vehicle or the original manufacturer's number die stamped upon the engine or motor of a motor vehicle.

(13) Terms including “motor vehicle”:

(A) "Any motor vehicle," "every motor vehicle," or similar term, means both new and used motor vehicles, except a "nonconventional type motor vehicle."

(B) "Motor vehicles which constitute inventory held for sale" means new motor vehicles and used motor vehicles held for the purpose of sale by dealers and used motor vehicles held for the purpose of sale by used motor vehicle dealers, and excludes motor vehicles held for the purpose of lease or rental by a person engaged in the motor vehicle leasing or rental business.

(C) "New motor vehicle" means only a newly manufactured motor vehicle, except a nonconventional type motor vehicle, and includes all such vehicles propelled otherwise than by muscular power, and motorcycles, motorized bicycles, trailers and tractors, and manufactured homes not subject to real property taxation pursuant to 54:4-1.2 et seq., excepting such vehicles as run only upon rails or tracks and manufactured homes subject to real property taxation.

(D) "Nonconventional type motor vehicle" means every vehicle not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over a highway, including, but not limited to, ditch-digging apparatus, well-boring apparatus, road and general purpose construction and maintenance machinery, asphalt spreaders, bituminous mixers, bucket loaders, ditchers, leveling graders, finishing machines, motor graders, road rollers, scarifiers, earth-moving carryalls, scrapers, power shovels, drag lines, self-propelled cranes, earth-moving equipment, trailers and semitrailers which weigh less than 2,500 pounds, except that no mobile or manufactured home or travel trailer shall be classified as a nonconventional type motor vehicle, motorized wheelchairs, motorized lawn mowers, bogies, farm equipment having a factory shipping weight of less than 1,500 pounds, whether or not motorized, including farm tractors within said weight limitation, industrial tractors, scooters, go-carts, gas buggies and golf carts. The Director of Motor Vehicles shall have power to make, amend and repeal regulations, not inconsistent with the provisions of this paragraph, prescribing what further vehicles or types of vehicles, not specified in this paragraph, shall be included in the category of nonconventional type motor vehicles.

(E) "Used motor vehicle" means every motor vehicle and motorized bicycle, except a nonconventional type motor vehicle, title to, or possession of, which has been transferred from the person who first acquired it from the manufacturer or dealer, and so used as to become what is commonly known as "secondhand" within the ordinary meaning thereof, and includes every motor vehicle and motorized bicycle other than a "new motor vehicle," a "nonconventional type motor vehicle" or a manufactured home subject to real property taxation.

(14) "Person" includes natural persons, firms or copartnerships, corporations, associations, or other artificial bodies, receivers, trustees, common law or statutory assignees, executors, administrators, sheriffs, constables, marshals, or other persons in representative or official capacity, and members,

officers, agents, employees, or other representatives of those hereinbefore enumerated.

(15) "Purchaser" means a person who takes possession of a motor vehicle by transfer of ownership, either for use or resale, except a dealer when he takes possession through a certificate of origin.

(16) "Secured party" means a lender, seller or other person in whose favor there is a security interest.

(17) "Security agreement" means an agreement which creates or provides for a security interest in a motor vehicle.

(18) "Security interest" means an interest in a motor vehicle which secures payment or other performance of an obligation.

(19) The terms "sell" or "sale" or "purchase" and any form thereof include absolute or voluntary sales and purchases, agreements to sell and purchase, bailments, leases, security agreements whereby any motor vehicles are sold and purchased, or agreed to be sold and purchased, involuntary, statutory and judicial sales, inheritance, devise, or bequest, gift or any other form or manner of sale or agreement of sale thereof, or the giving or transferring possession of a motor vehicle to a person for a permanent use; continued possession for 60 days or more is to be construed as permanent use.

(20) "Seller" means manufacturer, dealer, lessor, bailor, transferor with or without a security interest, and any other person selling, attempting to sell, or delivering a motor vehicle, and their legal successors in interest.

(21) "Terminal rental adjustment clause" means a provision of an agreement which permits or requires the rental price to be adjusted upward or downward by reference to the amount realized by the lessor upon sale or other disposition of the vehicle.

(22) "Title papers" means any instrument or document that is evidence of ownership of a vehicle.

(23) “Used motor vehicle dealer" means a person engaged in the business of selling, buying or dealing in used motor vehicles, and who has an established place of business.

(24) "Vehicle" means every device in, upon or by which a person or property is or may be transported upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks or motorized bicycles.

c. This chapter shall be interpreted and construed to effectuate its general purpose to regulate and control titles to, and possession of, all motor vehicles in this state, so as to prevent the sale, purchase, disposal, possession, use or operation of stolen motor vehicles, or motor vehicles with fraudulent titles, within this state.

d. The enforcement of this chapter shall be entrusted to the commission and it may make rules and regulations necessary in its judgment for the administration and

enforcement thereof in addition thereto but not inconsistent therewith. The commission may employ and discharge any person it requires for the administration and enforcement of this chapter and fix their compensation.

e. No person shall sell or purchase any motor vehicle in this state, except in the manner and subject to the conditions provided in this chapter.

f. Notwithstanding any other provision of law to the contrary, no agreement stating that it is for the lease of a vehicle shall be deemed to create a conditional sale of, or security interest in, the property which is the subject of the agreement merely because the agreement contains a terminal rental adjustment clause.

Source: 39:10-1; 39:10-2; 39:10-3; 39:10-4; 39:10-5; 39:10-5.1.

COMMENT

This section is substantially identical to the original sections. Subsection (a) is the former 39:10-1. Subsection (b) the former 39:10-2. The definitions have been placed in alphabetical order for ease of location. Subsection (c) is the former 39:10-3. Subsection (d) is the former 39:10-4. Subsection (e) is the former 39:10-5. Subsection (f) is the former 39:10-5.1 but the definitions included in that section were moved to the definitions list as numbers 21 and 24.

39A:PST-2. Certificates

a. The commission may designate any person to be its agent for the issuing and filing of certificates of origin, certificates of registration and certificates of ownership in accordance with the provisions of 39:10-11, subject to the requirements of chapter 10, and to any rules and regulations the commission shall impose. The agent shall so act until the agent's authority is revoked by the commission. All moneys received by such agents for the issuing and filing of certificates of origin and certificates of ownership under the provisions of this section shall forthwith be deposited as received with the State Treasurer. The fee allowed the agent for issuing and filing each certificate of ownership shall be fixed by the commission on the basis of the fees collected by the agent for the issuing and filing of such certificates. The commission may limit the fee so paid to a maximum. Such fee shall be paid to the agent by the State Treasurer upon the voucher of the commission in the same manner as other State expenses are paid.

b. Every person shall have for each motor vehicle in his possession in this State: (a) certificate of ownership therefor in conformity with this chapter, and (b) the registration certificate for the motor vehicle, if it is registered by the director and a registration certificate has been issued therefor. He shall produce either the certificate of ownership or registration certificate, at the discretion of the director, upon demand for production thereof by the director. If he fails to do so, the director may seize and take possession of the motor vehicle and hold and dispose of it in accordance with 39:10- 21.

c. If a motor vehicle is registered in or bears the registration plates of another state or country and is being used or operated in this State, the person in possession of it or using or operating it in this State must be entitled to ownership or possession in accordance with the laws of the state or country where it is registered or the registration plates of which it bears, and shall produce to the director documents showing title to, or right of possession in, the motor vehicle in that person or in the person who has authorized him to use and operate it, or registration certificate or other evidence of

registration, besides plates, issued by the state or country or department thereof to that person, or to the person who has authorized him to use and operate the motor vehicle, evidencing the registration of the motor vehicle in that state or country.

d. When a motor vehicle is in the possession of a garage keeper, motor vehicle dealer, both new and used, or motor vehicle service station in this State, the production of a writing signed by the person delivering possession of the motor vehicle to the garage keeper, dealer or service station, stating that the person is the owner or entitled to the possession of the motor vehicle and has title papers or the registration certificate therefor, shall be deemed a compliance with this section insofar as the garage keeper, dealer and service station are concerned.

e. Every motor vehicle and nonconventional type motor vehicle shall have and contain a manufacturer's vehicle identification number, which number shall not be obliterated, erased, mutilated, removed or missing. This section shall not affect those persons authorized by law to have in their possession a motor vehicle on which the manufacturer's number or numbers have been obliterated, erased, mutilated, removed or missing.

f. When a new motor vehicle is delivered in this State by the manufacturer to his agent or a dealer, or a person purchasing directly from the manufacturer, the manufacturer shall execute and deliver to his agent or a dealer, or a person purchasing directly from the manufacturer, a certificate of origin in the form prescribed by the director of motor vehicles, and no person shall bring into this State any new motor vehicle unless he has in his possession the certificate of origin as prescribed by the director. The certificate of origin shall contain the manufacturer's vehicle identification number and the motor number when used of the motor vehicle sold, name of the manufacturer, the manufacturer's shipping weight, a general description of the body, if any, the type and model and the gross vehicle weight rating.

g. When a new motor vehicle is sold in this State, the manufacturer, his agent or a dealer shall execute and deliver to the purchaser an assignment of the certificate of origin, with the genuine names and business or residence addresses of both stated thereon, and certified to have been executed with full knowledge of the contents and with the consent of both purchaser and seller. If, in connection with such sale, a security interest is taken or retained by the seller to secure all or a part of the purchase price of the motor vehicle, or is taken by a person who by making an advance or incurring an obligation gives value to enable the purchaser to acquire rights in the motor vehicle, the name and the business or residence address of the secured party or his assignee shall be noted on the manufacturer's certificate of origin. Nothing in this section shall apply to security interests in motor vehicles which constitute inventory held for sale, but such interests shall be subject to chapter 9 of Title 12A of the New Jersey Statutes.

h. When a used motor vehicle is sold in this State, the seller shall, except as provided in 39:10-15, execute and deliver to the purchaser, an assignment of the certificate of ownership or an assignment of the bill of sale issued prior to October 1, 1946. If a security interest exists at the time of such sale or if, in connection with such sale, a security interest is taken or retained by the seller to secure all or a part of the purchase price of the motor vehicle, or is taken by a person who by making an advance or

incurring an obligation gives value to enable the purchaser to acquire rights in the motor vehicle, the name and the business or residence address of the secured party or his assignee shall be noted on the certificate of ownership. Nothing in this section shall apply to security interests in motor vehicles which constitute inventory held for sale, but such interests shall be subject to chapter 9 of Title 12A of the New Jersey Statutes.

i. In every sale or transfer of a used motor vehicle which has been used as a police patrol car, whether said patrol car bore markings identifying it as such or not, the certificate of ownership shall state that said motor vehicle was used as a police patrol car, and shall continue to so state on each subsequent sale or transfer. Any person who transfers or attempts to transfer a motor vehicle in violation of this act shall be subject to a fine of $150 for a first offense and $250 for each subsequent offense. Such offense shall be prosecuted in the Superior Court or in the municipal court.

j. In every sale or transfer of a motor vehicle returned to the manufacturer under 56:12-29, a similar statute of another state, or as the result of a legal action or an informal dispute settlement procedure, the certificate of ownership shall indicate, in a conspicuous and understandable manner, that the motor vehicle was returned to the manufacturer because it did not conform to the manufacturer's warranty and the nonconformity was not corrected within a reasonable time as provided by law. The notice required under the provisions of this subsection shall continue to appear on each certificate of ownership issued as a result of any subsequent sale or transfer of that motor vehicle. Any person who transfers or attempts to transfer a motor vehicle in violation of this section shall be subject to a fine of not more than $7,500.

k. The Director of the Division of Motor Vehicles in the Department of Law and Public Safety, in accordance with the provisions of the "Administrative Procedure Act", shall promulgate rules and regulations to effectuate the purposes of this section.

l Any ambulance sold, transferred, gifted, discarded or abandoned to an entity other than a hospital, licensed ambulance dealership, an emergency service organization as defined in 40A:14-184 or any entity licensed by the Department of Health and Senior Services as an ambulance operator shall, prior to sale or transfer, be stripped of all markings that would identify the vehicle as an ambulance. The Commissioner of the Department of Health and Senior Services shall be responsible for the enforcement of this act. An action for a violation of this act may be brought in any court of competent jurisdiction, and shall be punishable as a crime of the fourth degree.

m. When the contract or terms of the security agreement noted on the certificate of origin, or certificate of ownership have been performed the seller or secured party shall deliver to the buyer the certificate of ownership thereto, executed as provided in this chapter, with proper evidence of satisfaction of the contract or termination of the security interest. Within 15 days after the performance of the contract or termination of the security interest, the seller or secured party shall file with the director a notice, in such form as the director shall prescribe, containing evidence of such performance or termination. The director shall thereupon cause a notation to be made on his records of certificate of ownership of the motor vehicle that the contract has been satisfied or the security interest terminated. Any person violating the provisions of this section shall pay a fine of $25.

Source: 39:10-6; 39:10-7; 39:10-8; 39:10-9; 39:10-9.1; 39:10-9.2; 39:10-9.3; 39:10-9.4; 39:10-10; 39:10-25.

COMMENT

This section is substantially identical to the original sections. Subsection (a) is the former 39:10-25. Subsections (b) – (d) are the former 39:10-6. Subsection (e) is the former 39:10-7. Subsections (f) and (g) are the former 39:10-8. Subsection (h) is the former 39:10-9. Subsection (i) is the former 39:10-9.1 and 39:10-9.2. Subsections (j) and (k) are the former 39:10-9.3. Subsection (*l*) is the former 39:10-9.4. Subsection (m) is the former 39:10-10.

39A:PST-3. Submitting evidence of purchase; recording

a. The purchaser of a motor vehicle in this State, other than a dealer licensed pursuant to the provisions of 39:10-19, shall, within 10 working days after its purchase, submit to the director evidence of the purchase. Upon presentation to the director of the certificate of origin, or certificate of ownership, or bill of sale issued prior to October 1, 1946, with proper assignment and certification of the seller, a record of the transaction shall be made and filed. A certificate of ownership shall be issued by the director and delivered to the buyer, in case of a sale not subject to a security interest, and the director shall collect a fee of $20 for the issuance and filing thereof.

b. In the case of a sale subject to a security interest, a certificate of ownership, with the name and address of the holder of the encumbrance or secured party or his assignee recorded thereon, shall be delivered to the holder of the encumbrance or secured party or his assignee and a copy thereof shall be delivered to the buyer. The director shall collect a fee of $30 for his services in issuing a certificate and copy thereof, and for making a record of and filing the record of the transaction, pursuant to this subsection.

c. Except as hereinafter in this section otherwise expressly provided, whenever a security interest is created in a motor vehicle, other than a security interest which is required to be noted on the certificate of origin or the certificate of ownership, as provided in 39:10-8 and 39:10-9, there shall be filed with the director the certificate of ownership of the motor vehicle, together with a financing statement on a form prescribed by the director. The director shall make and file a record of the transaction and shall issue a certificate of ownership, recording the name and address of the secured party or the party's assignee thereon, and shall deliver it to the secured party or the assignee. A copy of the certificate of ownership so issued shall be delivered to the buyer. The director shall collect a fee of $20 for the director's services in issuing a certificate and copy thereof and for making a record of and filing the record of the transaction, pursuant to this subsection.

d. The financing statement required to be filed pursuant to (c) shall be signed only by the buyer, shall not be required to be acknowledged or proved, and shall show, in addition to such matters as the director may require for the proper identification of the motor vehicle affected, the date of the security agreement, and the names and addresses of the parties thereto. Nothing in this section shall be construed as requiring that the security agreement or a copy thereof, or any proof of execution thereof other than that contained in the financing statement, shall be presented to the director. When the buyer is a corporation, it shall be sufficient if the financing statement is signed by any officer thereof, or by any agent designated by the corporation for that purpose, and it shall not be necessary that the financing statement recite the authorization of the agent. When there is

more than one buyer, it shall be sufficient if the financing statement is signed by any one of them.

e. Nothing in subsections (c) and (d) shall apply to security interests in motor vehicles which constitute inventory held for sale, but such interests shall be subject to chapter 9 of Title 12A, nor shall anything in the said subsections apply to interests in personal property subject to chapter 28 of Title 46.

f. In addition to the fees elsewhere in this section provided for, there shall be paid to the director at the time a certificate of ownership is issued a fee of $10 for notice of satisfaction of the lien or encumbrance of the record or abstract, or of the termination of the security interest, where the motor vehicle is subject to a lien or encumbrance or a security interest as provided in 39:10-14.

g. Notwithstanding any other provision of this chapter, when any dealer licensed under the provisions of 39:10-19 is the purchaser of a motor vehicle in this State, the dealer may, within 10 working days after its purchase, submit to the director the evidence of purchase. Upon presentation of the certificate of ownership with proper assignment and certification of the seller to the director, a record of the transaction shall be made and filed. A certificate of ownership shall be issued by the director and delivered to such purchaser, and the director shall collect a fee of $10 for the issuing and filing thereof. If a dealer does not submit the evidence of purchase, upon resale of the motor vehicle the dealer shall execute and attach to the certificate of ownership a dealer reassignment certificate. The director shall issue dealer reassignment certificates in lots upon payment of a fee of $10 for each certificate.

h. Any purchaser of a motor vehicle who fails to comply with the provisions of this section shall pay to the director a penalty of $25 plus the issuing and filing fee.

i. The failure of a person to comply with the requirements of this section shall not constitute a misdemeanor within the provisions of 39:10-24, nor shall such failure affect the validity of any instrument creating or reserving a security interest in a motor vehicle, as between the parties to such instrument.

j. The notation of the name and business or residence address of a secured party or his assignee, on the certificate of origin or on the certificate of ownership, as provided in 39:10-8 and 39:10-9, and the presentation to the director, in accordance with 39:10-11, of the certificate of origin or certificate of ownership so noted, and the compliance with the requirements of subsections (c) and (d) shall be in lieu of all filing requirements imposed by chapter 9 of Title 12A shall constitute the perfection of a security interest in the motor vehicle, and the rights and remedies of the debtors and the secured parties in respect to such security interest shall, except as otherwise expressly provided in this chapter, be subject to and governed by chapter 9 of Title 12A.

k. A person who has a certificate of ownership issued by the director for a mobile or manufactured home located in a mobile home park that shall be relocated on land which the owner of the home has an interest in or the title to, shall, at least 10 days prior to that relocation, file with the director a notice of relocation in a form and with evidence as the director shall prescribe. If the director shall accept the notice as complete, the director shall cancel the certificate of ownership on the date of relocation.

l. If certificate of ownership, or title papers, are lost, the director may, upon proof of certification or otherwise in the manner required by the director and if satisfied of the bona fides of the application, prepare a certificate of ownership, certify it and authorize its use in place of the original, with the same effect as the original. The director shall collect a fee of $25 for this duplicate certificate. A person who falsely states, in any application to the director for a duplicate certificate of ownership, that a certificate of ownership, or title papers, are lost, shall be subject to a fine of not less than $200 nor more than $500 or imprisonment for a term not exceeding 30 days or both.

m. The commissioner shall retain a file of all certificates of ownership until the vehicles described therein shall be eight years old according to the year of manufacture stated in such certificate of ownership. Authority is hereby granted to the commissioner to destroy all other certificates of ownership.

Source: 39:10-11; 39:10-11.1; 39:10-12; 39:10-13.

COMMENT

This section is substantially identical to the original sections. Subsections (a) – (j) are the former 39:10-11. Subsection (*l*) is the former 39:10-11.1. Subsection (*l*) is the former 39:10-12. Subsection (m) is the former 39:10-13.

39A:PST-4. Notations; index; certificates; security interests

a. The director shall, on the record or abstract of every motor vehicle registered with the director, which is subject to a security interest of which notice is required to be filed, make a notation of the existence of such security interest and shall index the same under the name of the owner of record of the vehicle, so long as the security interest remains unterminated of record.

b. Upon request from any person, the director shall issue a certificate showing names and addresses of the parties to any contract of conditional sale or chattel mortgage or other instrument, or to any financing statement, the name and address of the holder of the lien or liens under such contract, chattel mortgage or other instrument or of the secured party, the date thereof or of the financing statement, the date of filing, the make, model, identification number or numbers of the motor vehicle, and, if the condition in the contract of conditional sale or chattel mortgage has been performed or the security interest has been terminated, a statement to that effect, for which he shall be entitled to a fee of $5.

c. For a full certified copy of any instrument showing a lien on or a security interest in a motor vehicle the director shall be entitled to a fee of $10 for the certificate plus $0.50 for each copy of any paper certified.

d. When evidence of satisfaction of any contract of conditional sale or chattel mortgage or other instrument, or evidence of the termination of a security interest, as aforesaid, shall be presented to the director, the director shall make a notation thereof on the record of the sale of such motor vehicle, showing that the condition in the contract of conditional sale or chattel mortgage has been performed or the security interest has been terminated; provided, however, that the evidence of satisfaction of a chattel mortgage on a motor vehicle executed after September 1, 1951 shall be submitted by the county recording officer on a form prescribed by the director, unless the chattel mortgage is one

that is not required, under the provisions of 39:10- 11, to be presented to and recorded by the director.

e. The director, the director's agents, and employees of the Division of Motor Vehicles shall not incur any personal liability in carrying out the provisions of this section or in furnishing any information provided herein from the records of the Division of Motor Vehicles.

Source: 39:10-14.

COMMENT

This section is substantially identical to the original.

39A:PST-5. Seizure of motor vehicle; sale or disposal of mobile home

a. If a motor vehicle is seized, levied upon, or attached and taken into possession, actually or constructively, by virtue of judicial process issued by a court of competent jurisdiction in this State, or by virtue of a statute, State, Federal or otherwise, the person from whose possession the motor vehicle was taken, and without prejudice to that person's rights in the premises, shall surrender the title papers to the commissioner upon written notice or demand from the commissioner.

b. The officer or person so seizing and taking possession of the motor vehicle shall immediately file with the commissioner a notice in writing giving a full description of the motor vehicle, as provided in section 39:10-8 of this Title, and the name and address of the person from whom taken, and shall attach a copy of process or statutory or other authority to the notice.

c. If the motor vehicle is sold in pursuance thereof, the officer so selling it shall execute and deliver to the purchaser at the sale an application for certificate of ownership, in the same form and manner as provided in 39:10-8, which shall also contain the name and address of the person from whom the motor vehicle was taken. A copy of the writ, order, decree, execution or other process under which the motor vehicle is sold and a copy of the notice of sale, which notice of sale shall contain a description of the motor vehicle as required by this chapter, shall be attached thereto. If the sale is held by a bailiff or attorney in fact for a lienor, the lienor shall also execute the application for certificate of ownership. The commissioner, upon due application to him by the purchaser at the sale, shall file and record purchase of the vehicle as provided in 39:10- 8.

d. If a manufactured home is sold or otherwise disposed of pursuant to 2A:18-72 et al., the Director of the Division of Motor Vehicles shall issue, upon proof of purchase, a certificate of ownership to the purchaser, with no encumbrances listed thereon.

Source: 39:10-15; 39:10-15.1.

COMMENT

This section is substantially identical to the original sections. Subsections (a) – (c) are the former 39:10-15. Subsection (d) is the former 39:10-15.1.

39A:PST-6. Defective of improper title papers or sale; procedures to correct; title papers necessary

a. If the title papers or certificate of ownership are defective or improper, or if the motor vehicle was purchased and its sale consummated in another state or country, in accordance with the laws of such state or country regulating the sale of motor vehicles, and not made for the purpose of evading the provisions of this chapter, the bona fide owner of the motor vehicle may apply to the director to correct the defects, or permit the title papers to be received.

b. The director shall, upon such proof as the director requires showing that it is just and equitable that the defects be corrected or that the title papers or certificate of ownership be received, with or without hearing, determine the truth and merits of the application and whether the holder appears to be the bona fide owner of the motor vehicle, and may issue a certificate correcting the defects or permitting the title papers or certificate of ownership to be so recorded and filed. The person submitting the papers shall pay to the director a fee of $20 for the issuing and filing of the certificate.

c. Before issuing the certificate the director may, in the director's discretion, require the person to advertise in a newspaper having a general circulation in the county where that person resides, for the space of two weeks, at least once a week, making three insertions in all, a notice briefly stating that the person has applied to the director to correct defects in the motor vehicle title papers or to receive the title papers out of time, or, as the case may be, giving a description of the motor vehicle as provided in 39:10-8, and that if anyone desires to be heard in opposition thereto, such person may do so by appearing before the director on a date and at a place named, or communicating with him prior thereto. The person seeking the certificate shall also serve like notice on local police, State Police and any other person or agency, as prescribed by the director, personally or by registered mail. Proofs of the publication and service shall be submitted to the director. The director or the director's agent may have the notice advertised or served at the cost and expense of that person.

d. The commissioner may refuse to grant a registration certificate and plates for a motor vehicle, unless there is furnished to the commissioner or the commissioner's agent title papers or certificate of ownership in conformity with this chapter, in addition to the requirements of 39:1-1 et seq.

Source: 39:10-16; 39:10-18.

COMMENT

This section is substantially identical to the original sections. Subsections (a) – (c) are the former 39:10-16. Subsection (d) is the former 39:10-18.

39A:PST-7. Motor vehicle dealers license; off-site sales

a. No person shall engage in the business of buying, selling or dealing in motor vehicles in this State, nor shall a person engage in activity that would qualify the person as a leasing dealer, as defined in 56:12-61, unless that person is:

(1) a licensed real estate broker acting as an agent or broker in the sale of mobile homes without their own motor power other than recreation vehicles as defined in 39:3-10.11, or manufactured homes as defined in 54:4-1.4; or

(2) authorized to do so under the provisions of this chapter.

b. The director may, upon application in such form as he prescribes, license any proper person as such dealer or leasing dealer. A licensed real estate broker shall be entitled to act as an agent or broker in the sale of a mobile or manufactured home as defined in subsection a. of this section without obtaining a license from the director. For the purposes of this chapter, a "licensed real estate broker" means a real estate broker licensed by the New Jersey Real Estate Commission pursuant to the provisions of chapter 15 of Title 45.

c. Any sale or transfer of a mobile or manufactured home, in which a licensed real estate broker acts as a broker or agent pursuant to this section, which sale or transfer is subject to any other requirements of 39:10-1 et seq., shall comply with all of those requirements.

d. A person who has been convicted of a crime arising out of fraud or misrepresentation in the sale, leasing or financing of a motor vehicle, shall not be eligible to receive a license.

e. For the purposes of this section, each applicant for a license shall submit to the director the applicant's name, address, fingerprints and written consent for a criminal history record background check to be performed. The director is hereby authorized to exchange fingerprint data with and receive criminal history record information from the State Bureau of Identification in the Division of State Police and the Federal Bureau of Investigation consistent with applicable State and federal laws, rules and regulations, for purposes of facilitating determinations concerning licensure eligibility. The applicant shall bear the cost for the criminal history record background check, including all costs of administering and processing the check. The Division of State Police shall promptly notify the director in the event a current holder of a license or prospective applicant, who was the subject of a criminal history record background check pursuant to this section, is arrested for a crime or offense in this State after the date the background check was performed.

f. Each applicant for a license shall at the time such license is issued have established and maintained, or by said application shall agree to establish and maintain, within 90 days after the issuance thereof, a place of business consisting of a permanent building not less than 1,000 square feet in floor space located in the State of New Jersey to be used principally for the servicing and display of motor vehicles with such equipment installed therein as shall be requisite for the servicing of motor vehicles in such manner as to make them comply with the laws of this State and with any rules and regulations made by the director of motor vehicles governing the equipment, use and operation of motor vehicles within the State. However, a leasing dealer, who is not engaged in the business of buying, selling or dealing in motor vehicles in the State, shall not be required to maintain a place of business with floor space available for the servicing or display of motor vehicles or to have an exterior sign at the lessor's place of business.

g. A license fee of $100 shall be paid by an applicant upon his initial application for a license. The director may renew an applicant's license from year to year, upon application for renewal on a form prescribed by the director and accompanied each year by a renewal fee of $100.

h. Every license shall expire on March 31 of each year terminating the period for which it is issued. On and after February 1 of each year the director shall issue licenses for the following yearly period to expire on March 31 of the following year.

i. For the purposes of this section, a leasing dealer or an assignee of a leasing dealer whose leasing activities are limited to buying motor vehicles for the purpose of leasing them and selling motor vehicles at the termination of a lease shall not be deemed to be engaged in the business of buying, selling or dealing in motor vehicles in this State.

j. As used in this act:

(1) "Off-site sale" means the display and sale of new or used recreational vehicles by a recreational vehicle dealer, or used motor vehicles registered in New Jersey by a used motor vehicle dealer, licensed under the provisions of 39:10-19, at a location other than the dealer's established place of business. An "off-site sale" includes any off-site display of vehicles at which a recreational vehicle or used motor vehicle dealer has a sales person or employee present. For the purposes of this act, "off-site sale" does not include:

(A) An off-site display of vehicles at which a recreational vehicle or used motor vehicle dealer has no sales personnel present; or

(B) The sale of a vehicle at an auction at which only wholesale purchases are permitted.

(2) "Sponsoring organization" means:

(A) a credit union, automobile club, or other such not for profit organization or entity that makes the opportunity to attend and purchase a motor vehicle at an off-site sale available to its members; or

(B) a trade show coordinator, or other such organization, entity, or individual that makes the opportunity to attend and purchase a recreational vehicle at an off-site sale available to ticketed individuals.

k. Notwithstanding any other provision of law to the contrary, a recreational vehicle or used motor vehicle dealer, licensed under the provisions of 39:10-19, may hold an off-site sale provided he is granted a final permit to do so pursuant to 39:10-19.3.

l. The Chief Administrator of the Motor Vehicle Commission may issue a provisional permit, subject to a fee, for an off- site sale to a licensed recreational vehicle or used motor vehicle dealer, provided:

(1) No more than one permit for a particular location is issued during any calendar quarter;

(2) A completed application and fee, in an amount determined by the chief administrator, is received by the commission at least 15 days prior to the first day of the sale;

(3) The applicant is a recreational vehicle or used motor vehicle dealer, licensed under the provisions of 39:10-19, in good standing;

(4) The sale is not conducted within 1,000 feet of the established place of business of any motor vehicle dealer licensed under the provisions of 39:10-19;

(5) The display and sale of vehicles is conducted for no more than five consecutive days; and

(6) The sale is not open to the general public, but limited to members of the sponsoring organization or in the case of the off-site sales of recreational vehicles, only to ticketed individuals.

m. Following the issuance of a provisional permit for an off-site sale, and in the event that the chief administrator determines that neither the dealer, the sponsoring organization, nor the off-site sale location has an unsatisfactory history of violations of Title 39, the chief administrator shall issue a final permit for an off-site sale to the applicant, provided the dealer delivers to the commission, no later than five days prior to the sale:

(1) A surety bond in the amount of $500,000; or

(2) A notarized copy of a certificate of self-insurance issued pursuant to 39:6-52.

n. A dealer conducting an off-site sale shall maintain a booth or desk at the off-site sale premises location for the duration of the sale. The final permit for the sale and the name of the recreational vehicle or used motor vehicle dealer to whom the permit was issued shall be prominently displayed at the booth or desk at all times during the off-site sale.

o. Any agreements of sale, offerings, or contracts entered into during the off-site sale shall include, or have attached, the following information, in a clearly identifiable manner:

(1) The address and telephone number of the established place of business of the recreational vehicle or used motor vehicle dealer conducting the off- site sale; and

(2) The recreational vehicle or used motor vehicle dealer's license number; and

(3) A copy of the final permit issued to the recreational vehicle or used motor vehicle dealer authorizing him to conduct the off-site sale.

Source: 39:10-19; 39:10-19.1; 39:10-19.2; 39:10-19.3; 39:10-19.4;

COMMENT

This section contains the substance of the original. The subsections have been added for ease of review. Subsections (a) - (i) are the former 39:10-19. Subsection (j) is the former 39:10-19.1. Subsection (k) is the former 39:10-19.2. Subsections (*l*) and (m) are the former 39:10-19.3. Subsections (n) and (o) are the former 39:10-19.4.

39A:PST-8. Suspension or revocation of license

a. The director may suspend for a period less than the unexpired term of a license or revoke a license, after hearing, for a violation of any provision of this chapter or upon the final conviction of the licensee of a crime arising out of fraud or misrepresentation in the sale, leasing or financing of a motor vehicle, or upon proof of the failure of a licensee to make payment of the amount of any final judgment, rendered by a court of competent jurisdiction against such licensee and founded upon a claim arising out of fraud or misrepresentation in the sale or leasing of a motor vehicle, within 90 days after the same is finally entered, or for final conviction of the licensee for violating any provision of chapter 171 of Title 2A or of any supplement thereof (Observance of Sabbath Days).

b. The clerk of the court in which any conviction is rendered, or the court where it has no clerk, shall forward to the director, immediately upon the entry thereof, a certified copy of the conviction or a transcript thereof. The clerk of the court in which any judgment founded upon fraud or misrepresentation is rendered, or the court where it has no clerk, shall forward to the director, immediately after the expiration of the 90 days, a certified copy of the judgment, or a transcript thereof, showing it to have been unsatisfied more than 90 days after it became final.

c. The director shall, before suspending or revoking the license, and at least 10 days prior to the date set for the hearing, notify the holder of the license, in writing, of any charges made, and shall afford him an opportunity to be heard in person or by counsel. The written notice may be served either personally or by registered mail addressed to the last-known address of the licensee.

d. The director may subpoena and bring before him any person in this State, or take testimony by deposition, in the same manner as prescribed by law in judicial proceedings in the courts of this State, and shall also issue and deliver to the dealer such subpoenas as are requested by him.

e. The Appellate Division of the Superior Court shall have power to review, by an appeal in lieu of prerogative writ taken by an aggrieved person, a final determination of the director.

Source: 39:10-20.

COMMENT

This section contains the substance of the original. The subsections have been added for ease of review.

39A:PST-9. Possession of title papers by dealer; seizure and sale; surrender

a. All dealers for both new and used motor vehicles in this State shall have a certificate of origin, certificate of ownership, or writing provided in 39:10-6 for all motor vehicles in their possession.

b. The director, either personally or through an agent, may demand production of, and examine, the certificate of origin, certificate of ownership, or writing provided in 39:10-6 for any motor vehicle in a dealer's possession, and examine and inspect any motor vehicle in his possession.

c. If the demand is not complied with, or there is no certificate of origin, certificate of ownership or writing provided in 39:10-6 for a motor vehicle in the possession of a dealer, or if it is not in conformity with this chapter, the director or an agent may seize and take possession of the motor vehicle, and hold it until the certificate of origin, certificate of ownership or writing provided in 39:10-6 is produced or is corrected, if defective, or ownership of the motor vehicle is established according to law.

d. After the expiration of 90 days from the date the motor vehicle came into the director's possession, the director may sell it at public sale, upon at least 10 days' written notice of sale to the dealer, served personally or by registered mail, addressed to the dealer at his last known place of business, and notice of the sale being published for a space of two weeks, once a week, making three insertions in all, in one or more newspapers published and circulating in the county where the dealer has his established place of business and also by posting the notice in five public places in the county. The newspapers and places of posting shall be designated by the director.

e. Upon the sale of the motor vehicle, all valid liens and claims for interest therein, if any, shall be transferred from the vehicle to the proceeds of sale, which, subject thereto, shall become the sole property of the State, to be used as other moneys received by the director.

f. The director may prepare and prescribe any or all forms necessary for the proper administration of this chapter. The director or an agent may seize and take possession of any certificate of ownership or other title papers to which the director may be entitled, for which a person is under duty to return to the director, from any person or place in this State, with all the rights, privileges and immunities conferred by law on an officer executing a writ of replevin.

g. When a motor vehicle is scrapped, junked or destroyed, or a person permanently parts with its possession other than by sale, he shall immediately surrender and deliver the certificate of ownership to the commissioner, who shall issue a receipt therefor to the person surrendering it. When a motor vehicle is sold to be scrapped, junked or destroyed, assignment shall be made to the purchaser in accordance with the provisions of section 39:10-8. The purchaser shall within five days deliver the certificate of ownership to the commissioner, who shall issue a receipt therefor to the person surrendering it.

Source: 39:10-21; 39:10-22; 39:10-23.

COMMENT

This section contains the substance of the original. The subsections have been added for ease of review. Subsections (a) - (e) are the former 39:10-21. Subsection (f) is the former 39:10-22. Subsection (g) is the former 39:10-23.

39A:PST-10. Violations

A person who purposely or knowingly violates a provision of this chapter for which a specific penalty is not provided herein shall be subject to the penalty provided in 2C:21-4.8.

Source: 39:10-24.

COMMENT

This section contains the substance of the original.

39A:PST-11. Standards for used motor vehicles

a. Unless otherwise provided in this act, no motor vehicle dealer shall sell at retail any used passenger motor vehicle to be registered in this State, unless such vehicle, meets the standards for the issuance of a certificate of approval as provided in chapter 8 of Title 39.

b. In the event that any such used passenger motor vehicle is sold at retail and has any defect, which results in its rejection for failure to meet the standards for issuance of such a certificate of approval, in the absence of a waiver as provided in this act, the seller shall make, or cause to be made, all the necessary repairs, without charge, or return the full purchase price to the purchaser; provided that such defect or defects are not the result of the purchaser's own act.

c. Prior to entering into any agreement for the retail sale of a used passenger motor vehicle, the dealer shall inquire as to whether the vehicle to be purchased is intended for registration in this State in the condition sold and, if so, such fact shall be specified in the written agreement between the dealer and the purchaser, and the dealer, prior to execution of the agreement of sale, shall inform the purchaser of the dealer's responsibilities under this act.

d. Any agreement of retail sale may contain a provision whereby the purchaser waives the dealer's obligation under 39:10-27 provided, however, any such waiver must be separately stated in the agreement of retail sale and separately signed by the purchaser. The signing of such a waiver by the purchaser shall also serve to eliminate any criminal responsibility placed upon any motor vehicle dealer by this act.

e. Any dealer who fails to comply with the provisions of this act is a disorderly person.

Source: 39:10-26; 39:10-27; 39:10-28; 39:10-29; 39:10-30.

COMMENT

This section contains the substance of the original sections. Subsection (a) is the original 39:10-26. Subsection (b) is the former 39:10-27. Subsection (c) is the former 39:10-28. Subsection (d) is the former 39:10-29. Subsection (e) is the former 39:10-30.

39A:PST-12. Salvage certificates of title

a. As used in this act "salvage certificate of title" means a document issued by the Director of the Division of Motor Vehicles which serves as proof of ownership of a motor vehicle and provides a method of transfer of the vehicle only as a salvage motor vehicle.

b. If a motor vehicle has either been reported as being stolen or suffered sufficient damage to render it economically impractical to repair, the person in possession of the certificate of ownership for the vehicle shall surrender the certificate of ownership to the director along with a statement setting forth how the person acquired the certificate of ownership.

c. The director, after determining ownership, shall issue a salvage certificate of title to a person who surrenders a certificate of ownership pursuant to subsection a. of this section.

d. If a motor vehicle reported as being stolen is subsequently recovered, a certificate of ownership for the vehicle which had been surrendered to the director by a person pursuant to 39:10-32 may be issued by the director to that person only if:

(1) The person presents to the director a salvage certificate of title for the motor vehicle;

(2) The person presents to the director a report from the law enforcement agency which recovered the vehicle; and

(3) The vehicle passes an inspection at a State inspection facility to determine the accuracy of its vehicle identification number.

e. If a motor vehicle which has suffered sufficient damage to render it economically impractical to repair is subsequently repaired, a certificate of ownership for the vehicle may be issued to a person only if:

(1) The person presents to the director a salvage certificate of title;

(2) The repaired vehicle is inspected by an official specially designated by the director to determine the accuracy of its vehicle identification number;

(3) The person submits proof of ownership of repair parts used to the director; and

(4) The person complies with any other requirement the director deems appropriate.

f. The director shall establish a fee for the inspections required by 39:10-33 and 39:10-34. The fees shall be deposited in a non-lapsing fund which is dedicated to the administration of this act.

g. If a motor vehicle has been issued a salvage certificate of title, or similar document, by another state, that vehicle may be issued a certificate of ownership pursuant to 39:10-33 or 39:10-34.

h. The director shall promulgate rules and regulations pursuant to the "Administrative Procedure Act," deemed advisable to effectuate the purposes of this act.

Source: 39:10-31; 39:10-32; 39:10-33; 39:10-34; 39:10-35; 39:10-36; 39:10-37.

COMMENT

This section contains the substance of the original sections. Subsection (a) is the former 39:10-31. Subsections (b) and (c) are the former 39:10-32. Subsection (d) is the former 39:10-33. Subsection (e) is the former 39:10-34. Subsection (f) is the former 39:10-35. Subsection (g) is the former 39:10-36. Subsection (h) is the former 39:10-37.