

CHAPTER 58

AN ACT concerning the State Commission of Investigation and amending P.L.1968, c.266, P.L.1996, c.44, P.L.1979, c.254, P.L.1993, c.29 and supplementing Title 52 of the Revised Statutes.

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

1. Section 1 of P.L.1968, c.266 (C.52:9M-1) is amended to read as follows:

C.52:9M-1 State Commission of Investigation.

1. There is hereby created a permanent State Commission of Investigation. The commission shall consist of four members, to be known as commissioners.

Two members of the commission shall be appointed by the Governor. One each shall be appointed by the President of the Senate and by the Speaker of the General Assembly. Each member shall serve for a term of four years and until the appointment and qualification of his successor. No person shall serve, in succession, more than two four-year terms and any portion of an unexpired term as a member of the commission. The Governor shall designate one of the members to serve as chairman of the commission.

The members of the commission appointed by the President of the Senate and the Speaker of the General Assembly and at least one of the members appointed by the Governor shall be attorneys admitted to the bar of this State. No member or employee of the commission shall hold any other public office or public employment. No member of the commission shall have held any elective office or have been a candidate for any elective office within the one year preceding his appointment to the commission. No member of the commission shall hold any elective office or be a candidate for any elective office within the one year subsequent to his termination of service as a member of the commission. Not more than two of the members shall belong to the same political party.

Each member of the commission shall receive an annual salary of \$35,000. Each member shall also be entitled to reimbursement for his expenses actually and necessarily incurred in the performance of his duties, including expenses of travel outside of the State.

Vacancies on the commission shall be filled for the unexpired terms in the same manner as original appointments. Vacancies on the commission shall be filled by the appropriate appointing authority within 120 days. If the appropriate appointing authority does not fill a vacancy within that time period, the vacancy shall be filled by the Chief Justice of the Supreme Court within 60 days. A vacancy on the commission shall not impair the right of the remaining members to exercise all the powers of the commission.

Any determination made by the commission shall be by majority vote. "Majority vote" means the affirmative vote of at least three members of the commission if there are no vacancies on the commission or the affirmative vote of at least two members of the commission if there is a vacancy.

2. Section 8 of P.L.1996, c.44 (C.52:9M-12.2) is amended to read as follows:

C.52:9M-12.2 Notification to person criticized; response.

8. a. The commission shall make a good faith effort to notify any person whose conduct it intends to criticize in a proposed report.

b. The notice required under subsection a. of this section shall describe the general nature and the context of the criticism, but need not include any portion of the proposed report or any testimony or evidence upon which the report is based.

c. A person receiving notice under subsection a. of this section shall have 15 days to submit a response, signed by that person under oath or affirmation. Thereafter the commission shall consider the response and shall include the response in the report together with any relevant evidence submitted by that person; except that the commission may redact from the response any discussion or reference to a person who has not received a notice under subsection a. of this section.

d. Nothing in this section shall be construed to prevent the commission from granting such further rights and privileges, as it may determine, to any person whose conduct it intends to criticize in a proposed report.

e. Notwithstanding the provisions of R.S.1:1-2, nothing in this section shall be deemed to apply to any entity other than a natural person.

3. Section 15 of P.L.1968, c.266 (C.52:9M-15) is amended to read as follows:

C.52:9M-15 Disclosure of information, violation, penalties; privilege, certain; OPRA not applicable.

15. a. Any person conducting or participating in any examination or investigation who shall disclose or any person who, coming into possession of or knowledge of the substance of any examination or investigation, shall disclose, or any person who shall cause, encourage or induce a person, including any witness or informant, to disclose, other than as authorized or required by law, to any person other than the commission or an officer having the power to appoint one or more of the commissioners the name of any witness examined, or any information obtained or given upon such examination or investigation, except as directed by the Governor or commission, or any person other than a member or employee of the commission or any person entitled to assert a legal privilege who, coming into possession of or knowledge of the substance of any pending examination or investigation who fails to advise the Attorney General and the commission of such possession or knowledge and to deliver to the Attorney General and the commission any documents or materials containing such information, shall be guilty of a misdemeanor until September 1, 1979 when such person shall be guilty of a crime of the third degree. Any member or employee of the commission who shall violate this section shall be dismissed from his office or discharged from his employment.

b. Any statement made by a member of the commission or an employee thereof relevant to any proceedings before or investigative activities of the commission shall be absolutely privileged and such privilege shall be a complete defense to any action for libel or slander; provided, however, that nothing in this subsection shall be deemed to grant immunity for conduct that was outside the scope of his employment or constituted a crime, actual fraud, actual malice or willful misconduct.

c. Nothing contained in this section shall in any way prevent the commission from furnishing information or making reports, as required by this act, or from furnishing information to the Legislature, or to a standing reference committee thereof, pursuant to a resolution duly adopted by a standing reference committee or pursuant to a duly authorized subpoena or subpoena duces tecum, provided, however, that nothing herein shall be deemed to preclude the commission from seeking from a court of competent jurisdiction a protective order to avoid compliance with such subpoena or duces tecum.

d. Nothing in P.L.1963, c.73 (C.47:1A-1 et seq.), as amended and supplemented by P.L.2001, c.404, shall be construed to require the commission to disclose any information acquired or any records created, except as provided by this section.

4. Section 2 of P.L.1979, c.254 (C.52:9M-1.1) is amended to read as follows:

C.52:9M-1.1 Terms of member appointed after December 1, 1978.

2. Terms of members appointed after December 1, 1978. Notwithstanding the provisions of section 1 of this act (C.52:9M-1) and in order to effect the staggering of the terms of members of the commission notwithstanding the term for which they were originally appointed, the terms of the members appointed after December 1, 1978 shall be as follows: the first member appointed by the Governor, 36 months; the second member appointed by the Governor, 18 months; the member appointed by the President of the Senate, 30 months; the member appointed by the Speaker of the General Assembly, 24 months. Thereafter, the terms of the members shall be as provided in P.L.1968, c.266, s.1 (C.52:9M-1).

C.52:9M-1.2 Terms of member of the State Commission of Investigation serving on or appointed after the effective date of P.L.2005, c.58 (C.52:9M-1.2 et al)

5. Terms of members of the State Commission of Investigation serving on or appointed after the effective date of P.L.2005, c.58 (C.52:9M-1.2 et al).

a. End of Terms. Notwithstanding the provisions of section 1 of P.L.1968, c.266 (C.52:9M-1) and the terms for which the members were originally appointed, the terms of the members in office on the effective date of P.L.2005, c.58 (C.52:9M-1.2 et al) shall end before 12 o'clock noon on the following dates: the term of the member appointed by the Governor on or after November 5, 2004 would end on December 31, 2008; the term of the member appointed by the Governor after December 31, 2001 but before November 2004 would end on December 31, 2007; the term of the member appointed by the President of the Senate before December 31, 2002 would end on December 31, 2006; and the term of the member appointed by the Speaker of the General Assembly after December 31, 2001 would end on December 31, 2005.

b. Beginning of Terms. After terms end pursuant to subsection a. of this section, the four-year terms of the members appointed shall be as provided in section 1 of P.L.1968, c. 266 (C. 52:9M-1) in order to effect the staggering of terms, with each term of the members next appointed beginning at 12 o'clock noon as follows: one appointment by the Governor for which the member's term shall begin on December 31, 2008; a second appointment by the Governor for which the member's term shall begin on December 31, 2007; an appointment by the Senate President for which the member's term shall begin on December 31, 2006; and an appointment by the Speaker of the General Assembly for which the member's term shall begin on December 31, 2005.

C.52:9M-1.3 Limitation on terms of certain members.

6. Any member of the State Commission of Investigation who is currently serving the member's first or second three-year term or portion of an unexpired term on the effective date of P.L.2005, c.58 (C.52:9M-1.2 et al) shall be subject to the provisions of subsection a. of section 5 of P.L.2005, c.58 (C.52:9M-1.2) and shall be eligible to be reappointed to the commission for not more than one additional four-year term beginning as set forth in subsection b. of section 5 of P.L.2005, c.58 (C.52:9M-1.2).

7. Section 23 of P.L.1993, c.29 (C.2A:156A-29) is amended to read as follows:

C.2A:156A-29 Requirements for access.

23. Requirements for access.

a. A law enforcement agency, but no other governmental entity, may require the disclosure by a provider of electronic communication service or remote computing service of the contents of an electronic communication without notice to the subscriber or the customer if the law enforcement agency obtains a warrant.

b. Except as provided in subsection c. of this section, a provider of electronic communication service or remote computing service may disclose a record or other information pertaining to a subscriber or customer of the service to any person other than a governmental entity. This subsection shall not apply to the contents covered by subsection a. of this section.

c. A provider of electronic communication service or remote computing service shall disclose a record or other information pertaining to a subscriber or customer of the service, other than contents covered by subsections a. and f. of this section, to a law enforcement agency under the following circumstances:

(1) the law enforcement agency has obtained a warrant;

(2) the law enforcement agency has obtained the consent of the subscriber or customer to the disclosure; or

(3) the law enforcement agency has obtained a court order for such disclosure under subsection e. of this section.

A law enforcement agency receiving records or information pursuant to this subsection is not required to provide notice to the customer or subscriber.

d. Notwithstanding any other provision of law to the contrary, no service provider, its officers, employees, agents or other specified persons shall be liable in any civil action for damages as a result of providing information, facilities or assistance in accordance with the terms of a court order or warrant under this section.

e. A court order for disclosure under subsection b. or c. may be issued by a judge of

competent jurisdiction and shall issue only if the law enforcement agency offers specific and articulable facts showing that there are reasonable grounds to believe that the record or other information pertaining to a subscriber or customer of an electronic communication service or remote computing service is relevant and material to an ongoing criminal investigation. A judge who has issued an order pursuant to this section, on a motion made promptly by the service provider, may quash or modify such order, if the information or records requested are unusually voluminous in nature or compliance with such order otherwise would cause an undue burden on such provider.

f. A provider of electronic communication service or remote computing service shall disclose to a law enforcement agency or to the State Commission of Investigation the name, address, telephone number or other subscriber number or identity, and length of service provided to a subscriber or customer of such service and the types of services the subscriber or customer utilized, when the law enforcement entity obtains a grand jury or trial subpoena or when the State Commission of Investigation issues a subpoena.

g. Upon the request of a law enforcement agency, a provider of wire or electronic communication service or a remote computing service shall take all necessary steps to preserve, for a period of 90 days, records and other evidence in its possession pending the issuance of a warrant. The preservation period shall be extended for an additional 90 days upon the request of the law enforcement agency.

8. This act shall take effect immediately.

Approved March 28, 2005.