

tion of the Clean Water Act (beginning at 33 U.S.C. § 1251 (West 1980)) and the Safe Drinking Water Act (beginning at 42 U.S.C. § 201 (West 1980)) as priorities to be considered in the construction of the management scheme.

The Act establishes a second body to aid in the implementation of the Federal Act by forming the Pinelands Municipal Council. The Council is to be composed of the mayor or his or her designee from each municipality located in whole or part within the Pinelands area.

The purpose of the Pinelands Municipal Council is to review the acts of the Commission and to make recommendations to that body relevant to the implementation of the National Parks and Recreation Act of 1978, 16 U.S.C. § 471i (West 1980). The reasons for involving the municipalities are to gain local government input and to give notice to the municipalities of the Commission's acts which have precedence over local rulings.

The Act also details the boundaries of the Pinelands area and establishes rules restricting the use of power vessels and motor vehicles, prohibiting any form of littering, and imposing fines for violations.

In its conclusion, the Pinelands Protection Act sums up the object, design, and purpose of the bill as being "the protection of the Pinelands area and the resources thereof. . .," while giving the Act further strength by stating that its provisions should be liberally construed.

—Christopher L. Patella

EVIDENCE—PRIVILEGE OF THE PRESS AND RIGHT TO FAIR TRIAL—N.J.
STAT. ANN. §§ 2A:84A-21.1 to 2A:21.8 (West 1980)

The New Jersey Legislature recently supplemented the Evidence Act, 1960, N.J. STAT. ANN. §§ 2A:84-1 to -31. These revisions, embodied in N.J. STAT. ANN. §§ 2A: 84A-21.1 to 2A:84A-21.8, were made in response to the decision in *Matter of Farber*, 78 N.J. 259, 394 A.2d 330 (1978), where the privilege of the press and a defendant's right to a fair trial were in issue.

The intent of §§ 2A:84A-21.1 to 2A:84A-21.8 is to provide a procedural framework for the orderly resolution of conflicts between a newsperson claiming a privilege not to disclose subpoenaed confidential information and a criminal defendant who, at trial, seeks to obtain this information. Section 2A:84A-21.3(A) requires that to sustain a claim of a newsperson's privilege under Rule 27 of the New Jersey Rules of Evidence, there must be a *prima facie* showing that the person is, in fact, a newsperson and that the

subpoenaed materials were obtained in the course of his professional activities. Section 3(A) provides that the evidence may be rebutted by the defendant. Additionally, a waiver of this privilege, pursuant to Rule 37 of the Federal Rules of Evidence, may be established by clear and convincing evidence. Upon a finding by the court that the privilege is applicable, the defense must show by a preponderance of the evidence that the evidence is relevant, material and necessary to the defense and that such evidence could not be secured from any less intrusive source. The value of the materials sought upon the issues of guilt or innocence must outweigh the privilege against disclosure. Further, it must be shown that the subpoena is not overbroad, oppressive or unreasonably burdensome. However, this can be overcome by a showing by the newsperson that the information sought is irrelevant, immaterial, unnecessary to the defense or that it could be secured from another source.

Section 4 mandates that once a *prima facie* showing has been made pursuant to section 3, an order for the protection of these materials must be issued for *in camera* inspection and determination as to probable admissibility at trial. The subpoena, however, may be quashed in whole or in part if the judge determines that the moving party has not made a *prima facie* showing. Both parties are entitled to be heard by the judge on the issues of admissibility and necessity to the defense of the evidence. The record remains sealed with regard to any materials found to be privileged.

Section 2A:84A-21.6 authorizes an interlocutory appeal of the judge's decision to quash or uphold the subpoena. This appeal acts as a stay of any penalties which may have been imposed for failure to comply with the court's order.

Section 2A:84A-21.8 specifies that the party issuing the subpoena may be assessed costs, including counsel fees, when it is found that no reasonable basis for requesting the information has been shown. The judge must set forth his reasons for awarding or denying costs.

Sections 2A:84A-21.9 to 2A:84A-21.13, as companion legislation, propose to insure that the files of the news media shall not be the subject of searches and seizures by law enforcement officials except in specifically enumerated situations.

Exceptions will be found where there is probable cause to believe that the news media is involved in a crime, the seizure is necessary to prevent death or serious injury, or that the subpoena process has not been honored and that a further delay would threaten the interests of justice. An express power of the Department of Corrections to search inmate newspapers within a correctional facility, however, is retained.

A civil cause of action may be instituted against the state or an individual if there is a search and seizure against the news media in violation of this Act. The prevailing party is entitled to recover damages, reasonable costs and fees.

—*Frances Marchetta*

PLAIN LANGUAGE—LIFE AND HEALTH INSURANCE POLICY LANGUAGE
SIMPLIFICATION ACT—N.J. STAT. ANN. §§ 17B:17-17 to 17B:17-25
(West 1980)

N.J. STAT. ANN. §§ 17B:17-17 to 17B:17-25 requires that all insurance policies, contracts, certificates of life and health insurance, and credit life and health insurance be in language which passes the Flesch Reading Ease Test¹ or, if the Commissioner of Insurance prefers, another test which achieves the same result. This standard applies to all policies, contracts, certificates, etc. which are delivered or issued for delivery in the State of New Jersey. To be considered easily readable under the statute, a policy must receive a minimum score of forty on the Flesch test, or a comparable score if alternate tests are used. However, this threshold may be lowered by the Commissioner of Insurance, at his discretion, if the policy is readable in its present form or was drafted to conform to any other statute or regulation.

Additionally, if printed, the policy must not be in less than ten-point type, one-point leaded, except for specification pages, schedules and tables. An index must be included if the policy is more than 3,000 words on three or fewer pages, or if the policy is longer than three pages. The overall policy style may not give undue emphasis to any part of the text, endorsements or riders.

The aim of the statute is to provide the consumer with an insurance policy he or she can readily understand. Consumer groups have lobbied for this type of legislation on a national level; similar legislation has been enacted in several states, including Massachusetts and Minnesota.

—*Jo Anne Mantz*

¹ *The Flesch Reading Ease Test measures the difficulty of language used in a given test sample. The test involves counting the numbers of syllables, words and sentences in the sample and then deriving a numerical score which represents the text's level of readability.*