

3B:18-1 et al

LEGISLATIVE HISTORY CHECKLIST

NJSA: 3B:18-1 et al (Fiducraries' commissions -- prescribe)

LAWS OF: 1983

CHAPTER: 394

Bill No: A1458

Sponsor(s): Herman

Date Introduced: May 20, 1982

Committee: **Assembly:** Judiciary, Law, Public Safety and Defense

Senate: Judiciary

Amended during passage: YES **Amendments during passage denoted by asterisks according to Governor's recommendations**

Date of Passage: **Assembly:** December 6, 1982

Senate: April 25, 1983

Date of Approval: December 14, 1983

Following statements are attached if available:

Sponsor statement: YES

Committee statement: **Assembly** YES

Senate YES

Fiscal Note: NO

Veto Message: YES

Message on Signing: NO

Following were printed:

Reports: NO

Hearings: NO

12-14-83

[OFFICIAL COPY REPRINT]

ASSEMBLY, No. 1458

STATE OF NEW JERSEY

INTRODUCED MAY 20, 1982

By Assemblyman HERMAN

AN ACT concerning commissions payable to certain fiduciaries, amending N. J. S. 3B:18-14, N. J. S. 3B:18-15 ***[and]*** *,* N. J. S. 3B:18-33***[**, supplementing Title 3B of the New Jersey Statutes]* and ***[repealing]*** N. J. S. 3B:18-1.

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

1 1. N. J. S. 3B:18-14 is amended to read as follows:

2 3B:18-14. Corpus commissions; one fiduciary. On the settlement
3 of the account of one fiduciary, 5% on all corpus received by the
4 fiduciary where corpus receipts do not exceed **[\$100,000.00]**
5 \$200,000.00, and where corpus receipts exceed **[\$100,000.00]**
6 \$200,000.00, 5% on the first **[\$100,000.00** of corpus, and, on the
7 the excess over \$100,000 of corpus, a percentage, not in excess of
8 5%,**]** \$200,000.00, 3 1/2% on the excess over \$200,000.00 up to
9 \$1,000,000.00, and 2***[1/2]***% on the excess over \$1,000,000.00 or
10 such ***[greater]*** *other* percentage as the court may determine
11 on the intermediate or final settlement of the fiduciary's accounts,
12 according to actual services rendered.

1 ***[2.** N. J. S. 3B:18-15 is amended to read as follows:

2 3B:18-15. Corpus commissions; two or more fiduciaries. If there
3 are two **[or more]** fiduciaries, their commissions on corpus shall be
4 the same as provided in the case of one fiduciary, and, in addition
5 thereto, **[the court may allow corpus commissions in excess of the**
6 **commissions to which one fiduciary would be entitled under N. J. S.**
7 **3B:18-14, at a rate not exceeding 1% of all corpus for each addi-**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter printed in italics thus is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

***—Assembly amendments adopted in accordance with the Governor's recommendations June 16, 1983.**

8 tional fiduciary] *an amount equal to 2% of all corpus. If there are*
 9 *more than two fiduciaries, their commissions on corpus shall be*
 10 *equal to the total amount that two fiduciaries would be entitled,*
 11 *and in addition thereto, 1% of all corpus for each additional*
 12 *fiduciary. No one fiduciary shall be entitled to any greater commis-*
 13 *sion than that which would be allowed if there were but one*
 14 *fiduciary involved.]**

1 *2. N. J. S. 3B:18-15 is amended to read as follows:

2 3B:18-15. Corpus commissions; two or more fiduciaries.

3 If there are two or more fiduciaries, their commissions on corpus
 4 shall be the same as provided in the case of one fiduciary, and, in
 5 addition thereto, the court may allow corpus commissions in excess
 6 of the commissions to which one fiduciary would be entitled under
 7 N. J. S. 3B:18-14, at a rate not exceeding 1% of all corpus for each
 8 additional fiduciary. *No one fiduciary shall be entitled to any*
 9 *greater commission than that which would be allowed if there were*
 10 *but one fiduciary involved.**

1 3. N. J. S. 3B:18-33 is amended to read as follows:

2 3B:18-33. When rates of corpus commissions on termination of
 3 trust or guardianship effective. With respect to the computation
 4 of corpus commissions pursuant to N. J. S. 3B:18-28 as to all
 5 corpus held by a fiduciary on February 29, 1980, the commissions
 6 which may be taken shall be [at the rate authorized as of the date
 7 the corpus was received by the fiduciary, and] *the greater of (1)*
 8 *the commission permitted by law effective prior to February 29,*
 9 *1980, or (ii) the commission computed pursuant to N. J. S. 3B:18-28*
 10 *provided that the "annual commissions authorized" to be taken for*
 11 *yearly periods ending prior to February 29, 1980, shall be at the*
 12 *rate authorized by the applicable law in effect during that yearly*
 13 *period.*

1 *4. (New section) Commissions on real estate. When a fiduciary
 2 comes into the possession of real estate, including real estate which
 3 is not specifically devised, but is managed by the fiduciary, and
 4 such real estate is not sold during the administration of the estate,
 5 trust or guardianship, the reasonable value thereof shall be
 6 considered corpus receipts for the purpose of fixing corpus com-
 7 missions.]*

1 *5. N. J. S. 3B:18-1 is repealed.]*

1 *4. N. J. S. 3B:18-1 is amended to read as follows:

2 3B:18-1. Allowances of corpus commissions generally.

3 Allowance of commissions on corpus in excess of [\$100,000.00]
 4 \$200,000.00 made in accordance with the provisions of this chapter
 5 to fiduciaries, and fiduciaries appointed under chapter 26 of this

6 title for the property of an absentee, shall be made with reference
7 to their actual pains, trouble and risk in settling the estate, rather
8 than in respect to the quantum of the estate.*

1 ***[6.]*** *5.* This act shall take effect immediately.

9 more than two fiduciaries, their commissions on corpus shall be
 10 equal to the total amount that two fiduciaries would be entitled,
 11 and in addition thereto, 1% of all corpus for each additional
 12 fiduciary. No one fiduciary shall be entitled to any greater commis-
 13 sion than that which would be allowed if there were but one
 14 fiduciary involved.

1 3. N. J. S. 3B:18-33 is amended to read as follows:

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 5 corpus held by a fiduciary on February 29, 1980, the commissions
 6 which may be taken shall be [at the rate authorized as of the date
 7 the corpus was received by the fiduciary, and] *the greater of (1)*
 8 *the commission permitted by law effective prior to February 29,*
 9 *1980, or (ii) the commission computed pursuant to N. J. S. 3B:18-28*
 10 *provided that the "annual commissions authorized" to be taken for*
 11 *yearly periods ending prior to February 29, 1980, shall be at the*
 12 *rate authorized by the applicable law in effect during that yearly*
 13 *period.*

1 4. (New section) Commissions on real estate. When a fiduciary
 2 comes into the possession of real estate, including real estate which
 3 is not specifically devised, but is managed by the fiduciary, and
 4 such real estate is not sold during the administration of the estate,
 5 trust or guardianship, the reasonable value thereof shall be
 6 considered corpus receipts for the purpose of fixing corpus com-
 7 missions.

1 5. N. J. S. 3B:18-1 is repealed.

1 6. This act shall take effect immediately.

STATEMENT

The purpose of this bill is to codify and update provisions of the statute governing commissions for fiduciaries.

The bill would amend the 25 year old statute regarding the amount of corpus used as a basis for fiduciary commissions from \$100,000.00 to \$200,000.00 in recognition of inflation and increasing property value since 1957. The bill would allow 5% on the first \$200,000.00, 3½% on the excess over \$200,000.00 up to \$1,000,000.00 and 2½% on the excess over \$1,000,000.00.

The bill provides a set compensation schedule so that testators would know exactly how much their fiduciary would be compensated, as would the fiduciary. The present law specifically provides a commission for one fiduciary of 5% on the first \$100,000.00

A1458 (1983)

ASSEMBLY JUDICIARY, LAW, PUBLIC SAFETY AND
DEFENSE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1458

STATE OF NEW JERSEY

DATED: OCTOBER 7, 1982

The purpose of this bill is to revise the statute governing commissions for fiduciaries, in order to reflect the change in values occasioned by inflation and increased property values. Included in the corpus is the value of real property managed by the fiduciary. The bill would, accordingly, allow a 5% commission on the first \$200,000.00, a 3½% commission on the excess over \$200,000.00 up to \$1,000,000.00 and a 2½% commission on the excess over \$1,000,000.00.

This differs from the present law which provides a commission for one fiduciary of 5% on the first \$100,000.00 corpus but then authorizes the court to determine a percentage not to exceed 5% on the amount of corpus over \$1,000,000.00. The percentage schedule set forth in this bill codifies the general judicial practice used in establishing fiduciary commissions. According to the sponsor, by establishing a set compensation schedule, persons writing a will would benefit by knowing exactly how much their fiduciary would be compensated and the courts would profit by saving court time in applying a uniform fee schedule.

This bill also clarifies the amount of corpus commissions due to more than one fiduciary and limits the amount so that one fiduciary may not receive an amount greater than that which would be allowed if there were but one fiduciary involved. Section 3 of this bill makes clear how commissions for trustees and certain guardians would be determined.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1458

STATE OF NEW JERSEY

DATED: MARCH 30, 1983

This bill makes several changes in the statutes governing commissions paid to fiduciaries. The following is a description of its provisions:

1. Presently, fiduciaries are entitled to 5% on the first \$100,000.00 of corpus and the court is authorized to determine a percentage not to exceed 5% on the amount of corpus over \$100,000.00. This bill would allow 5% on the first \$200,000.00 of corpus; 3-1/2% on the excess over \$200,000.00 up to a million and 2-1/2% on the excess over a million.

There are several reasons for these changes. The basic reason being that the rates for fiduciaries have not been raised since 1957 and that the proposed rates more accurately reflect inflation and increasing proper value since 1957. It is also hoped that by enacting a more complete compensation schedule those setting up trust would know exactly how much the commissions on that trust will amount to. The rate schedule set forth in the bill follows what has become the general judicial practice in establishing the amount a fiduciary is entitled as a commission on a trust.

2. In addition to the changes in the basic rate schedule, Assembly Bill No. 1458 changes the amount of corpus commissions due when more than one fiduciary is involved in administering a trust. Assembly Bill No. 1458 provides that if there are two fiduciaries involved, their commission is equal to that said if one fiduciary was involved plus 2% of all corpus. If there are more than two fiduciaries, their commissions would equal to the total amount to which two fiduciaries would be entitled plus 1% of all corpus for each additional fiduciary. Assembly Bill No. 1458 also states that no one fiduciary in a situation where more than one fiduciary is involved would be entitled to any greater commission than would be permitted if only one fiduciary is involved. Presently, in multiple fiduciary situations, commissions are equal to the amount which one fiduciary would receive plus 1% of all corpus for each additional fiduciary.

3. Assembly Bill No. 1458 also attempts to clarify some confusion which has arisen since the enactment of chapter 501 of the Laws of 1979 with regard to the computation of commissions for trustees and certain

guardians upon the termination of the trust. (Chapter 501 made a distinction in terms of setting commission rates between long periods of administration undertaken by guardians and trustees and the usually shorter periods for other fiduciaries, such as executors and administrators). Assembly Bill No. 1458 would provide that the commissions paid to these fiduciaries on corpus held prior to February 29, 1980 (the effective date of P. L. 1979, c. 501) be computed at the greater of either the commission permitted by law prior to February 29, 1980 or the schedule set forth in N. J. S. 3B:18-28 (copy attached) which was established by chapter 501.

4. Assembly Bill No. 1458 provides that the reasonable value of real property managed by the fiduciary be included in corpus for the purpose of fixing corpus commissions.

5. Assembly Bill No. 1458 repeals N. J. S. 3B:18-1 which provides that the allowance on corpus in excess of \$100,000.00 shall be made in consideration of the efforts made by the fiduciary in settling the estate rather than with respect to the size of the estate.

corpus but then authorizes the court to determine a percentage not to exceed 5% on the amount of corpus over \$100,000.00.

Under present law, the court does allow up to 5% of the value of probate assets in some instances. The courts, however, generally allow 5% on the first \$100,000.00 of corpus and 3½% on the corpus over \$100,000.00. The bill schedule would follow the general judicial practice. Thus the set percentages would provide more certainty and uniformity while reducing valuable court time.

The bill clarifies the amount of corpus commissions due to more than one fiduciary and limits the amount so that one fiduciary may not receive an amount greater than that which would be allowed if there were but one fiduciary involved.

There was confusion regarding the method of computation for commissions for trustees and certain guardians in P. L. 1979, Chapter 501 (now 3B:18-33). Section 3 of this bill makes clear how the amount due such fiduciaries would be determined.

The bill includes in corpus the value of real property managed by the fiduciary.

CORRECTED COPY

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

June 13, 1983

ASSEMBLY BILL NO. 1458

To the General Assembly:

Pursuant to Article V, Section I, paragraph 14 of the Constitution, I herewith return Assembly Bill No. 1458 with my recommendations for reconsideration.

Assembly Bill No. 1458 amends the New Jersey Statutes governing fiduciary corpus commissions. The bill changes the way in which corpus commissions are calculated for executors and administrators of decedents' estates and fiduciaries for the estates of absentees. Under current law, these fiduciaries are allowed corpus commissions of 5% on the first \$100,000 of corpus and up to 5% on the excess. In addition, where there are two or more fiduciaries, commissions may be allowed up to 1% for each additional fiduciary. The standard for fixing the corpus commissions within these ranges is the "actual pains, trouble and risk" which the fiduciary experienced in settling the estate. In addition, the court has the discretion to allow commissions in excess of the above percentages where unusual or extraordinary services have been rendered.

In place of this discretionary approach to corpus commissions, the bill would substitute a mandatory schedule of corpus commissions. The bill would require that the corpus commissions be calculated as follows:

- 5% on the first \$200,000;
- 3½% on the excess over \$200,000 up to \$1,000,000; and
- 2½% on the excess over \$1,000,000.

The above percentages represent a minimum amount of corpus commissions, since the bill gives the court discretion to impose an even greater percentage.

Where there are two or more fiduciaries, the bill would require that an additional 2% in corpus commissions be allowed for one additional fiduciary. If there are more than two fiduciaries, then corpus commissions would be increased by 1% for each additional fiduciary.

The bill goes on to repeal the statutory standard that commissions on corpus in excess of \$100,000 must be made with regard to the fiduciary's "actual pains, trouble and risk in settling the estate, rather than in respect to the quantum of the estate." This standard affects corpus commissions for trustees under the will, guardians, as well as personal representatives of decedents' estates and fiduciaries for absentees.

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EXECUTIVE DEPARTMENT

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The bill thus changes the philosophy governing the award of corpus commissions from a discretionary allowance to a mandatory schedule. The value of having a fixed schedule Statewide is that it will assure uniformity throughout the State with respect to the award of corpus commissions. All parties involved, the testators, beneficiaries as well as the fiduciaries, will have certainty with respect to the amount of corpus commissions to be paid by the estate. While I appreciate the need for some uniformity and certainty in the awarding of corpus commissions which the schedule set forth in this bill accomplishes, there still should be some flexibility in awarding corpus commissions. Commissions should also reflect the work and responsibility of the fiduciary in managing the estate and not be purely a function of the size of the estate. Accordingly, I recommend that the "pains, trouble and risk" standard be retained in the statutes to assure that deviations may be made from the statutory schedule in accordance with this standard. I am updating the language in that provision in order to accommodate the new statutory schedules.

I am advised by probate experts that the increase in corpus commissions set forth in the bill is justified due to the increased complexity of estate management, caused by the number of investment alternatives available and the many changes in the gift and estate tax laws. The potential liability of fiduciaries has increased accordingly.

While I agree that additional compensation for fiduciaries may be necessary, the schedule set forth in this bill seems too high. The bill's schedule is higher than the Division of Taxation's guidelines. The Division of Taxation has in its regulations a schedule for calculating corpus commissions for executors and administrators which it will allow as a deduction on the estate's transfer inheritance and estate tax return. In the absence of a court judgment awarding a different sum for commissions, the estate may take these sums as a corpus commission deduction. For estates in excess of \$1,000,000 I would recommend that the guidelines from the Division of Taxation be used and accordingly would reduce the 2½% figure set forth in the schedule for commissions on corpus in excess of \$1,000,000 to 2%.

In addition, I find excessive the mandatory 2% in corpus commissions for one additional fiduciary and a mandatory 1% for any fiduciary more than two.

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In a multi-million dollar estate where there are three fiduciaries, the bill would mandate that corpus commissions total 5½% of the corpus in excess of \$1,000,000 (2½% for the first fiduciary, plus 2% for the second fiduciary, plus 1% for the third fiduciary). I recommend that the current rule be retained which gives the court discretion in awarding commissions up to 1% for each additional fiduciaries. I note that the bill provides no fiduciary would be entitled to any greater commission then he would be allowed if there were one fiduciary involved. This is a fair and sensible rule and one I recommend we implement.

The bill also permits real estate to be included in corpus for the purposes of calculating corpus commissions. However, an automatic award of commissions based on real estate could create liquidity problems for an estate. Current law gives the court discretion to allow a fiduciary reasonable compensation with respect to services which the fiduciary rendered to real estate. In addition, the testator can provide in his will for compensation to the fiduciary for real estate included in the estate. Accordingly, under current law a fiduciary may receive compensation for services rendered with respect to real estate and I see no need for this provision which would make such compensation automatic.

The bill also makes a correction to P.L. 1979, c. 501 which set a fixed percentage schedule for calculating corpus commissions based on the years of administration for guardians and trustees under a will. I have no problem with this change.

Accordingly, I herewith return Assembly Bill No. 1458 and recommend that it be amended as follows:

Page 1, Title, line 2: Omit "and" insert ","

Page 1, Title, line 3: Omit ", supplementing Title 3B of the New Jersey Statutes"

Page 1, Title, line 4: Omit "repealing"

Page 1, Section 1, line 9: Omit "½"

Page 1, Section 1, line 10: Omit "greater" and insert "other"

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EXECUTIVE DEPARTMENT

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Page 1 and 2, Section 2, lines 1 through 14: Omit and insert:

"2. N.J.S. 3B:18-15 is amended to read as follows:

3B:18-15. Corpus commissions; two or more fiduciaries

If there are two or more fiduciaries, their commissions on corpus shall be the same as provided in the case of one fiduciary, and, in addition thereto, the court may allow corpus commissions in excess of the commissions to which one fiduciary would be entitled under N.J.S. 3B:18-14, at a rate not exceeding 1% of all corpus for each additional fiduciary. No one fiduciary shall be entitled to any greater commission than that which would be allowed if there were but one fiduciary involved."

Page 2, Section 4, lines 1 through 7: Omit

Page 2, Section 5, line 1: Omit and insert

"4. N.J.S. 3B:18-1 is amended to read as follows:

"3B:18-1. Allowances of corpus commissions generally

Allowance of commissions on corpus in excess of [\$100,000.00] \$200,000.00 made in accordance with the provisions of this chapter to fiduciaries, and fiduciaries appointed under chapter 26 of this title for the property of an absentee, shall be made with reference to their actual pains, trouble and risk in settling the estate, rather than in respect to the quantum of the estate."

Page 2, Section 6, line 1: Omit "6" insert "5"

Respectfully,

/s/ Thomas H. Kean

GOVERNOR

[seal]

Attest:

/s/ W. Cary Edwards
Chief Counsel