

ASSEMBLY, No. 334

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 27, 1939

By Mr. CAVICCHIA

Referred to Committee on Revision and Amendment of Laws

AN ACT authorizing testamentary trustees to deduct during each year their commissions on income from testamentary trust funds in the prerogative court or the orphans' court in certain cases.

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

1 1. Any trustee designated by will or appointed to exercise a trust cre-  
2 ated by will may deduct from the income of the trust fund as his commis-  
3 sion during each year a sum not exceeding five per centum (5%) of the net  
4 income; provided, that the trustee shall have deposited with the register of  
5 the prerogative court securities of such kind as are legal for trust invest-  
6 ments in the amount of one and one-half times the commissions so d ducted;  
7 and provided, that the trustee shall have filed with the clerk of the court  
8 in which he qualified or was appointed a notice of intention to comply with  
9 the provisions of this act, a certificate of the register of the prerogative  
10 court of the value of the securities deposited by the trustee pursuant to this  
11 act, and a statement under oath by the trustee, or if the trustee be a cor-  
12 poration, by its president, or other duly authorized officer, that the aforemen-  
13 tioned deposit has been duly made. But nothing in this act shall limit the  
14 complete discretion of the court to which an account is exhibited to award  
15 commissions to a trustee both upon income and corpus of the trust fund, in  
16 such amounts as it shall deem proper, and if the total commission allowed

17 are smaller than the sums already deducted, the trustee forthwith shall re-  
18 imburse the trust fund to the extent that the sums were provisionally with-  
19 drawn. The securities deposited with the register of the prerogative court  
20 shall secure the liability of the trustee to make such reimbursement.

1 2. If any securities so deposited are secured by mortgages or by other  
2 collateral security, such mortgages and collateral security, together with the  
3 instruments which they secure, shall be duly assigned by the trustee to the  
4 register of the prerogative court in his official capacity. Until an order is  
5 made by a court exercising jurisdiction over an accounting of the trust fund,  
6 directing that recourse be had to the securities deposited, the trustee shall  
7 be entitled to the beneficial interest in, and the interest and income from,  
8 the securities so assigned, and the register of the prerogative court shall ex-  
9 ceute a power of attorney in favor of the trustee authorizing the trustee to  
10 receive and retain for his own use, until recourse be had by court order to  
11 such securities, the interest or income arising from the securities deposited.  
12 At the time of the depositing of the securities, the trustee, or if the trus-  
13 tee be a corporation, its president, or other duly authorized officer, shall  
14 make oath in writing as to the fair or estimated market value, which oath  
15 shall be filed with the register of the prerogative court. If the register shall  
16 not approve securities presented for deposit or securities already on de-  
17 posit, he may so inform the trustee, and it shall then be the duty of the  
18 trustee to substitute within thirty days other securities meeting the require-  
19 ments of this act. A trust company or bank of this State which shall have  
20 deposited, pursuant to this act, securities in the value of one hundred thou-  
21 sand dollars (\$100,000.00) shall not be required to make further deposits  
22 in order to deduct each year its commissions on net income from testamen-  
23 tary trust funds. Upon the approval by a court exercising jurisdiction over  
24 an accounting of the trust fund of the commissions deducted, or upon the  
25 reimbursement by the trustee of the sums provisionally withdrawn, the  
26 trustee shall be entitled to withdraw the securities on deposit with the regis-  
27 ter. The withdrawal shall be made only upon the order of a court exercis-  
28 ing jurisdiction over an accounting of the trust fund.

1 3. Upon the failure of a trustee complying with the provisions of this  
2 act, to file an accounting of the trust fund at least once in five years after  
3 the notice of intention provided herein has been filed, the clerk of the court  
4 in which the trustee qualified or was appointed shall report such neglect to  
5 the court, and if the court so directs it shall be the duty of the clerk to cite  
6 the trustee to render his account, unless the court, for good cause shown, al-  
7 lows further time therefor.

1 4. Where a trustee designated by will or appointed to exercise a trust  
2 created by will heretofore has retained in the trust fund a portion of the  
3 net income each year not exceeding five per centum (5%) thereof to await  
4 the allowance of commissions upon the approval of an accounting, the trust-  
5 ee may deduct such accumulated sums from the trust fund as its commis-  
6 sions upon complying with the provisions of this act.

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#### STATEMENT

This bill authorizes a testamentary trustee to deduct each year from the income of the trust, a commission not exceeding five per centum (5%) of the net income. Complete protection for the trust fund is provided by requiring the trustee making such deduction to have previously deposited with the register of the prerogative court securities of such kind as are legal for trust investments in an amount specified by the act. Said trustee is further required to have filed with the court a notice, certificate and oath provided for by this act. If on accounting the court allows commissions smaller than the amount deducted, the trustee must forthwith reimburse the fund to the extent of said amount. The securities deposited with the register above mentioned shall secure the liability of the trustee to make such reimbursement.

COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, No. 334**

**STATE OF NEW JERSEY**

ADOPTED APRIL 17, 1939

AN ACT relating to the commissions of certain fiduciaries, and amending sections 3:11-1 and 3:11-2, and repealing sections 3:11-3 and 3:11-4, of the Revised Statutes.

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

1 1. Section 3:11-1 of the Revised Statutes is hereby amended to read as  
2 follows:

3 3:11-1. Allowance of corpus commissions to executors, administrators,  
4 administrators with the will annexed, guardians and trustees [.] under a  
5 will, shall be made with reference to their actual pains, trouble and risk in  
6 settling the estate, rather than in respect to the quantum of the estate.

1 2. Section 3:11-2 of the Revised Statutes is hereby amended to read as  
2 follows:

3 3:11-2. [Except as hereinafter in this chapter provided, on the settle-  
4 ment of accounts of executors, administrators, guardians and trustees under  
5 a will, accounting in the prerogative or orphans' court, their commissions, over  
6 and above their actual expenses, shall not exceed the following rates:

7 On all sums that come into their hands, not exceeding ten thousand  
8 dollars, five per centum.

9 If over ten thousand dollars and not exceeding twenty thousand dollars,  
10 four per centum, on such excess.

11 If over twenty thousand dollars and not exceeding fifty thousand dollars,  
12 three per centum, on such excess.

13 In any estate where the receipts exceed fifty thousand dollars the court  
 14 before which the account shall be presented for settlement and allowance  
 15 shall determine the commissions of executors, administrators and trustees on  
 16 the final settlement of their accounts according to the actual services rendered  
 17 and the commissions shall not exceed five per centum on all sums which come  
 18 into their hands.】

19 On the settlement of accounts of executors, administrators, administra-  
 20 tors with the will annexed, guardians, and trustees under a will, accounting  
 21 in the prerogative or orphans' court, their commissions over and above their  
 22 actual expenses shall be computed upon the following rates:

23 On all income that comes into their hands five per centum, and such  
 24 executors, administrators, administrators with the will annexed, guardians,  
 25 and trustees under a will may take such income commissions as of the time or  
 26 when the income was or is received by them without allowance thereof by  
 27 the court.

28 On corpus where the corpus receipts do not exceed fifty thousand dollars,  
 29 seven per centum on the first one thousand dollars thereof, five per centum  
 30 on the next nine thousand dollars thereof, four per centum on the next ten  
 31 thousand dollars thereof, and three per centum on the excess.

32 Where the corpus receipts exceed fifty thousand dollars, the court before  
 33 which the account shall be presented for settlement and allowance shall  
 34 determine the corpus commissions of executors, administrators, adminis-  
 35 trators with the will annexed, guardians, and trustees under a will, on the  
 36 intermediate or final settlement of their accounts according to the actual  
 37 services rendered, and the commissions on corpus, shall not exceed five per  
 38 centum on all corpus which comes into their hands.

1 3. Section 3:11-3 and 3:11-4 of the Revised Statutes are hereby repealed.

1 4. This act shall take effect immediately.

## STATEMENT

This bill is one of a series of bills designed to prevent the administration of estates of New Jersey decedents in New York, Pennsylvania and other States. One of the reasons assigned for administration of estates of New Jersey decedents in other States is that fiduciaries in other States are entitled to take their income commissions as and when income is received, whereas in New Jersey no commissions may be taken until allowed by a court after accounting. This bill permits, but does not compel, fiduciaries to take their income commissions as of the time or when the income was or is received and removes the assigned argument for administration of New Jersey estates in other States. In addition the bill will produce a uniform income revenue for fiduciaries instead of receiving income commissions all at one time on the allowance of an account which may cover a period of several years, and thus in most cases reduce the fiduciary's income tax and keep in New Jersey money which would otherwise go to the Federal Government as income taxes. Corpus commissions on estates over \$50,000.00 remain unchanged and are subject solely to allowance by the court. Corpus commissions on estates under \$50,000.00 remain the same except on the first \$1,000.00 of corpus and cannot be taken until allowed by the court. The courts almost uniformly allow five per centum income commissions.

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6 settling the estate, rather than in respect to the quantum of the estate.

1 2. Section 3:11-2 of the Revised Statutes is hereby amended to read as  
2 follows:

3-19 3:11-2. On the settlement of accounts of executors, administrators, ad-  
20 ministrators with the will annexed, guardians, and trustees under a will,  
21 accounting in the prerogative or orphans' court, their commissions over and  
22 above their actual expenses shall be computed upon the following rates:

23 On all income that comes into their hands five per centum, and such  
24 executors, administrators, administrators with the will annexed, guardians,  
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