

3B:18-14

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2000 **CHAPTER:** 29
NJSA: 3B:18-14 (Executors of estates -- commissions)
BILL NO: S952 (Substituted for A2049)

SPONSOR(S): O'Connor and Gormley

DATE INTRODUCED: February 10, 2000

COMMITTEE: **ASSEMBLY:** -----

SENATE: Judiciary

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: **ASSEMBLY:** May 11, 2000
SENATE: March 23, 2000

DATE OF APPROVAL: June 16, 2000

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL: Original

S952

SPONSORS STATEMENT: (Begins on page 2 of original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: Yes

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: No

A2049

SPONSORS STATEMENT: (Begins on page 2 of original bill) Yes

Bill and Sponsors Statement identical to S952

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

SENATE: No

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

SENATE, No. 952

STATE OF NEW JERSEY 209th LEGISLATURE

INTRODUCED FEBRUARY 10, 2000

Sponsored by:

Senator EDWARD T. O'CONNOR, JR.

District 31 (Hudson)

Senator WILLIAM L. GORMLEY

District 2 (Atlantic)

Co-Sponsored by:

Assemblyman Carroll

SYNOPSIS

Clarifies law with regard to commissions of executors of estates.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/12/2000)

1 AN ACT concerning executor's commissions and amending
2 N.J.S.3B:18-14 and repealing N.J.S.3B:18-1 and N.J.S.3B:18-15.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. N.J.S.3B:18-14 is amended to read as follows:

8 3B:18-14. Corpus commissions[; one fiduciary.

9 On the settlement of the account of one fiduciary, 5% on all corpus
10 received by the fiduciary where corpus receipts do not exceed
11 \$200,000.00, and where corpus receipts exceed \$200,000.00, 5% on
12 the first \$200,000.00, 3 1/2 % on the excess over \$200,000.00 up to
13 \$1,000,000.00, and 2% on the excess over \$1,000,000.00 or such
14 other percentage as the court may determine on the intermediate or
15 final settlement of the fiduciary's accounts, according to actual
16 services rendered.] Commissions on all corpus received by the
17 fiduciary may be taken as follows:

18 5% on the first \$200,000 of all corpus received by the
19 fiduciary:

20 3.5% on the excess over \$200,000 up to \$1,000,000;

21 2% on the excess over \$1,000,000; and

22 1% of all corpus for each additional fiduciary provided that no
23 one fiduciary shall be entitled to any greater commission than that
24 which would be allowed if there were but one fiduciary involved.

25 Such commissions may be reduced by the court having jurisdiction
26 over the estate only upon application by a beneficiary adversely
27 affected upon an affirmative showing that the services rendered were
28 materially deficient or that the actual pains, trouble and risk of the
29 fiduciary in settling the estate were substantially less than generally
30 required for estates of comparable size.

31 (cf: P.L.1983, c.394, s.1)

32

33 2. N.J.S.3B:18-1 and N.J.S.3B:18-15 are repealed.

34

35 3. This act shall take effect immediately.

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37

38

STATEMENT

39

40 N.J.S.3B:18-14 sets forth the schedule which is used to calculate
41 the commissions to which executors of estates are entitled. Recently
42 the Internal Revenue Service has begun to take the position that it is
43 not bound by N.J.S.A.3B:18-14 unless a court has approved such

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

Matter underlined thus is new matter.

1 commissions. However, current practice in New Jersey is to refrain,
2 except in extraordinary circumstances, from incurring the additional
3 costs and delay of submitting an executor's accounting for judicial
4 approval. Therefore, a court determination of the executor's
5 commission is rare. The IRS tactic of disallowing a deduction for the
6 full executor's commission calculated in accordance with the statutory
7 schedule leaves lawyers in New Jersey open to criticism for not being
8 able to advise executors accurately of the amount of the executor's
9 commission that will be deductible on the federal estate tax return. As
10 a consequence, some estates owe additional tax interest to the IRS.
11 In order to allow practitioners to be able to administer estates with
12 greater predictability and certainty, the Real Property, Probate and
13 Trust Section of the Bar Association recommends that N.J.S.3B:18-14
14 be amended. The amendatory language contained in the bill is
15 intended to clarify that a fee calculated pursuant to the provisions of
16 N.J.S.3B:18-14 is the normally appropriate commission for a fiduciary
17 and that a court determination is necessary only if a beneficiary objects
18 to the statutory fee calculation. In addition to amending N.J.S.3B:18-
19 14, the bill also repeals two sections of laws dealing with the
20 executors' commissions which the Real Property, Probate and Trust
21 Section views as unnecessary and redundant.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 952

STATE OF NEW JERSEY

DATED: MARCH 16, 2000

The Senate Judiciary Committee reports favorably Senate Bill No. 952.

N.J.S.A.3B:18-14 sets forth the schedule which is used to calculate the commissions to which executors of estates are entitled. Recently the Internal Revenue Service has begun to take the position that it is not bound by N.J.S.A.3B:18-14 unless a court has approved such commissions. However, current practice in New Jersey is to refrain, except in extraordinary circumstances, from incurring the additional costs and delay of submitting an executor's accounting for judicial approval. Therefore, a court determination of the executor's commission is rare. The IRS stance of disallowing a deduction for the full executor's commission calculated in accordance with the statutory schedule leaves lawyers in New Jersey open to criticism for not being able to advise executors accurately of the amount of the executor's commission that will be deductible on the federal estate tax return. As a consequence, some estates owe additional money interest to the IRS. In order to allow practitioners to be able to administer estates with greater predictability and certainty, this bill would amend N.J.S.3B:18-14 to clarify that a fee calculated pursuant to the provisions of N.J.S.3B:18-14 is the normally appropriate commission for a fiduciary and that a court determination is necessary only if a beneficiary objects to the statutory fee calculation. In addition to amending N.J.S.3B:18-14, the bill also repeals two sections of laws dealing with the executors' commissions which are unnecessary and redundant.

P.L. 2000, CHAPTER 29, *approved June 16, 2000*

Senate, No. 952

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2 N.J.S.3B:18-14 and repealing N.J.S.3B:18-1 and N.J.S.3B:18-15.

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29 fiduciary in settling the estate were substantially less than generally
30 required for estates of comparable size.

31 (cf: P.L.1983, c.394, s.1)

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33 2. N.J.S.3B:18-1 and N.J.S.3B:18-15 are repealed.

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35 3. This act shall take effect immediately.

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22 Section views as unnecessary and redundant.

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25

26

27 Clarifies law with regard to commissions of executors of estates.

CHAPTER 29

AN ACT concerning executor's commissions and amending N.J.S.3B:18-14 and repealing N.J.S.3B:18-1 and N.J.S.3B:18-15.

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

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

Corpus commissions.

3B:18-14. Corpus commissions. Commissions on all corpus received by the fiduciary may be taken as follows:

5% on the first \$200,000 of all corpus received by the fiduciary;

3.5% on the excess over \$200,000 up to \$1,000,000;

2% on the excess over \$1,000,000; and

1% of all corpus for each additional fiduciary provided that no one fiduciary shall be entitled to any greater commission than that which would be allowed if there were but one fiduciary involved.

Such commissions may be reduced by the court having jurisdiction over the estate only upon application by a beneficiary adversely affected upon an affirmative showing that the services rendered were materially deficient or that the actual pains, trouble and risk of the fiduciary in settling the estate were substantially less than generally required for estates of comparable size.

Repealer.

2. N.J.S.3B:18-1 and N.J.S.3B:18-15 are repealed.

3. This act shall take effect immediately.

Approved June 16, 2000.

Office of the Governor
NEWS RELEASE

PO BOX 004
TRENTON, NJ 08625

CONTACT: Jayne O'Connor
609-777-2600

RELEASE: June 16, 2000

Gov. Christie Whitman today signed the following pieces of legislation:

S-952, sponsored by Senators Edward T. O' Connor, Jr. (D-Hudson) and William L. Gormley (R-Atlantic) and Assemblyman Michael Patrick Carroll (R-Morris), clarifies that an executor's commission calculated according to the statute is the normally appropriate commission, and that court approval is not required, thereby eliminating the possibility of increased costs and delays. The bill also makes purely technical amendments to restructure the statute for purposes of clarity.

This bill was recommended by the Real Property, Probate and Trust Section of the New Jersey State Bar Association (NJSBA). It is in response to a recent Internal Revenue Service (IRS) practice of disallowing, for federal estate tax purposes, a deduction for the executor's commission calculated in accordance with New Jersey's statutory schedule, unless a court has approved the commission.