

2A:34-23

LEGISLATIVE HISTORY CHECKLIST

(Divorce--Equitable distribution--exempt property acquired during marriage by gift, devise or bequest)

NJSA 2A:34-23

LAWS 1980

CHAPTER 181

Bill No. A1229

Sponsor(s) Hurley and others

Date Introduced Feb. 28, 1980

Committee: Assembly Judiciary, Law, Public Safety and Defense

Senate Judiciary

Amended during passage Yes ~~No~~ Amendments during passage denoted by asterisks

Date of Passage: Assembly April 17, 1980

Senate Nov. 10, 1980

Date of approval Dec. 31, 1980

Following statements are attached if available:

Sponsor statement Yes ~~No~~ (Below)

Committee Statement: Assembly Yes ~~No~~

Senate Yes ~~No~~ 6-9-80 & 9-29-80

Fiscal Note Yes ~~No~~

Veto Message Yes ~~No~~

Message on signing Yes ~~No~~

Following were printed:

Reports Yes ~~No~~

Hearings Yes ~~No~~

Sponsor's statement:

The bill provides that any property which was acquired during a marriage by gift, devise of bequest would not be subject to equitable distribution as the result of a divorce proceeding. Interspousal gifts are included as assets subject to equitable distribution to conform with suggestions of Governor Byrne.

(over)

6/22/81

Attached:

A762 (bill vetoed by Governor Byrne at conclusion of 1978-1979 session with veto message, sponsor's statement, Assembly and Senate committee statements, and 2nd OCR, prior to veto)

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12-31-80

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[SECOND OFFICIAL COPY REPRINT]

ASSEMBLY, No. 1229

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 28, 1980

By Assemblyman HURLEY, Assemblywoman MUHLER, Assemblymen D. GALLO, SAXTON, CHINNICI, BURSTEIN, KARCHER, DOYLE and HERMAN

Referred to Committee on Judiciary, Law, Public Safety and Defense

AN ACT concerning equitable distribution of certain matrimonial property upon entry of judgments of divorce under certain circumstances, and amending N. J. S. 2A:34-23.

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

1 1. N. J. S. 2A:34-23 is amended to read as follows:

2 2A:34-23. Pending any matrimonial action brought in this State
3 or elsewhere, or after judgment of divorce or maintenance, whether
4 obtained in this State or elsewhere, the court may make such order
5 as to the alimony or maintenance of the parties, and also as to
6 the care, custody, education and maintenance of the children, or
7 any of them, as the circumstances of the parties and the nature of
8 the case shall render fit, reasonable and just, and require reason-
9 able security for the due observance of such orders. Upon neglect
10 or refusal to give such reasonable security, as shall be required,
11 or upon default in complying with any such order, the court may
12 award and issue process for the immediate sequestration of the
13 personal estate, and the rents and profits of the real estate of the
14 party so charged, and appoint a receiver thereof, and cause such
15 personal estate and the rents and profits of such real estate, or
16 so much thereof as shall be necessary, to be applied toward such
17 alimony and maintenance as to the said court shall from time to
18 time seem reasonable and just; or the performance of the said
19 orders may be enforced by other ways according to the practice of
20 the court. Orders so made may be revised and altered by the court
21 from time to time as circumstances may require.

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

22 In all actions brought for divorce, divorce from bed and board,
 23 or nullity the court may award alimony to either party, and in so
 24 doing shall consider the actual need and ability to pay of the
 25 parties and the duration of the marriage. In all actions for divorce
 26 other than those where judgment is granted solely on the ground
 27 of separation the court may consider also the proofs made in estab-
 28 lishing such ground in determining an amount of alimony or main-
 29 tenance that is fit, reasonable and just. In all actions for divorce
 30 or divorce from bed and board where judgment is granted on the
 31 ground of institutionalization for mental illness the court may con-
 32 sider the possible burden upon the taxpayers of the State as well
 33 as the ability of the plaintiff to pay in determining an amount of
 34 maintenance to be awarded.

35 In all actions where a judgment of divorce or divorce from bed
 36 and board is entered the court may make such award or awards to
 37 the parties, in addition to alimony and maintenance, to effectuate
 38 an equitable distribution of the property, both real and personal,
 39 which was legally and beneficially acquired by them or either of
 40 them during the marriage. *However, all such property, real, per-*
 41 *sonal or otherwise, legally or beneficially acquired during the*
 42 *marriage by either party by way of gift, devise or bequest shall*
 43 *not be subject to equitable distribution, except that interspousal*
 44 *gifts shall be subject to equitable distribution.*

1 ****[2. (New section) Section 1 of this amendatory act does not**
 2 *apply to any judgment entered and any action for divorce or di-*
 3 *vorce from bed and board filed prior to the effective date of this*
 4 *act. Section 1 of this amendatory act does apply to a gift, de-*
 5 *vis, or bequest, irrespective of whether it was acquired before or*
 6 *after the effective date of this act.**]*

1 ***[2.]**[3.]** *2.**** This act shall take effect immediately.

**ASSEMBLY JUDICIARY, LAW, PUBLIC SAFETY AND
DEFENSE COMMITTEE**

STATEMENT TO

ASSEMBLY, No. 1229

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: MARCH 24, 1980

This bill provides that any property which was acquired during a marriage by gift, devise or bequest would not be subject to equitable distribution as the result of a divorce proceeding. Interspousal gifts are included as assets subject to equitable distribution to conform with suggestions of Governor Byrne.

Assembly Judiciary, Law, Public Safety and Defense Committee amendments clarify the reach of this act. The act is not retroactive, and does not apply to any judgment entered or any divorce action filed prior to the effective date of the act. The act does affect any and all gifts, devises or bequests, regardless of when they were made or made effective.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1229

STATE OF NEW JERSEY

DATED: JUNE 9, 1980

This bill would amend New Jersey's divorce law, N. J. S. 2A:34-23, by exempting gifts, devises and bequests from equitable distribution. The theory on which Assembly No. 1229 rests is that in the majority of instances, the gift, devise or bequest in question will be from the parents or other relative of the recipient. To permit a compulsory division of the asset between the recipient and his spouse is contrary to the marital expectations of the recipient and the giving parent or relative. Since the efforts of neither spouse resulted in the gift, devise or bequest, it need not be regarded as a marital asset under the partnership concept of marriage.

A measure similar to Assembly No. 1229 was passed by the Legislature during the last session. The main reason given for not signing that measure was the Governor's view that interspousal gifts should be subject to equitable distribution. Assembly No. 1229 reflects this position.

The Assembly Judiciary Committee added language indicating that the provisions of Assembly No. 1229 shall not apply to divorce judgment already rendered or to any action for divorce which has already been filed. The Senate Judiciary Committee by amendment deleted this language. The Senate Judiciary Committee is of the view that the provisions of Assembly No. 1229 should be applicable to pending actions.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1229

STATE OF NEW JERSEY

DATED: SEPTEMBER 29, 1980

Assembly Bill No. 1229 would amend New Jersey's divorce law, N. J. S. 2A:34-23 by exempting gifts, devises and bequests from equitable distribution. The theory on which Assembly Bill No. 1229 rests is that in the majority of instances, the gift, devise or bequest in question will be from the parents or other relative of the recipient. To permit a compulsory division of the asset between the recipient and his spouse is contrary to the marital expectations of the recipient and the giving parent or relative. Since the efforts of neither spouse resulted in the gift, devise or bequest, it need not be regarded as a marital asset under the partnership concept of marriage.

A measure similar to Assembly Bill No. 1229 was passed by the Legislature during the last session. The main reason given for not signing that measure was the Governor's view that interspousal gifts should be subject to equitable distribution. Assembly Bill No. 1229 reflects the view expressed in the Governor's veto message.

The Assembly Judiciary Committee added language indicating that the provisions of Assembly Bill No. 1229 shall not apply to divorce judgment already rendered or to any action for divorce which has already been filed. In June of this year, Assembly Bill No. 1229 was released by this committee with an amendment deleting the language added by the Assembly. The effect of this amendment was to make the provisions of Assembly Bill No. 1229 applicable to pending actions. When Assembly Bill No. 1229 was discussed in caucus, the issue of retroactivity was again raised and it was decided to recommit the bill in order to reconsider this issue. The committee reconsidered the issue of applicability to pending cases and decided to reiterate the position taken in June and to release Assembly Bill No. 1229 without further amendment.

12-31-80

From The Office of the Governor
STATEMENT

Assembly Bill No. 1229, which I have just signed into law, will exempt from equitable distribution property acquired by gift, devise or bequest with the exception of interspousal gifts. The bill conforms to the recommendations I made at the end of the last session and brings a needed refinement to our equitable distribution law.

During the legislative process, a controversy arose as to whether the new rule should be limited to those matrimonial actions commenced after the effective date of the act. The Legislature could not reach agreement on this issue, and amendments made to the bill to impose such a rule were inserted by one house and removed by the other. The bill as passed by both houses and enacted by me is silent on this point. I believe the courts are the more appropriate forum to resolve that issue. They will have to decide based on existing principles of law, the extent to which this new law will affect pending cases.

ASSEMBLY, No. 762

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 16, 1978

By Assemblymen HURLEY and CHINNICI

Referred to Committee on Judiciary, Law, Public Safety
and Defense

AN ACT concerning equitable distribution of certain matrimonial property upon entry of judgments of divorce under certain circumstances, and amending N. J. S. 2A:34-23.

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

1 1. N. J. S. 2A:34-23 is amended to read as follows:

2 2A:34-23. Pending any matrimonial action brought in this State
3 or elsewhere, or after judgment of divorce or maintenance, whether
4 obtained in this State or elsewhere, the court may make such order
5 as to the alimony or maintenance of the parties, and also as to
6 the care, custody, education and maintenance of the children, or
7 any of them, as the circumstances of the parties and the nature of
8 the case shall render fit, reasonable and just, and require reason-
9 able security for the due observance of such orders. Upon neglect
10 or refusal to give such reasonable security, as shall be required,
11 or upon default in complying with any such order, the court may
12 award and issue process for the immediate sequestration of the
13 personal estate, and the rents and profits of the real estate of the
14 party so charged, and appoint a receiver thereof, and cause such
15 personal estate and the rents and profits of such real estate, or
16 so much thereof as shall be necessary, to be applied toward such
17 alimony and maintenance as to the said court shall from time to
18 time seem reasonable and just; or the performance of the said
19 orders may be enforced by other ways according to the practice of
20 the court. Orders so made may be revised and altered by the court
21 from time to time as circumstances may require.

22 In all actions brought for divorce, divorce from bed and board,
23 or nullity the court may award alimony to either party, and in so
24 doing shall consider the actual need and ability to pay of the
25 parties and the duration of the marriage. In all actions for divorce

26 other than those where judgment is granted solely on the ground
27 of separation the court may consider also the proofs made in estab-
28 lishing such ground in determining an amount of alimony or main-
29 tenance that is fit, reasonable and just. In all actions for divorce
30 or divorce from bed and board where judgment is granted on the
31 ground of institutionalization for mental illness the court may con-
32 sider the possible burden upon the taxpayers of the State as well
33 as the ability of the plaintiff to pay in determining an amount of
34 maintenance to be awarded.

35 In all actions where a judgment of divorce or divorce from bed
36 and board is entered the court may make such award or awards to
37 the parties, in addition to alimony and maintenance, to effectuate
38 an equitable distribution of the property, both real and personal,
39 which was legally and beneficially acquired by them or either of
40 them during the marriage. *Excepted from distribution shall be*
41 *such property, real, personal or otherwise, legally or beneficially*
42 *acquired prior to or during the marriage by either party by way*
43 *of gift, devise or bequest.*

1 2. This act shall take effect immediately.

STATEMENT

The purpose of this bill is to divest divorce courts of any power to arbitrarily remove property from the blood line of a donor when making equitable distribution of property under our divorce laws.

ASSEMBLY JUDICIARY, LAW, PUBLIC SAFETY AND
DEFENSE COMMITTEE

STATEMENT TO
ASSEMBLY, No. 762
with Assembly committee amendments

STATE OF NEW JERSEY

DATED: MAY 24, 1978

The purpose of this bill is to except property acquired by one spouse by gift, devise, or bequest from equitable distribution in the event of a divorce.

The committee amended the bill to provide that such distribution of property acquired by gift, devise, or bequest might occur if a party proves, by a preponderance of the evidence, that the acquisition of the property materially affected the standard of living of the parties during the marriage.

The committee further amended the bill to provide that unless good cause was shown, no judgment of divorce may be granted until the issues of support and equitable distribution are settled by the parties or adjudicated by the court. The bifurcation of the decree and settlement sometimes results in lengthy delay between the granting of the judgment of divorce and the settlement. The committee provided the good cause standard so that such bifurcation may take place because the committee felt that such flexibility must be retained by the court.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY. No. 762

STATE OF NEW JERSEY

DATED: AUGUST 6, 1979

The bill provides that any property which was acquired during a marriage by gift, devise or bequest would not be subject to equitable distribution as the result of a divorce proceeding.

The Senate Judiciary Committee added two amendments to the bill. The first amendment corrects an oversight by the deletion of the words "prior to" since the concept of equitable distribution has never been applied to property acquired prior to the marriage, inclusion of the words "prior to" is unnecessary and may cause a great deal of confusion.

The second amendment deletes language which would have subjected property acquired by gift, devise or bequest to equitable distribution if a party could prove by a preponderance of the evidence that the property has materially contributed to the life style of the couple. This language was viewed as unnecessary since there are alternative means of making financial arrangements (i.e. alimony) for the parties.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

ASSEMBLY BILL NO. 762 (2nd OCR)

STATEMENT

I am filing Assembly Bill No. 762 (2nd OCR) in the State Library without my approval.

Under the provisions of Article V, Section I, Paragraph 14(b) of the Constitution, this bill does not become a law if it is not signed within the 45-day period, Sundays excepted, following the adjournment sine die of the Legislature. In these circumstances there is no provision for a veto, but I deem it to be in the public interest to state my reasons for deciding not to sign the bill.

This bill would amend New Jersey divorce law, N.J.S. 2A:34-23, by exempting gifts, devises and bequests from equitable distribution and by prohibiting bifurcation of trials except for good cause shown.

The exemption of gifts, devises and bequests from equitable distribution is fair and is consistent with the desires of the donor or decedent. In the majority of instances the gift, devise or bequest in question will be from the parents or other relative of the recipient. To permit a compulsory division of the asset between the recipient and his spouse is contrary to the natural expectations of the recipient and the giving parent or relative. Since the efforts of neither spouse resulted in the gift, devise or bequest, it need not be regarded as a marital asset under the partnership concept of marriage.

Commentators on the bill have noted that the one problem with the amendment is that it excludes interspousal gifts as well. This could lead to unjust results in many cases, particularly, now that interspousal gifts are important tools of estate planning. Accordingly, the bill should be amended to provide for the inclusion of interspousal gifts as assets subject to equitable distribution.

The second provision in the bill prohibits entry of a divorce judgment until issues of support and equitable distribution have been resolved unless good cause is shown. Such a procedure will encourage, in many cases, an earlier resolution of support and equitable distribution issues. The statutory prescription is consistent with present Supreme Court directions. Although unobjectionable, it may be seen as an invasion of the Supreme Court's rule-making power and need not be enacted.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

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Accordingly, I will file Assembly Bill No. 762 (2nd OCR) without my approval but with the recommendation that it be resubmitted with amendments consistent with this statement.

Respectfully,

/s/

GOVERNOR