

3A:35-5

LEGISLATIVE HISTORY CHECKLIST

WJSA 3A:35-5 (Probate--Abolishes right of dower & curtesy)

LAWS OF 1979 CHAPTER 485

Bill No. A20

Sponsor(s) Burstein and Bate

Date Introduced Pre-filed

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

Amended during passage Yes ~~xix~~ Amendments during passage denoted by asterisks

Date of Passage: Assembly April 20, 1978  
Senate Dec. 3, 1979 Amendments of 11-19-79 (attached) were rescinded

Date of approval Feb. 28, 1980

Following statements are attached if available:

Sponsor statement	Yes	<del>xix</del>
Committee Statement: Assembly	<del>xix</del>	No
Senate	Yes	<del>xix</del>
Fiscal Note	<del>xix</del>	No
Veto message	<del>xix</del>	No
Message on signing	Yes	<del>xix</del>

Following were printed.

Reports	<del>xix</del>	No
Hearings	<del>xix</del>	No

Earlier proposed legislation:

- A1704 (1976-77)
- S1013, A3142 (1974-75)
- S903 (1972-73)

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(over)

Hearings and reports on earlier version (i.e. similar) bills:

974.90 New Jersey. Legislature. Senate. Judiciary Committee.  
C866 Public hearing on uniform probate code bills, held  
1973h 9-11-73. Trenton, 1973.

974.90 New Jersey. Legislative Services Agency. Division  
C866 of Law Revision.  
1973k 1972-73 legislation adapted from the proposed  
uniform probate code. Trenton, 1973.

(See pp.1-7)

Recommendation for legislation of A.18 and A.20 (1979)

974.90 New Jersey. Commission on Sex Discrimination  
W872 in the Statutes.  
1981b Sex discrimination in marriage and family  
law. Second report. Trenton, 1981.

(See pp.66-67)

ASSEMBLY, No. 20

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1978 SESSION

By Assemblymen BURSTEIN and BATE

AN ACT concerning the rights of married persons in certain real property and supplementing Title 3A of the New Jersey Statutes.

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

1 1. All rights of dower and curtesy are abolished as to the real  
2 property whereof a married person, or another to his or her use,  
3 shall, subsequent to the effective date of this act, be seized, during  
4 coverture, of an estate of inheritance; however, as to such real  
5 property occupied jointly with his or her spouse, as their principal  
6 matrimonial residence every married person shall be entitled to  
7 joint possession with his or her spouse during their marriage, which  
8 right of possession may not be released, extinguished or alienated  
9 without the consent of both spouses except by judgment of a court  
10 of competent jurisdiction. All other real property owned by either  
11 spouse which is not the principal matrimonial residence may be  
12 alienated without the consent of both spouses.

1 2. This act shall take effect 90 days after its enactment.

STATEMENT

This bill has been prepared by the Division of Law Revision of the Legislative Services Agency, and is one of a series of bills relating to the changes required in the New Jersey law in order to adopt certain provisions of the Uniform Probate Code. It would abolish the rights of dower and curtesy which would attach as to all estates of inheritance in real property acquired by either spouse in fee or beneficially subsequent to the effective date of this act. The rights of dower and curtesy to which a married person would be otherwise entitled are compensated by the proposed increased value of a spouse's share on intestacy.

The rights of dower and curtesy which have attached to real property acquired prior to the effective date of this act are immune to legislative action and hence are not affected. The bill entitles each spouse to the joint possession during marriage of real property jointly occupied by them as their principal matrimonial residence. The right of possession may not be released, extinguished or alienated without joint consent except by court judgment. All other real property owned by either spouse may be alienated without the consent of both spouses.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 20

STATE OF NEW JERSEY

DATED: NOVEMBER 19, 1979

This bill has been prepared by the Division of Law Revision of the Legislative Services Agency, and is one of a series of bills relating to the changes required in the New Jersey law in order to adopt certain provisions of the Uniform Probate Code. It would abolish the rights of dower and curtesy which would attach as to all estates of inheritance in real property acquired by either spouse in fee or beneficially subsequent to the effective date of this act. The rights of dower and curtesy to which a married person would be otherwise entitled are compensated by the proposed increased value of a spouse's share on intestacy. The committee amendments are intended to emphasize that the rights of dower and curtesy are abolished only as to estates to which surviving spouses have a right to an elective share.

SENATE COMMITTEE AMENDMENTS TO  
ASSEMBLY, No. 20

STATE OF NEW JERSEY

ADOPTED NOVEMBER 19, 1979

Amend page 1, section 1, after line 12, insert new section 2 as follows:

“2. This act shall not apply to estates with respect to which the surviving spouse does not have the right to an elective share of the decedent’s estate.”.

Amend page 1, section 2, line 1, omit “2.”, insert “3.”.

FOR IMMEDIATE RELEASE

FOR FURTHER INFORMATION

FEBRUARY 28, 1980

KATHRIN FORSYTH

Governor Brendan Byrne today signed eleven bills, all sponsored by Assemblyman Albert Burstein (D-Bergen), which constitute the final portion of New Jersey's probate reform package.

"The signing of these last eleven bills marks the culmination of a seven year effort to update New Jersey's probate law, making it one of the most modern and enlightened codes in the nation," said Byrne.

The first part of the probate reform program, also sponsored by Assemblyman Burstein, was enacted in 1977. The final step will be the reorganization of Title 3A, which contains the probate law, to make any necessary technical and minor substantive changes. This process should be completed by the end of the year.

Byrne said that in preparing the probate reform package, his staff and the legislature worked closely with the Committee of Real Property, Probate and Trust Law of the New Jersey State Bar Association.

He commended the efforts of Assemblyman Burstein, attorneys Alfred C. Clapp, Richard F. Lert and Harrison Durand of the New Jersey State Bar Association, and Maurice Gold of Legislative Services, "as well as the many other people whose talents contributed to this major revision of the New Jersey probate law."

These are the bills the Governor signed today:

A-18, which helps prevent the disinheritance of a husband or wife by allowing the surviving spouse to elect to take one-third of the deceased person's augmented estate.

Under prior law, New Jersey was one of the few states that allowed husbands and wives to disinherit each other.

An augmented estate is defined in the bill as being the deceased person's estate, minus administration and funeral costs, plus various kinds of property transfers made by the decedent and other types of interests.

The independent wealth of the surviving husband or wife is credited against the elective share, as is any property the surviving spouse received from the deceased person. Only the balance, if any, may be collected from the elective share.

A-8, which revises the New Jersey law governing the appointments, duties, rights and obligations of guardians for minors or mental incompetents.

The bill modernizes the definition of a mental incompetent to mean a person impaired by mental illness or mental deficiency or by a physical illness or disability, chronic use of drugs, chronic alcoholism or other cause "to the extent that he lacks sufficient capacity to govern himself or manage his affairs."

The bill sets forth rules and guidelines governing the powers and duties of the guardian of a minor or of a minor's estate and the powers of the courts in such cases.

A-6, which permits a sum of up to \$5,000 per year from an estate to be paid to or on behalf of a minor beneficiary without the necessity of formally appointing a guardian of the estate in certain cases.

The money, which can be paid to the parent, legal guardian of the minor, adult who has custody of the child and with whom he resides, or a financial institution, must be applied to the "support and educational needs of the minor."

Any excess in a given year must be preserved for the future support of the child and any balance remaining must be delivered to the minor when he reaches the age of 18.

A-19, which clarifies the law governing disclaimers of testamentary and interstate transfers.

Clarification of the law was particularly important because of the federal gift tax consequences a beneficiary may face if he makes a disclaimer deemed untimely under the law.

A-20, which abolishes the ancient rights of dower and curtesy. Dower is the right of a surviving wife to possession for the rest of her life of one half the real estate owned in her husband's name. Curtesy is the corresponding right for surviving husbands.

A-21, which permits the court to authorize, direct or ratify transactions regarding the estate of a minor or mental incompetent in situations where the continuing services of a legal guardian are unnecessary.



STATE OF NEW JERSEY

COMMISSION ON SEX DISCRIMINATION  
IN THE STATUTES



**SEX DISCRIMINATION  
IN  
MARRIAGE AND FAMILY LAW**

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SEPTEMBER 1981  
SECOND REPORT

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## SECTION II

### RECOMMENDATIONS ON PROPOSED LEGISLATION

#### SURVIVING SPOUSE GRANTED RIGHT TO ELECTIVE SHARE OF DECEDENT'S ESTATE; DOWER AND CURTESY ABOLISHED

ASSEMBLY BILL 18 (P.L. 1979, c. 483)

ASSEMBLY BILL 20 (P.L. 1979, c. 485)

The Commission supported Assembly Bills 18 and 20, sponsored by Assemblyman Albert Burstein. The legislation is part of a series of bills adapted from the Uniform Probate Code, promulgated by the National Conference of Commissioners on Uniform State Laws for adoption in all states as a uniform code.

Assembly Bill 18 introduced the concept of "elective share" into New Jersey law by providing the surviving spouse with the right to take one-third of the decedent's "augmented estate" where necessary for the survivor's support and maintenance. Prior to this legislation, a decedent could deplete the entire estate during his or her lifetime by gift or otherwise so that at the time of death the assets or estate were completely or considerably depreciated. The effect was often the complete disinheritance of a surviving spouse who needed continuous support. This had a disproportionate impact on women because the husband often is the sole wage earner, holding marital assets in his own name.

Assembly Bill 20 abolished dower (a common law principle under which a widow was guaranteed for her lifetime the

use of one-third of all real property owned by her husband at any time during the marriage) and curtesy (a lesser right accorded husbands), and established an increased value of a spouse's share on intestacy.

The legislation provides that the husband and wife are entitled to joint possession of the principal matrimonial residence, with neither party able to sell or otherwise encumber the property without the consent of the other spouse. All other real property owned in the individual name of a party to the marriage requires no consent of the spouse to sell or encumber the property. Upon the death of the owner, the property passes either under the terms of the will, subject to a possible right of an elective share, or according to the rules of intestacy if there is no will.

The effect of this law is to treat the principal marital residence as jointly held property by the husband and wife, even if the deed should happen to be in the name of only one spouse, and to treat all other real property on an equal basis with personal property, thus ending the disparities that have arisen between widows whose husbands have invested in real estate and those who have invested in personal property.

#### TEMPORARY ALIMONY

#### SENATE BILL 1020

The Commission supports Senate Bill 1020, sponsored by Senator Donald Di Francesco, as amended per its recommendation on April 17, 1980.

STATE OF NEW JERSEY

1972-1973 LEGISLATION  
ADAPTED FROM THE PROPOSED  
UNIFORM PROBATE CODE

PREPARED FOR USE BY THE  
SENATE JUDICIARY COMMITTEE  
AT A  
PUBLIC HEARING

SEPTEMBER 11, 1973

BERGEN COUNTY ADMINISTRATION BUILDING  
HACKENSACK, NEW JERSEY

COMPILED AND EDITED  
BY  
DIVISION OF LAW REVISION  
LEGISLATIVE SERVICES AGENCY

STATE OF NEW JERSEY

INTRODUCED APRIL 17, 1972

By Senators THOMAS, BATE, CAFIERO, PARKER,  
STOUT and WOODCOCK

Referred to Committee on Judiciary

AN ACT concerning disposition of intestate estates, abolishing the estates of dower and \***[courtesy]**\* \*curtesy\*, supplementing chapter 4, Title 3A of the New Jersey Statutes and repealing N. J. S. 3A :4-1 to 3A :4-10, inclusive, and N. J. S. 3A :4-12.

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

1 1. Any part of the estate of a decedent not effectively disposed  
2 of by his will passes to his heirs as prescribed in sections 2 through  
3 12 of this act.

1 2. The intestate share of the surviving spouse is:

2 a. if there is no surviving issue, the entire intestate estate;

3 b. if there are surviving issue all of whom are issue of the  
4 surviving spouse also, the first \$50,000.00, plus ½ of the balance  
5 of the intestate estate;

6 c. if there are surviving issue one or more of whom are not  
7 issue of the surviving spouse, ½ of the intestate estate.

1 3. The part of the intestate estate not passing to the surviving  
2 spouse under section 2 of this act, or the entire intestate estate if  
3 there is no surviving spouse, passes as follows:

4 a. to the issue of the decedent; if they are all of the same degree  
5 of kinship to the decedent they take equally, but if of unequal  
6 degree, then those of more remote degree take by representation;

7 b. if there is no surviving issue, to his parent or parents equally;

8 c. if there is no surviving issue or parent, to the brothers and  
9 sisters and the issue of each deceased brother or sister by repre-  
10 sentation; if there is no surviving brother or sister, the issue of  
11 brothers and sisters take equally if they are all of the same degree  
12 of kinship to the decedent, but if of unequal degree then those of  
13 more remote degree take by representation;

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

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14 \***[d. if there is no surviving issue, parent or issue of a parent**  
15 **but the decedent is survived by one or more grandparents or**  
16 **issue of grandparents, half of the estate passes to the paternal**  
17 **grandparents if both survive, or to the surviving paternal grand**  
18 **parent, or to the issue of the paternal grandparents if both are**  
19 **deceased, the issue taking equally if they are all of the same degree**  
20 **of kinship to the decedent, but if of unequal degree those of more**  
21 **remote degree take by representation; and the other half passes**  
22 **to the maternal relatives in the same manner; but if the only**  
23 **surviving grandparent or issue of a grandparent is on the paternal**  
24 **or the maternal side, the entire estate passes to the relatives on**  
25 **that side in the same manner as the half.]\***

26 \**d. if there is no surviving issue, parent or issue of a parent,*  
27 *but the decedent is survived by one or more grandparents;*

28 (1) *half of the estate passes to the paternal grandparents equally*  
29 *if both survive, or to the surviving paternal grandparent; or if*  
30 *both are deceased and the decedent is survived by maternal grand-*  
31 *parents or grandparent, then to the issue of the paternal grand-*  
32 *parents, the issue taking equally if they are all of the same degree*  
33 *of kinship to the decedent, but if of unequal degree those of more*  
34 *remote degree take by representation;*

35 (2) *and the other half passes to the maternal grandparents*  
36 *equally if both survive, or to the surviving maternal grandparent;*  
37 *or if both are deceased and the decedent is survived by paternal*  
38 *grandparents or grandparent, then to the issue of the maternal*  
39 *grandparents, the issue taking equally if they are all of the same*  
40 *degree of kinship to the decedent, but if of unequal degree, those*  
41 *of more remote degree take by representation;*

42 (3) *but if the decedent is survived by a grandparent or grand-*  
43 *parents only on the paternal or maternal side and by no issue of*  
44 *the grandparents on the other side, the entire estate passes to the*  
45 *surviving grandparent or grandparents equally;*

46 *e. if there is no surviving issue, parent, issue of a parent or no*  
47 *surviving grandparent, but the decedent is survived by issue of*  
48 *grandparents, the issue take equally if they are all of the same*  
49 *degree of kinship to the decedent, but if of unequal degree those*  
50 *of more remote degree take by representation.\**

1 4. Any person who fails to survive the decedent by 120 hours  
2 is deemed to have predeceased the decedent for purposes of in-  
3 testate succession, and the decedent's heirs are determined accord-  
4 ingly. If the time of death of the decedent or of the person who

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would otherwise be an heir, or the times of death of both, cannot be determined, and it cannot be established that the person who would otherwise be an heir has survived the decedent by 120 hours, it is deemed that the person failed to survive for the required period. This section is not to be applied where its application would result in a taking of intestate estate by the State under section 5 of this act.

5. If there are none who may inherit an intestate estate that estate shall escheat to the State.

6. When representation is required to effect disposition of an estate, the estate is divided into as many shares as there are surviving heirs in the nearest degree of kinship and deceased persons in the same degree who left issue who survive the decedent, each surviving heir in the nearest degree receiving one share and the share of each deceased person in the same degree being divided among his issue in the same manner.

7. Relatives of the half blood inherit the same share they would inherit if they were of the whole blood.

8. Relatives of the decedent conceived before his death but born thereafter inherit as if they had been born in the lifetime of the decedent.

9. If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person,

a. an adopted child is the child of an adopting parent and not of the natural parents except that adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and that natural parent.

b. In cases not covered by a., a person born out of wedlock is a child of the mother. That person is also a child of the father, if:

(1) the natural parents participated in a marriage ceremony before or after the birth of the child, even though the attempted marriage is void; or

(2) the paternity is established by an adjudication before the death of the father or is established thereafter by clear and convincing proof, except that the paternity established under this subparagraph is ineffective to qualify the father or his kindred to inherit from or through the child unless the father has openly treated the child as his, and has not refused to support the child.

10. If a person shall die intestate as to all of his estate, any real or personal property which in his lifetime he gave to a person entitled under this act to the property whereof a decedent died intestate shall be treated as an advancement against that person's

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5 share of the estate only if so declared in a contemporaneous writing  
6 by the decedent or acknowledged in writing as such by the recipient.  
7 The property advanced shall be valued as of the time the recipient  
8 came into possession or enjoyment of the property or as of the  
9 time of the death of the decedent, whichever occurs first. If the  
10 recipient fails to survive the decedent the value of the property  
11 shall not be taken into account in computing the intestate share  
12 to be received by his issue unless the declaration or acknowledg-  
13 ment provides otherwise.

1 11. A debt owed to the decedent by an heir is not charged against  
2 the intestate share of any person except that heir. If the debtor  
3 fails to survive the decedent, the debt is not taken into account in  
4 computing the intestate share of the debtor's issue.

1 12. No person is disqualified to take as an heir because he or a  
2 person through whom he claims is or has been an alien.

1 13. The estates of dower and \***[courtesy]**\* *curtesy* are abol-  
2 ished for those who marry after the effective date of this act and as  
3 to property hereafter acquired by persons married prior to the  
4 effective date of this act.

1 \*14. As used in this act,

2 "*Heirs*" means those persons, including the surviving spouse,  
3 who are entitled upon intestate succession, as provided in this act,  
4 to the property real and personal of a decedent.

5 "*Estate*" means all of the property, real and personal of the  
6 decedent as originally constituted and as it exists from time to time  
7 during administration.\*

1 \***[14.]**\* \*15.\* N. J. S. 3A:4-1 to 3A:4-10, inclusive, and N. J. S.  
2 3A:4-12 are repealed.

1 \***[15.]**\* \*16.\* This act shall take effect January 1 next succeeding  
2 enactment.

#### SENATE JUDICIARY COMMITTEE

#### STATEMENT TO

SENATE No. 903

#### *With Committee Amendments*

This bill is adapted from the proposed Uniform Probate Code  
which has been approved by the National Conference of Commis-  
sioners on Uniform State Laws and by the American Bar Associa-

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LEGISLATIVE COMMITTEE

REPORT TO

HOUSE No. 903

Committee Amendments

to the proposed Uniform Probate Code  
as adopted by the National Conference of Commis-  
sioners and by the American Bar Associa-

tion. It would change the New Jersey intestate laws and abolish  
dower and curtesy.

Under present law, the spouse of a decedent who dies without a  
will receives one third of the personal property and a one third  
life interest in the real property if there are children or their issue.

This bill would give the spouse \$50,000.00 plus one half of the  
balance if there are surviving issue. If all of the issue are not the  
issue of the spouse however, the spouse would receive one half  
of the estate.

The spouse would continue to get the entire estate if there are  
no issue. If there is no surviving spouse, the children and their  
representatives would share the whole estate, as is true now.

If there are no children or a spouse, the parents and brothers  
and sisters share the estate under N. J. S. 3A:4-4. This bill would  
give the estate to the parents if they survive and to the brothers  
and sisters if they do not.

N. J. S. 3A:4-5 provides for inheritance by the next of kin with  
representatives of ancestors who are closest in degree to the de-  
cedent taking the estate. Section 3 of this bill would give the estate  
to the grandparents or their issue. More remote ancestors would  
be eliminated from inheritance.

The committee amendments make it clearer that half of the  
estate goes to the grandparents or their issue on the maternal side  
and half to the paternal side. If the grandparents on one side are  
deceased and there are no issue surviving them, then their half  
goes to the grandparents on the other side.

The committee amendments also change the bill to provide that  
if no grandparents survive, all the issue of those grandparents  
who are in the same degree of kinship to the decedent share equally  
and the more remote take by representation. This is a change from  
the Uniform Probate Code in which each half would be determined  
separately even if all of the grandparents were deceased.

Currently, New Jersey law requires that persons who cannot be  
shown to have died other than simultaneously are presumed for  
purposes of disposing of their property to have survived each  
other. This is the theory of the Uniform Simultaneous Death Act.  
Section 4 of this bill would follow the Probate Code and require  
that a person survive for 5 days in order to take his share. If it  
cannot be established he has so survived, then he would be deemed  
to have failed to survive.

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This bill makes provision for adopted children to inherit as children of the adopting parents, rather than their natural parents, and for relatives of the half-blood to inherit as if they were of the whole blood. These sections follow present case law.

An illegitimate child presently inherits from its father only if the parents subsequently marry and treat him as their child. Section 9 of this bill would allow inheritance by such a child if the parents participated in a marriage ceremony or if paternity is adjudicated or clearly established. However, the father could inherit from the child only if he had treated the child as his and not refused to support him.

N. J. S. 3A:4-8 provides that property given to issue shall be counted as part of their share of the decedent's estate. Section 10 of this bill, on the other hand, requires that a gift be treated as an advancement only if it is so declared in a writing by the decedent or the recipient.

Under section 13 dower and curtesy are abolished for those who marry and for property acquired after the effective date of the bill which would be the January 1 after enactment.

#### COMMENT

SENATE No. 903

*Intestacy, Dower, etc.*

This Bill gives the surviving spouse a larger share than the New Jersey existing Statutes on descent and distribution. In doing so it reflects the desire of most married persons who almost always leave all of a modest estate, or at least half of a larger estate, to the surviving spouse when a will is executed. The basic scheme of the Bill is set out in the statement of the Senate Judiciary Committee (See *infra*, p. 4). These comments are supplemental to that statement.

The present law of New Jersey permits great-grandparents and their issue and other blood relatives, no matter how remote, to inherit. The Uniform Probate Code provisions would prevent inheritance by what has been called the "laughing heir" who may never even have heard of the decedent during his lifetime.

At present, in New Jersey, which follows the English historical pattern, there is a different scheme for the descent of real prop-

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Abolished, also, are the estates of dower and curtesy for those  
who marry after the effective date of the Act and as to property  
acquired thereafter by persons married prior to that date. To take  
the place of dower and curtesy, the surviving spouse of a testate  
decedent would be given an "elective share," which is described  
hereafter in the Judiciary Committee statement and in the com-  
ment on Bill No. 899 (see p. 24 post). The surviving spouse  
of an intestate decedent is given the increased share set out in  
this Bill.

This Bill further would eliminate some of the confusion which  
presently arises in the case of simultaneous deaths of decedent  
and heir or when the times of their deaths cannot be determined.  
The present law sometimes gives rise to multiple administrations  
and multiple succession taxes. The Uniform Probate Code pro-  
vision, which this Bill would adopt, states that a person who fails  
to survive a decedent by 120 hours shall be deemed to have pre-  
deceased the decedent for purposes of intestate succession. In  
cases of doubt, it must be proved that the heir survived the de-  
cedent for the required five-day period. However, this pre-  
sumption of death is not such that it would allow an escheat of the  
estate if there would be a failure of heirs merely because the date  
of death could not be established.

Also included is a provision that debts owed to a decedent by an  
heir are chargeable against the share of that heir but are not  
chargeable against the heir's issue, who would take by repre-  
sentation.

This Bill if enacted would adopt Uniform Probate Code sections  
2-101 through 2-111 and parts of section 1-201.