

3A. 39-1 et al

LEGISLATIVE HISTORY CHECKLIST

HJSA 3A:39-1 et al. (Probate--Conservation of property of absent person)

LAWS OF 1979 CHAPTER 487

Bill No. A22

Sponsor(s) Burstein and Bate

Date Introduced Pre-filed

Committee: Assembly Judiciary, L.W., Public Safety and Defense

Senate Judiciary

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

Date of Passage: Assembly April 20, 1978

Senate Sept. 10, 1979

Date of approval Feb. 28, 1980

Following statements are attached if available:

Sponsor statement Yes ~~No~~

Committee Statement: Assembly Yes ~~No~~

Senate Yes ~~No~~

Fiscal Note Yes ~~No~~

Veto message Yes ~~No~~

Message on signing Yes ~~No~~

Following were printed:

Reports Yes ~~No~~

Hearings Yes ~~No~~

Earlier proposed legislation:

- A1708 (1976-77)
- S1008, A3137 (1974-75)
- S2328 (1972-73)

9/1/78

(over)

Hearings and reports on earlier (i.e. similar) proposed legislation:

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

(See pp.75-77)

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

[OFFICIAL COPY REPRINT]  
ASSEMBLY, No. 22

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1978 SESSION

By Assemblymen BURSTEIN and BATE

AN ACT concerning the conservation of property of an absent person, amending N. J. S. 3A:39-1 and 3A:39-2, supplementing Title 3A of the New Jersey Statutes and repealing N. J. S. 3A:39-3 and 3A:39-4.

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

1 1. As used in this act, an absent person means any person who  
2 has disappeared, or been confined or detained by a foreign power.

1 2. N. J. S. 3A:39-1 is amended to read as follows:

2 3A:39-1. **When a person who has property in this State has**  
3 **absented himself from his usual place of abode for 1 year and his**  
4 **whereabouts is not and has not been known for 1 year, or where**  
5 **a war absentee who has property in this State has not provided an**  
6 **adequate power of attorney authorizing another to act on his**  
7 **behalf with respect to such property.**

8 *If an absent person has property in this State, which property*  
9 *may be wasted or dissipated unless proper management is provided,*  
10 *or where funds are needed for the support, care and welfare of such*  
11 *person or those entitled to be supported by him, and protection is*  
12 *necessary or desirable to obtain or provide funds, the Superior*  
13 *Court\***[**or the County Court of the county in which the person last*  
14 *resided or was domiciled or in which the property or any part of it*  
15 *may be situate,**]**\** may in a summary action appoint one or more  
16 trustees to take charge of and manage the property. The trustee  
17 shall be under the direction and control of the court appointing him  
18 and shall have full power over the property and may commence and  
19 maintain such proceedings for the conservation, protection or dis-  
20 posal of the property, or any part thereof, as the court may deem  
21 proper

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

1 3. N. J. S. 3A:39-2 is amended to read as follows:

2 3A:39-2. Distribution or any other disposition of the property  
3 in the case of any such person[, other than a war absentee,] may  
4 be made under direction of the court when he is presumed dead  
5 under section 3A:40-1 of this Title, or sooner if the death of the  
6 absent person is established by evidence satisfactory to the court.  
7 If the absent person returns *or the need for management or pro-*  
8 *tection ceases* before [such] *distribution or other* disposition the  
9 trustee shall restore to him the property, after deduction of the  
10 reasonable expenses of the trust and compensation of the trustees.

1 4. The trustee shall have all the powers, duties and responsi-  
2 bilities of a guardian of the estate of a minor, and the court shall  
3 have all the powers, for the benefit of any such person, which it  
4 has for the benefit of a minor for whom a guardian has been  
5 appointed. The court shall have the same powers, without appoint-  
6 ing a trustee, to authorize, direct or ratify any single or more than  
7 one transaction necessary or desirable to achieve any security,  
8 service, care or protective arrangement, which it has in the case  
9 of a minor for whom no general guardian has been appointed.

1 5. N. J. S. 3A:39-3 and 3A:39-4 are repealed.

1 6. This act shall take effect immediately.

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2 3A:39-2. Distribution or any other disposition of the property  
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#### STATEMENT

This is one of a series of bills adapted from the proposed Uniform Probate Code which has been approved by the National Conference of Commissioners on Uniform State Laws and by the American Bar Association, and has been prepared by the Division of Law Revision of the Legislative Services Agency.

The purpose of this bill is to provide means for the conservation of the property of an absent person, as defined therein, where such property may be wasted or dissipated and where funds are necessary for the support, care and welfare of persons dependent upon the absent person. The bill eliminates the present requirement that the person be absent for 1 year or be a war absentee. The trustee and the court have all the powers, duties and responsibilities of a guardian for the estate of a minor, and the court is also given power to ratify any single or more than one transaction necessary without appointing a trustee.

A22(1979)

SENATE JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 22

STATE OF NEW JERSEY

DATED: JUNE 25, 1979

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By committee amendment, reference to the jurisdiction of the now merged County Court was deleted.

FOR IMMEDIATE RELEASE

FEBRUARY 28, 1980

FOR FURTHER INFORMATION

KATHRYN 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.



A-22, which modernizes the present law governing absent persons.

The bill broadens the definition of an absent person to include "any person who has disappeared or been confined or detained by a foreign power" and eliminates special treatment of war absentees.

A trustee for the absentees property cannot be appointed unless the property is endangered or if it is needed to provide support, care or welfare to the absent person or his dependents.

A-1624, which broadens the powers of fiduciaries to permit them to acquire, dispose of, manage develop, improve, exchange, partition or abandon an estate asset.

A-1625, which makes two technical amendments to the "Prudent Investment Law." This law governs the investment powers of fiduciaries in New Jersey.

A-1626, which is a comprehensive revision of the law governing multiple-party bank accounts.

A-3144, which clarifies and revises the law governing the disclaimer of nontestamentary transfers.

A-3335, which significantly changes the calculation of corpus commissions for trustees and guardians and generally increases the amount of corpus commissions which fiduciaries may take annually without a court order.

A corpus commission is the remuneration a fiduciary receives for his services rendered in administering the principal under his control.

This bill changes the formulation calculating a trustee's corpus commission by providing for increased commissions where the length of service is long.

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