

3A:10-2, 3A:10-2.1 to 3A:10-2.3

LEGISLATIVE HISTORY CHECKLIST

WISA 3A:10-2, 3A:10-2.1 to 3A:10-2.3 (Probate--Fiduciaries--Commissions)

LAYS OF 1979 CHAPTER 501

Bill No. A3335

Sponsor(s) Herman

Date Introduced May 21, 1979

Committee: Assembly Judiciary, Law, Public Safety and Defense

Senate Judiciary

Amended during passage Yes **\*\*** Amendments during passage denoted by asterisks

Date of Passage: Assembly Dec. 3, 1979

Senate Jan. 7, 1980

Date of approval Feb. 29, 1980

Following statements are attached if available:

Sponsor statement Yes ~~Yes~~

Committee Statement: Assembly Yes ~~Yes~~

Senate Yes ~~Yes~~

Fiscal Note ~~Yes~~ No

Veto message ~~Yes~~ No

Message on signing Yes ~~Yes~~

Following were printed:

Reports ~~Yes~~ No

Hearings ~~Yes~~ No

EJ/1/78

851

[OFFICIAL COPY REPRINT]  
ASSEMBLY, No. 3335

STATE OF NEW JERSEY

INTRODUCED MAY 21, 1979

By Assemblyman HERMAN

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

AN ACT concerning fiduciaries' compensation, amending N. J. S. 3A:10-2 and supplementing chapter 10 of 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. N. J. S. 3A:10-2 is amended to read as follows:

2 3A:10-2. a. On the settlement of accounts of **[fiduciaries acting**  
3 **in any capacity referred to in section 3A:10-1 of this Title]** *execu-*  
4 *tors, \*administrators,\* administrators with the will annexed, and*  
5 *fiduciaries appointed under chapter 40 of this Title for the property*  
6 *of an absentee,* their commissions over and above their actual  
7 expenses shall be computed upon the following rates:

8 (1) On all income that comes into their hands, 6% without court  
9 allowance. For the purposes of this section, income which is with-  
10 held from payment to any such fiduciary pursuant to any law of  
11 this State, or of the United States, or any other State, country or  
12 sovereignty, or of any political subdivision or governmental unit  
13 of any of the foregoing, requiring such withholding for income tax  
14 or other tax purposes, shall be deemed to be income which comes  
15 into the hands of such fiduciary, and shall be subject to income com-  
16 missions as provided in this section in the same manner as if  
17 actually received by such fiduciary.

18 (2) If there is but one fiduciary, 5% on all corpus that comes  
19 into the fiduciary's hands in cases where corpus receipts do not  
20 exceed \$100,000.00, and in cases where corpus receipts exceed  
21 \$100,000.00, 5% on the first \$100,000.00 of corpus, and, on the excess  
22 over \$100,000.00 of corpus, such percentage, not in excess of 5%,  
23 as the court may determine on the intermediate or final settlement  
24 of the fiduciary's accounts, according to actual services rendered.

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

25 (3) If there are two or more fiduciaries, their commissions on  
26 corpus shall be the same as herein provided in the case of one  
27 fiduciary, and, in addition thereto, the court may allow corpus com-  
28 missions in excess of the commissions to which one fiduciary would  
29 be entitled under this section, at a rate not exceeding 1% of all  
30 corpus for each additional fiduciary. [In any case in which the  
31 administration of the fiduciary or fiduciaries has extended or  
32 extends beyond a period of 25 years, corpus commissions for such  
33 additional years shall be allowed at a rate not exceeding  $\frac{1}{2}$  of 1%  
34 per annum, irrespective of the number of fiduciaries.]

35 b. The court may, on an intermediate or the final settlement of  
36 the fiduciary's accounts, allow corpus commissions in addition to  
37 those provided by this section, on a showing that unusual or extra-  
38 ordinary services have been rendered by the fiduciary for which  
39 the fiduciary should receive extra compensation.

40 c. Fiduciaries may annually, without court allowance, take sums  
41 as follows on account of corpus commissions: if there is but one  
42 fiduciary, the amount so taken may equal  $\frac{1}{2}$  of 1% [of the first  
43 \$100,000.00 of corpus and  $\frac{1}{10}$  of 1%] of the value of the corpus [in  
44 excess of \$100,000.00, or \$1,100.00, whichever is less;] and, if there  
45 are two or more fiduciaries, the amount so taken may equal the  
46 commissions which may be taken pursuant to this subsection when  
47 there is but one fiduciary, plus  $\frac{1}{2}$  of such commissions for each  
48 fiduciary more than one. In computing the amount of commissions  
49 which may be taken annually pursuant to this subsection, the value  
50 of any item of corpus at the time when such item came into the  
51 hands of the fiduciary or fiduciaries, herein in this section referred  
52 to as the "presumptive value" of such item, may be used as the  
53 value of such item, or, at the option of the fiduciary, the value of  
54 such item at the end of the period for which such commissions are  
55 taken may be used. The failure of a fiduciary or fiduciaries to take  
56 commissions in any year as provided in this subsection shall not  
57 constitute a waiver of the right of such fiduciary or fiduciaries to  
58 take in a subsequent year the commissions not taken for such year.  
59 Commissions taken as provided in this subsection shall be subject  
60 to review on intermediate and final accountings, and to the extent  
61 that aggregate commissions so taken exceed the commissions allow-  
62 able under paragraphs (2) and (3) of subsection a. of this section,  
63 they [shall] *may* be disallowed.

64 d. In the event of a dispute as to the value of corpus on the  
65 settlement of the account of a fiduciary or fiduciaries, the burden of  
66 proving that the value of any item of corpus differs from the pre-

67 sumptive value of such item shall be upon such fiduciary or fidu-  
68 ciaries or other party claiming such difference.

1 2. (New section) On the settlement of accounts fiduciaries acting  
2 as trustees under a will or acting as a guardian shall be entitled to  
3 commissions over and above their actual expenses as in this section  
4 provided.

5 a. On all income that comes into their hands, commissions in the  
6 amount of 6% may be taken without court allowance. For the  
7 purposes of this section, income which is withheld from payment  
8 to the trustee pursuant to any law of this State, or of the United  
9 States, or any other state, country or sovereignty or of any political  
10 subdivision or governmental unit of any of the foregoing, for  
11 income tax or other tax purposes, shall be deemed to be income to  
12 the trustee, and shall be subject to income commissions as if actually  
13 received by such trustee.

14 b. Fiduciaries may annually, without court allowance, take com-  
15 missions on corpus (including accumulated income which has been  
16 invested by the fiduciary) in the amount of  $\frac{5}{10}$  of 1% of the first  
17 \$100,000.00 of value of corpus,  $\frac{3}{10}$  of 1% of the next \$100,000.00 of  
18 value and  $\frac{2}{10}$  of 1% of the value in excess of \$200,000.00. The value  
19 of the corpus for the purpose of computing the commissions shall  
20 be the "presumptive value" or, at the option of the fiduciary, the  
21 value at the end of the period, as defined in paragraph c. of N. J. S.  
22 3A:10-2.

23 The failure of a fiduciary to take commissions in any year shall  
24 not constitute a waiver by the fiduciary to take in a subsequent  
25 year the commissions not taken for such year.

26 c. In addition to the annual commissions on corpus, upon termi-  
27 nation of the trust or guardianship, or upon distribution of assets  
28 from the trust or guardianship, the fiduciary may take a commission  
29 on corpus distributed, including accumulated income which has  
30 been invested by the fiduciary. The value of the corpus for the  
31 purpose of computing the commissions shall be the "presumptive  
32 value" or, at the option of the fiduciary, the value at the time of  
33 distribution, as defined in paragraph c. of N. J. S. 3A:10-2. The  
34 amount of the commissions to be taken are as follows:

35 (1) If the distribution of corpus occurs within 5 years of the  
36 date when such corpus came into the hands of the fiduciary, an  
37 amount equal to the annual commissions on corpus authorized  
38 pursuant to subsection b. of this section, but not actually taken by  
39 the fiduciary, plus an amount equal to 2% of the value of the corpus  
40 distributed.

41 (2) If distribution of the corpus occurs between 5 and 10 years  
42 of the date when the corpus came into the hands of the fiduciary,

43 an amount equal to the annual commissions on corpus authorized  
 44 pursuant to subsection b. of this section, but not actually received  
 45 by the fiduciary, plus an amount equal to 1½% of the value of  
 46 the corpus distributed.

47 (3) If the distribution of corpus occurs more than 10 years after  
 48 the date the corpus came into the hands of the fiduciary, an amount  
 49 equal to the annual commissions on corpus authorized pursuant to  
 50 subsection b. of this section, but not actually received by the  
 51 fiduciary, plus an amount equal to 1% of the value of the corpus  
 52 distributed.

53 d. If there are two or more such fiduciaries, their corpus com-  
 54 missions shall be the same as for a single fiduciary plus an addi-  
 55 tional amount of ⅓ of such commissions for each additional  
 56 fiduciary.

57 e. The court may, on an intermediate or the final settlement of  
 58 fiduciaries accounts, allow corpus commissions in addition to those  
 59 provided by this section, on a showing that unusual or extraordi-  
 60 nary services have been rendered by the fiduciary or fiduciaries  
 61 for which he or they should receive additional compensation.

62 f. In the event of a dispute as to the value of corpus on the settle-  
 63 ment of the account of a fiduciary or fiduciaries, the burden of  
 64 proving that the value of any item of corpus differs from the pre-  
 65 sumptive value of such item shall be upon the party claiming such  
 66 difference.

1 \*3. (New section) No commissions in excess of those specified in  
 2 section 2 of this act shall be paid to a fiduciary acting as a trustee  
 3 under a will unless the testator, in his last will and testament or  
 4 any codicil thereto, acknowledges that he is aware of the com-  
 5 missions specified in section 2 and expressly authorizes payment  
 6 of commissions in excess thereof.\*

1 \***[3.]**\* \*4. (New section)\* a. With respect to fiduciaries annual  
 2 corpus commissions, the rates set forth herein shall apply for all  
 3 yearly periods ending after the effective date of this act.

4 b. With respect to the computation of corpus commissions pur-  
 5 suant to section 2 c. as to all corpus in the hands of a fiduciary on  
 6 the effective date of this act, the commissions which may be taken  
 7 shall be at the rate authorized as of the date the corpus came into  
 8 the hands of the fiduciary, and the "annual commissions author-  
 9 ized" to be taken for yearly periods ending prior to the effective  
 10 date of this act shall be at the rate authorized by the applicable law  
 11 in effect during that yearly period.

1 \***[4.]**\* \*5.\* This act shall take effect immediately.

ASSEMBLY, No. 3335

STATE OF NEW JERSEY

INTRODUCED MAY 21, 1979

By Assemblyman HERMAN

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

AN ACT concerning fiduciaries' compensation, amending N. J. S. 3A:10-2 and supplementing chapter 10 of Title 3A of the New Jersey Statutes.

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4 *tors, administrators with the will annexed, and fiduciaries appointed*  
5 *under chapter 40 of this Title for the property of an absentee, their*  
6 *commissions over and above their actual expenses shall be computed*  
7 *upon the following rates:*

8 (1) On all income that comes into their hands, 6% without court  
9 allowance. For the purposes of this section, income which is with-  
10 held from payment to any such fiduciary pursuant to any law of  
11 this State, or of the United States, or any other State, country or  
12 sovereignty, or of any political subdivision or governmental unit  
13 of any of the foregoing, requiring such withholding for income tax  
14 or other tax purposes, shall be deemed to be income which comes  
15 into the hands of such fiduciary, and shall be subject to income com-  
16 missions as provided in this section, in the same manner as if  
17 actually received by such fiduciary.

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20 exceed \$100,000.00, and in cases where corpus receipts exceed  
21 \$100,000.00, 5% on the first \$100,000.00 of corpus, and, on the excess  
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28 missions in excess of the commissions to which one fiduciary would  
29 be entitled under this section, at a rate not exceeding 1% of all  
30 corpus for each additional fiduciary. [In any case in which the  
31 administration of the fiduciary or fiduciaries has extended or  
32 extends beyond a period of 25 years, corpus commissions for such  
33 additional years shall be allowed at a rate not exceeding  $\frac{1}{3}$  of 1%  
34 per annum, irrespective of the number of fiduciaries.]

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36 the fiduciary's accounts, allow corpus commissions in addition to  
37 those provided by this section, on a showing that unusual or extra-  
38 ordinary services have been rendered by the fiduciary for which  
39 the fiduciary should receive extra compensation.

40 c. Fiduciaries may annually, without court allowance, take sums  
41 as follows on account of corpus commissions: if there is but one  
42 fiduciary, the amount so taken may equal  $\frac{1}{5}$  of 1% [of the first  
43 \$100,000.00 of corpus and  $\frac{1}{10}$  of 1%] of the value of the corpus [in  
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51 hands of the fiduciary or fiduciaries, herein in this section referred  
52 to as the "presumptive value" of such item, may be used as the  
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14 b. Fiduciaries may annually, without court allowance, take com-  
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63 ment of the account of a fiduciary or fiduciaries, the burden of  
64 proving that the value of any item of corpus differs from the pre-  
65 sumptive value of such item shall be upon the party claiming such  
66 difference.

1 3. a. With respect to fiduciaries annual corpus commissions, the  
2 rates set forth herein shall apply for all yearly periods ending after  
3 the effective date of this act.

4 b. With respect to the computation of corpus commissions pur-  
5 suant to section 2 c. as to all corpus in the hands of a fiduciary on  
6 the effective date of this act, the commissions which may be taken  
7 shall be at the rate authorized as of the date the corpus came into  
8 the hands of the fiduciary, and the "annual commissions author-  
9 ized" to be taken for yearly periods ending prior to the effective  
10 date of this act shall be at the rate authorized by the applicable law  
11 in effect during that yearly period.

1 4. This act shall take effect immediately.

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#### STATEMENT

This bill will amend the statutes providing for commissions to fiduciaries. With the exception of a change in the formula with respect to the interim annual commissions, these changes affect only court appointed guardians and trustees under a will and do not affect other fiduciaries such as executors.

The basic purpose of this bill is to recognize the distinction between long periods of administration from guardians and trustees and the usually shorter periods for other fiduciaries such as executors and administrators. For example, under current law, the corpus commissions on a \$100,000.00 trust administered for 4 years or administered for 1 year are exactly the same—5% or \$5,000.00. For the 4 years administration, these commissions would be paid at the rate of \$200.00 annually plus \$4,200.00 at termination, resulting in the total of \$5,000.00 or an average of \$1,250.00 per year. Pursuant to the proposed Act, the commissions on the same \$100,000.00 trust administered for 4 years would be \$500.00 annually, plus 2% at termination, making a total of \$4,000.00 or an average of \$1,000.00 per year. If the same trust were administered for 12 years, the Act provides for 12 yearly corpus commissions of \$500.00 each, plus 1% at termination, for a total of \$7,000.00 or an average of \$583.00 per year.

The Act would also benefit the income beneficiaries of a trust by providing them with annual income tax deductions for the full amount of the trustees' commissions. It is not uncommon that when the court allows commissions on an intermediate accounting, total allowances exceed the distributive net income, with the result that income tax benefits are lost to the income beneficiaries.

The last amendment to the statutory commission rates was on 6/10/57. Since that time the Consumer Price Level has doubled and there have been changes to the tax laws governing trusts which increase annual costs. For example, a New Jersey trustee must now file annually a New Jersey Tax Return, a completely different calculation from the Federal Income Tax.

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ASSEMBLY JUDICIARY, LAW, PUBLIC SAFETY AND  
DEFENSE COMMITTEE

STATEMENT TO  
**ASSEMBLY, No. 3335**  
with Assembly committee amendments

**STATE OF NEW JERSEY**

DATED: JUNE 28, 1979

This bill will amend the statutes providing for commissions to fiduciaries. With the exception of a change in the formula with respect to the interim annual commissions, these changes affect only court appointed guardians and trustees under a will and do not affect other fiduciaries such as executors.

The basic purpose of this bill is to recognize the distinction between long periods of administration from guardians and trustees and the usually shorter periods for other fiduciaries such as executors and administrators. For example, under current law, the corpus commissions on a \$100,000.00 trust administered for 4 years or administered for 1 year are exactly the same—5% or \$5,000.00. For the 4 years administration, these commissions would be paid at the rate of \$200.00 annually plus \$4,200.00 at termination, resulting in the total of \$5,000.00 or an average of \$1,250.00 per year. Pursuant to the proposed Act, the commissions on the same \$100,000.00 trust administered for 4 years would be \$500.00 annually, plus 2% at termination, making a total of \$4,000.00 or an average of \$1,000.00 per year. If the same trust were administered for 12 years, the Act provides for 12 yearly corpus commissions of \$500.00 each, plus 1% at termination, for a total of \$7,000.00 or an average of \$583.00 per year.

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The last amendment to the statutory commission rates was on 6/10/57. Since that time the Consumer Price Level has doubled and there have been changes to the tax laws governing trusts which increase annual costs. For example, a New Jersey trustee must now file annually a New Jersey Tax Return, a completely different calculation from the Federal Income Tax.

The committee amendments provide that if a testator wants to provide for a higher commission, to be paid to the trustee of a will, than is provided by this law, the testator must do so knowingly: he must acknowledge awareness of the legally allowed commissions, and specifically request that a higher commission be paid.

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ASSEMBLY COMMITTEE AMENDMENTS TO  
**ASSEMBLY, No. 3335**

**STATE OF NEW JERSEY**

ADOPTED JUNE 28, 1979

Amend page 1, section 1, line 4, after "tors," insert "administrators,".

Amend page 3, section 2, line 2, correct spelling of "guardian".

Amend page 4, section 2, after line 66, insert new section 3 as follows:

"3. (New section) No commissions in excess of those specified in section 2 of this act shall be paid to a fiduciary acting as a trustee under a will unless the testator, in his last will and testament or any codicil thereto, acknowledges that he is aware of the commissions specified in section 2 and expressly authorizes payment of commissions in excess thereof."

Amend page 4, section 3, line 1, omit "3.", insert "4. (New section)".

Amend page 4, section 4, line 1, omit "4", insert "5".

FROM THE OFFICE OF THE GOVERNOR

FOR IMMEDIATE RELEASE

FOR FURTHER INFORMATION

FEBRUARY 28, 1980

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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 1

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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