

FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext.103 or <mailto:refdesk@njstatelib.org>

REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

IS 3/13/08

§§1-7,10-12,15,16 -
C.52:27G-32 to
52:27G-43
§8 - C.53:1-20.9e
§9 - C.9:6-8.10e
§17 - Approp.
§18 - Note to §§1-17

P.L. 2005, CHAPTER 370, *approved January 12, 2006*
Assembly Committee Substitute (*Third Reprint*) for
Assembly, Nos. 2869 and 3093

1 AN ACT concerning guardianship for elderly or other incapacitated
2 adults, supplementing ²[chapter 12 of Title 3B ¹and Title 22A¹ of
3 the New Jersey Statutes and]² Titles 9 ², 52² and 53 of the
4 Revised Statutes, amending N.J.S.3B:12-25 and N.J.S.22A:2-30
5 and making an appropriation therefor.

6

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

9

10 1. (New section) The Legislature finds and declares that:

11 a. As the elderly and other incapacitated adult populations in the
12 State continue to grow, the need for an increasing number of qualified
13 individuals to be available to serve as court-appointed guardians for
14 this population increases;

15 b. New Jersey has established the Office of the Public Guardian
16 for Elderly Adults to perform guardian services for adults age 60 years
17 or older who do not have family or friends willing or able to furnish
18 guardian services. The registration of professional guardians, to be
19 available when family, friends or the Office of the Public Guardian for
20 Elderly Adults are unable to act, will enhance the quality of care given
21 to vulnerable adults;

22 c. To the extent that many elderly and other incapacitated adults
23 in the State do not have family or friends available to serve as
24 guardians, it is ²[important to increase the number of persons who can
25 serve as professional guardians when the Office of the Public Guardian
26 for Elderly Adults is not available, while simultaneously ensuring that
27 only]prudent, after giving first consideration for guardianship of
28 elderly adults to the Office of the Public Guardian for Elderly Adults,
29 or when that office is not available, to develop other² qualified
30 individuals ²[become registered]who can serve as professional²
31 guardians; and

32 d. The establishment of standards for professional guardians will

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly ASI committee amendments adopted May 5, 2005.

² Assembly floor amendments adopted June 20, 2005.

³ Senate floor amendments adopted December 15, 2005.

1 help protect adults who are adjudicated mentally incapacitated and
2 need guardianship services.

3

4 2. (New section) a. A person shall not serve as a professional
5 guardian of ¹[three] five¹ or more wards who are incapacitated adults
6 unless that person has been granted letters of guardianship under
7 N.J.S.3B:12-25 and is:

8 (1) a spouse ²[, heir]², domestic partner ¹as defined in section 3
9 of P.L.2003, c.246 (C.26:8A-3)¹ ², heir² or friend of the incapacitated
10 adult;

11 (2) the public guardian appointed pursuant to section 5 of
12 P.L.1985, c.298 (C.52:27G-24); ¹[or]¹ ²or²

13 (3) a registered professional guardian ²[¹; or

14 (4) an attorney licensed to practice law in this State¹]².

15 b. A person shall not serve as a registered professional guardian
16 for any incapacitated adult who is a resident or confined to any facility
17 or institution where the registered professional guardian is employed
18 by, or has any duties or responsibilities in connection with, the facility
19 or institution, with the exception of an employee who has duties and
20 responsibilities at the facility or institution and is a relative of the
21 ward¹[;].¹

22 c. Nothing herein shall affect the authority of the court to appoint
23 a financial institution qualified pursuant to section 28 of P.L. 1948,
24 c.67 (C.17:9A-28) as a fiduciary, or a person designated as a
25 testamentary guardian.

26 d. A person may serve as a professional guardian of an
27 incapacitated adult if that person has been registered by the Office of
28 the Public Guardian for Elderly Adults as a professional guardian
29 pursuant to this act²[¹, or is an attorney licensed to practice law in
30 this State. Nothing in this act shall be construed to prohibit an
31 attorney licensed to practice law in this State, who is not otherwise
32 disqualified or ineligible pursuant to this act, from registering as a
33 professional guardian¹]². The Office of the Public Guardian for
34 Elderly Adults shall not register a person as a professional guardian
35 unless that person:

36 (1) is a full-time New Jersey resident or maintains an office in New
37 Jersey;

38 (2) has¹, prior to the effective date of this act, had¹ a minimum of
39 five years of work experience ¹[in the field of care management, case
40 management or other relevant work experience involving the
41 management and care of elderly adults]as a court-appointed guardian
42 of ²[a non-related person¹]five or more persons not related to the
43 guardian ²; or¹, on after the effective date of this act,¹ has received a
44 bachelor's degree ¹[or an associate's degree]¹ and has two years of
45 work experience in the field of care management, case management or
46 other relevant work experience involving the management and care of

1 elderly adults;

2 (3) has supplied proof of current professional liability insurance
3 coverage to the Office of the Public Guardian for Elderly Adults;

4 (4) has submitted a credit check to the Office of the Public
5 Guardian for Elderly Adults from one national credit reporting agency,
6 which has been issued within one month of the date of the application
7 for registration as a professional guardian;

8 (5) has satisfied the criminal history record background, child
9 abuse registry and domestic violence central registry check
10 requirements of this act;

11 (6) is not subject to any outstanding warrants for arrest;

12 (7) ¹[has not had a professional license suspended or revoked;

13 (8)]¹ has completed approved initial training and biennial
14 continuing education courses, as provided for in section ²[4]~~5~~² of this
15 act, relating to guardianship law, procedures and ethics; and

16 ¹[(9)](8)¹ is not otherwise ineligible as set forth in section 3 of
17 this act.

18 ¹e. Except for legal services authorized by a court, a person
19 serving as a registered professional guardian ²: (1)² shall only provide
20 guardianship services to a ward and shall not bill the ward for other
21 professional or licensed services while serving as guardian²].

22 f. A person serving as a registered professional guardian] ; and
23 (2)² shall not contract for professional or licensed services with a
24 person, organization or agency with which the guardian has a vested
25 interest.¹

26

27 3. (New section) a. In addition to the disqualification from
28 registration as a professional guardian pursuant to section ²[5]~~6~~² of
29 this act, a person is ineligible for registration as a professional
30 guardian or, if registered, may have his registration suspended or
31 revoked pursuant to section ¹[12] ²[11]~~12~~ ²of this act, if the
32 person:

33 (1) is an attorney who has been disbarred or suspended from the
34 practice of law;

35 (2) ¹[is a professional removed from good-standing status by the
36 applicable sanctioning committee of the applicable professional
37 licensing board or other authorized entity of the profession,] was
38 engaged in a profession or occupation for which the person was
39 licensed, certified or registered by a board or other authorized entity
40 in the State and his license, certification or registration was suspended
41 or revoked by the applicable board or other authorized entity of the
42 profession or occupation¹;

43 (3) has a criminal ³[or disorderly persons]³ conviction or has been
44 found to be civilly liable for any matter involving moral turpitude,
45 abuse, neglect, fraud, misappropriation, misrepresentation, theft or

1 conversion;

2 (4) ³[is adjudicated a bankrupt within the past 10 years]lacks
3 financial responsibility to serve as a registered professional guardian,
4 as determined by the Office of the Public Guardian for Elderly Adults³;

5 (5) is found to have committed abuse, neglect or exploitation of
6 another person;

7 (6) is the subject of any other disciplinary decision or civil
8 adjudication that would prohibit the person by law from providing
9 services to children or vulnerable adults;

10 (7) fails to fulfill the initial training or biennial continuing education
11 courses pursuant to this act;

12 (8) misrepresents, conceals or falsifies information on the
13 registered guardian application form or annual renewal form;

14 (9) is found to have committed any act which results in a
15 substantial change in the registered guardian's qualifications to serve
16 as a guardian;

17 (10) engages in conduct which demonstrates unfitness to work as
18 a registered professional guardian, including, but not limited to,
19 persistent or repeated violations of a court order or engaging in any
20 impropriety involving dishonesty, fraud, deceit or misrepresentation;

21 (11) fails to cooperate during the course of an investigation by the
22 Office of the Public Guardian for Elderly Adults or any law
23 enforcement agency;

24 (12) ²repeatedly² fails to accept ²[indigent]pro bono² cases when
25 assigned by the court; or

26 (13) is the subject of a court order, finding of fact or conclusion of
27 law that indicates:

28 (a) a finding that the professional guardian has violated the
29 guardian's duties to an incapacitated person or his estate;

30 (b) a failure to comply with an order of the court;

31 (c) knowingly or negligently engaging in misconduct which:
32 benefits the professional guardian or another; operates to deceive the
33 court; causes serious or potentially serious injury to a party, the public
34 or the legal system; or causes serious or potentially serious
35 interference with a legal proceeding;

36 (d) endangering an incapacitated person;

37 (e) conduct outside the powers or role of a guardian;

38 (f) ²[violation of State law, court rule or court procedure;

39 (g)]² a repeated or significant failure to perform guardian
40 responsibilities or a dereliction of fiduciary duties;

41 ²[(h)](g)² a failure to file required reports and forms;

42 ²[(i)](h)² having engaged in inappropriate billing or fee payment;

43 or

44 ²[(j)](i)² malfeasance, nonfeasance or misfeasance.

45 b. A registered professional guardian shall maintain records of all
46 transactions and reports associated with an incapacitated adult in his

1 care and shall be subject to audit or spot-check inspection at any
2 reasonable time, at the discretion of the public guardian and his
3 authorized agents, to enable the public guardian to verify satisfactory
4 operational, fiscal and care management compliance by professional
5 guardians.

6 ²[c. A registered professional guardian ¹and a family member of
7 the registered professional guardian¹ shall be prohibited from acting as
8 an executor or being a beneficiary of the estate of an incapacitated
9 adult, unless the registered professional guardian ¹or family member¹
10 is also an heir at law of the incapacitated adult.

11 d. A registered professional guardian ¹and a family member of the
12 registered professional guardian¹ shall not be granted power of
13 attorney by the incapacitated adult or co-ownership of a financial
14 account of the incapacitated adult without explicit court approval,
15 unless the registered professional guardian ¹or family member¹ is also
16 an heir at law of the incapacitated adult.

17 e. A registered professional guardian, unless authorized by a court
18 order after notice to all interested persons, shall not:

19 (1) loan an incapacitated adult's property or funds to himself or an
20 affiliate;

21 (2) make, revoke or change an incapacitated adult's beneficiary
22 designation to himself or an affiliate;

23 (3) purchase or participate in the purchase of property from an
24 incapacitated adult's estate for the professional guardian's own or an
25 affiliate's account or benefit;

26 (4) transfer an incapacitated adult's property or funds by inter vivos
27 transaction to himself or an affiliate, or receive by operation of
28 survivorship rights any of an incapacitated adult's property or funds for
29 himself or an affiliate; ¹[or]¹

30 (5) engage in any transaction involving self-dealing or a conflict of
31 interest concerning an incapacitated adult's property or funds¹; or

32 (6) make any renovation to the ward's real property in an amount
33 greater than \$10,000¹².

34
35 ²4. (New section) a. An inter vivos gift, contract, conveyance,
36 disposition, transfer, trust, change in beneficiary designation,
37 appointment, or re-titling of an account or property, or a testamentary
38 instrument affecting an incapacitated adult's money or property in
39 favor of a registered professional guardian or a family member or
40 business associate of the registered professional guardian, made or
41 executed, as appropriate, during the two-year period before the
42 establishment of a guardianship in which the registered professional
43 guardian is appointed as guardian shall be void, unless the court
44 determines that:

45 (1) the registered professional guardian or a family member or
46 business associate of the registered professional guardian who benefits

1 from the inter vivos transaction or testamentary instrument described
2 in this subsection is a spouse, domestic partner as defined in section 3
3 of P.L. 2003, c.246 (C.26:8A-3) or heir at law of the incapacitated
4 adult; or

5 (2) the registered professional guardian has proved by a
6 preponderance of the evidence that the inter vivos transaction or
7 testamentary instrument described in this subsection:

8 (a) was not made or executed, as appropriate, when the
9 incapacitated adult was under the disability that caused the
10 incapacitated adult to be subsequently declared incapacitated;

11 (b) was authorized and not the result of undue influence, fraud,
12 coercion, duress, deception or misrepresentation; and

13 (c) was reviewed by an independent attorney, who is not associated
14 with the registered professional guardian or a family member or
15 business associate of the registered professional guardian, donee,
16 contracting party, transferee, beneficiary, title holder or devisee, and
17 that:

18 (i) the independent attorney counseled the incapacitated adult
19 about the nature and consequences of the intended inter vivos
20 transaction or testamentary instrument described in this subsection;
21 and

22 (ii) the independent attorney certified that the intended inter vivos
23 transaction or testamentary instrument described in this subsection was
24 not the result of undue influence, fraud, coercion, duress or
25 misrepresentation.

26 The provisions of this subsection shall not be construed to affect
27 any other right or remedy that may be available to the incapacitated
28 adult or the estate of the incapacitated adult with respect to an inter
29 vivos transaction or testamentary instrument described in this
30 subsection that benefits a registered professional guardian or a family
31 member or business associate of the registered professional guardian.

32 The provisions of this subsection shall not be construed to
33 invalidate a subsequent transfer for value to a bona fide transferee
34 from a registered professional guardian or a family member or business
35 associate of the registered professional guardian.

36 b. A registered professional guardian, unless authorized by a court
37 order after notice to all interested persons, shall not:

38 (1) loan an incapacitated adult's property or funds to himself or an
39 affiliate;

40 (2) make, revoke or change an incapacitated adult's beneficiary
41 designation to himself or an affiliate;

42 (3) purchase or participate in the purchase of property from an
43 incapacitated adult's estate for the professional guardian's own or an
44 affiliate's account or benefit;

45 (4) transfer an incapacitated adult's property or funds by inter vivos

1 transaction to himself or an affiliate, or receive by operation of
2 survivorship rights any of an incapacitated adult's property or funds for
3 himself or an affiliate:

4 (5) engage in any transaction involving self-dealing or a conflict of
5 interest concerning an incapacitated adult's property or funds; or

6 (6) make any renovation to the ward's real property in an amount
7 greater than \$10,000, except that in extraordinary circumstances
8 involving a catastrophic situation, the guardian may apply ex parte to
9 the Superior Court for an order permitting the renovation.²

10
11 ²[4.] 5.² (New section) a. The Office of the Public Guardian for
12 Elderly Adults shall charge each professional guardian an initial
13 application fee and an annual registration fee. The initial application
14 fee shall be in addition to the cost of a credit history report and child
15 abuse registry and criminal history record background checks. Annual
16 registration shall be made on forms furnished by the office and
17 accompanied by the applicable fee, as established by the office. The
18 initial application and annual registration fees shall not exceed \$300.
19 Such fees shall be retained by the office for the implementation of this
20 act.

21 b. The Office of the Public Guardian for Elderly Adults shall
22 approve a vendor to provide initial training and continuing education
23 courses biennially in accordance with procedures to be established by
24 the office. In order to administer this program efficiently, the office
25 may limit the number of vendors providing this service.

26
27 ²[5.] 6.² (New section) a. Upon receipt of an application for
28 registration as a professional guardian, the Office of the Public
29 Guardian for Elderly Adults is authorized to determine whether
30 criminal history record information exists on file in the Federal Bureau
31 of Investigation, Identification Division or in the State Bureau of
32 Identification in the Division of State Police that would disqualify the
33 person from being registered as a professional guardian.

34 The Office of the Public Guardian for Elderly Adults is authorized
35 to access the child abuse registry in the Department of Human
36 Services and the domestic violence central registry in the
37 Administrative Office of the Courts.

38 A person shall be disqualified from registration if the person's
39 criminal history record background check reveals a record of
40 conviction of any of the following crimes and offenses:

41 (1) In New Jersey, any crime or disorderly persons offense:

42 (a) involving danger to the person, meaning those crimes and
43 disorderly persons offenses set forth in N.J.S.2C:11-1 et seq.,
44 N.J.S.2C:12-1 et seq., N.J.S.2C:13-1 et seq., N.J.S.2C:14-1 et seq. or
45 N.J.S.2C:15-1 et seq.;

1 (b) against the family, children or incompetents, meaning those
2 crimes and disorderly persons offenses set forth in N.J.S.2C:24-1 et
3 seq.;

4 (c) involving theft as set forth in chapter 20 of Title 2C of the New
5 Jersey Statutes, or fraud relating to any health care plan or program as
6 set forth in section 15 of P.L.1989, c.300 (C.2C:21-4.1), sections 2
7 and 3 of P.L.1997, c.353 (C.2C:21-4.2 and 2C:21-4.3), P.L.1999,
8 c.162 (C.2C:21-22.1) or section 17 of P.L.1968, c.413 (C.30:4D-17);
9 or

10 (d) involving any controlled dangerous substance or controlled
11 substance analog as set forth in chapter 35 of Title 2C of the New
12 Jersey Statutes except paragraph (4) of subsection a. of
13 N.J.S.2C:35-10.

14 (2) In any other state or jurisdiction, of conduct which, if
15 committed in New Jersey, would constitute any of the crimes or
16 disorderly persons offenses described in paragraph (1) of this
17 subsection.

18 A person shall also be disqualified from registration if a check of
19 the child abuse registry reveals that the person has a history of child
20 abuse.

21 In a case in which a check of the domestic violence central registry
22 reveals that the person has a history of domestic violence, the public
23 guardian shall review the record with respect to the type and date of
24 the criminal offense or the provisions and date of the final domestic
25 violence restraining order and make a determination as to the
26 suitability of the person to be a registered professional guardian.

27 b. Notwithstanding the provisions of subsection a. of this section
28 to the contrary, no person shall be disqualified from registration on the
29 basis of any conviction disclosed by a criminal history record
30 background check performed pursuant to this act if the person has
31 affirmatively demonstrated to the public guardian clear and convincing
32 evidence of the applicant's rehabilitation. In determining whether a
33 person has affirmatively demonstrated rehabilitation, the following
34 factors shall be considered:

35 (1) the nature and responsibility of the position which the person
36 would hold, has held or currently holds, as the case may be;

37 (2) the nature and seriousness of the offense;

38 (3) the circumstances under which the offense occurred;

39 (4) the date of the offense;

40 (5) the age of the person when the offense was committed;

41 (6) whether the offense was an isolated or repeated incident;

42 (7) any social conditions which may have contributed to the
43 offense; and

44 (8) any evidence of rehabilitation, including good conduct in prison
45 or in the community, counseling or psychiatric treatment received,

1 acquisition of additional academic or vocational schooling, work
2 history, or the recommendation of those who have had the person
3 under their supervision.

4 c. If a person refuses to consent to, or cooperate in, the securing
5 of a criminal history record background check, the public guardian
6 shall not register that person as a professional guardian and shall notify
7 the person of that denial.

8 ²[6.]² (New section) a. A person who is required to undergo
9 a criminal history record background, child abuse registry and
10 domestic violence central registry check pursuant to section ²[5]⁶² of
11 this act shall submit to the public guardian his name, address and
12 fingerprints ¹[taken on standard fingerprint cards by a State or
13 municipal law enforcement agency or taken by such other means as
14 specified by the Commissioner of Health and Senior Services], in
15 accordance with the applicable State and federal laws, rules and
16 regulations¹. The ¹[public guardian] Office of the Public Guardian¹
17 is authorized to exchange fingerprint data with and receive criminal
18 history record information from the Federal Bureau of Investigation
19 and the Division of State Police for use in making the determinations
20 required pursuant to this act.

21 b. Upon receipt of the criminal history record information for a
22 person from the Federal Bureau of Investigation or the Division of
23 State Police, the public guardian shall, within a reasonable time, notify
24 the person in writing of his qualification or disqualification for
25 registration under this act. If the person is disqualified, the conviction
26 or convictions which constitute the basis for the disqualification shall
27 be identified in the notice to the person.

28 c. Upon receipt of the information for a person from the child
29 abuse registry in the Department of Human Services or the domestic
30 violence central registry in the Administrative Office of the Courts, the
31 public guardian shall, within a reasonable time, notify the person in
32 writing of his qualification or disqualification for registration under
33 this act. If the person is disqualified, the incident or incidents which
34 constitute the basis for the disqualification shall be identified in the
35 notice to the person.

36 d. The person has a right to be heard by the Office of the Public
37 Guardian for Elderly Adults, within 30 days from the date of the
38 written notice of disqualification, on the accuracy of his criminal
39 history record, child abuse registry or domestic violence central
40 registry information or to establish his rehabilitation under subsection
41 b. of section ²[5]⁶² of this act. Upon the issuance of a final decision
42 by the public guardian, pursuant to this subsection, the Office of the
43 Public Guardian for Elderly Adults shall notify the person as to
44 whether he remains disqualified. A person disputing an adverse
45 determination by the Office of the Public Guardian for Elderly Adults
46 may file with the Office of Administrative Law for an administrative

1 hearing.

2

3 ²[7.]² (New section) a. In accordance with the provisions of
4 sections ²[5]6² and ²[6]7² of P.L. , c. (C.) (pending before
5 the Legislature as this bill), the Division of State Police in the
6 Department of Law and Public Safety shall conduct a criminal history
7 record background check, including a name and fingerprint
8 identification check, of each person seeking registration as a
9 professional guardian who is required to undergo a criminal history
10 record background check pursuant to P.L. , c. (C.)¹(pending
11 before the Legislature as this bill)¹.

12 b. For the purpose of conducting a criminal history record
13 background check pursuant to subsection a. of this section, the
14 Division of State Police shall examine its own files and arrange for a
15 similar examination by federal authorities. The division shall
16 immediately forward the information obtained as a result of conducting
17 the check to the public guardian.

18 c. The Division of State Police shall promptly notify the Office of
19 the Public Guardian for Elderly Adults in the event a person who is
20 required to undergo a criminal history record background check
21 pursuant to section ²[5]6² of P.L. , c. (C.) (pending before
22 the Legislature as this bill) is convicted of a crime or offense in this
23 State after the date the background check was performed. Upon
24 receipt of such notification, the public guardian shall make a
25 determination regarding the continuation of the registration of the
26 person as a professional guardian.

27

28 ²[8.]² (New section) a. In accordance with the provisions of
29 sections ²[5]6² and ²[6]7² of P.L. , c. (C.)(pending before
30 the Legislature as this bill), the Department of Human Services shall
31 conduct a check of its child abuse registry for each person seeking
32 registration as a professional guardian who is required to undergo such
33 a check pursuant to P.L. , c. (C.)(pending before the
34 Legislature as this bill). The department shall immediately forward the
35 information obtained as a result of the check to the Office of the
36 Public Guardian for Elderly Adults.

37 b. The department shall promptly notify the Office of the Public
38 Guardian for Elderly Adults in the event a person who is required to
39 undergo a check of the child abuse registry pursuant to section ²[5]6²
40 of P.L. , c. (C.) (pending before the Legislature as this bill) is
41 listed in the registry after the date the child abuse registry check was
42 performed. Upon receipt of such notification, the public guardian shall
43 make a determination regarding the continuation of the registration of
44 the person as a professional guardian.

1 ²[9.] 10.² (New section) A person seeking registration as a
2 professional guardian shall assume the cost of the criminal history
3 record background and child abuse registry checks conducted pursuant
4 to this act, in accordance with regulations as may be adopted by the
5 public guardian.

6

7 ¹[10. (New section) Upon registration as a professional guardian,
8 the registered professional guardian shall agree, in conformance with
9 any judgment appointing a professional guardian, to submit an annual
10 written report to the Surrogate in the Surrogate's capacity as deputy
11 clerk of the Superior Court of the county in which the ward resides,
12 on the status of each case, each ward's condition and any
13 accountings.]¹

14

15 ¹[11.] ²[10.¹] 11.² (New section) a. The Office of the Public
16 Guardian for Elderly Adults shall maintain a Statewide registry of
17 registered professional guardians and make all information in the
18 registry available to the Administrative Director of the Courts for the
19 use of the Superior Court, or to other interested parties upon request.
20 The registry shall include the following information for each registered
21 guardian:

22 (1) full name used within the past 10 years;

23 (2) date of birth;

24 (3) business address;

25 (4) business telephone number;

26 (5) educational background and professional experience, including
27 work in any related field germane to furnishing of guardianship
28 services; and

29 (6) the insurance company issuing the registered guardian's
30 professional liability insurance coverage;

31 b. In addition to the information listed in subsection a. of this
32 section, if known to the public guardian, the registry shall include the
33 following information for each registered guardian:

34 (1) whether that person has ever been removed for cause or
35 resigned as guardian in a specific case, the circumstances of the
36 removal or resignation, and the case names, court locations and case
37 numbers;

38 (2) any judgment entered against the person as a result of the
39 performance of services as a guardian;

40 (3) any finding by a court that the person is accountable for
41 malfeasance, nonfeasance or misfeasance;

42 (4) any finding by a court that the person has violated the
43 guardian's duties to the incapacitated adult, his estate or his insurance
44 policy; and

45 (5) any known pending or final licensing or disciplinary actions.

1 ¹[12.] ²[~~11.~~¹12.]² (New section) The public guardian may
 2 suspend or revoke a person's registration as a professional guardian
 3 and remove the person from the Statewide registry established
 4 pursuant to section ¹[11]² [~~10~~¹11]² of this act if: the public guardian
 5 has reasonable cause to suspect the trustworthiness or capability of
 6 that person to perform the duties of a professional guardian; or the
 7 person is no longer in compliance with the requirements of section 2
 8 of this act or becomes ineligible for registration as a professional
 9 guardian as provided for in subsection a. of section 3 of this act.
 10 Notice of the suspension or revocation of the registration and removal
 11 from the registry shall be sent ¹, within 30 days.¹ to the Administrative
 12 Office of the Courts and the known local Surrogates on behalf of the
 13 Superior Court, Chancery Division, Probate Part having jurisdiction
 14 over the professional guardian's wards.

15
 16 ¹[13.] ²[~~12.~~¹13.]² N.J.S.3B:12-25 is amended to read as follows:
 17 3B:12-25. Appointment of guardian ²[other than a testamentary
 18 guardian]².

19 The Superior Court may determine the [~~mental incompetency~~]
 20 incapacity of an alleged [~~mental incompetent~~] incapacitated person
 21 and appoint a guardian for ²[his]the² person, guardian for ²[his]the²
 22 estate or a guardian for ²[his]the² person and estate. Letters of
 23 guardianship shall be granted to the spouse ²or domestic partner as
 24 defined in section 3 of P.L.2003, c.246 (C.26:8A-3)², if the spouse is
 25 living with the [~~incompetent~~] incapacitated person as man and wife
 26 ²or as a domestic partner as defined in section 3 of P.L.2003, c.246
 27 (C.26:8A-3)² at the time the [~~incompetency~~]
 28 ²[~~incapacity~~]incapacitation² arose, or to ²[his]the² incapacitated
 29 person's² heirs²,² or ²[~~domestic partner~~ ¹as defined in section 3 of
 30 P.L.2003, c.246 (C.26:8A-3)¹ or]² friends, ²or thereafter first
 31 consideration shall be given to the Office of the Public Guardian for
 32 Elderly Adults in the case of adults within the statutory mandate of the
 33 office.² or if none of them will accept the letters or it is proven to the
 34 court that no appointment from among them will be to the best interest
 35 of the [~~incompetent~~] incapacitated person or ²[his]the² estate, then
 36 to²[the Office of the Public Guardian for Elderly Adults in the case
 37 of adults within the statutory mandate of the office or then to]² any
 38 other proper person as will accept the same ², and if applicable², in
 39 accordance with the professional guardianship requirements of
 40 P.L. , c. (C.) (pending before the Legislature as this bill).
 41 ²Consideration may be given to surrogate decision-makers, if any,
 42 chosen by the incapacitated person before the person became
 43 incapacitated by way of a durable power of attorney pursuant to
 44 section 4 of P.L.2000, c.109 (C.46:2B-8.4), health care proxy or
 45 advance directive.²

1 for first two pages, \$5.00 for each additional page, \$5.00 for cover
2 letter stating no assets, \$5.00 for death certificate.

3 Exemplifying will for another state, not exceeding two pages
4 including will and codicil, plus cost of certificate of Secretary of State
5 when requisite, \$75.00 (not including \$9.00 fee for exemplified forms).
6 For pages in excess of two, \$5.00 for each page.

7 Recording, microfilming or photostating, docketing, indexing,
8 filing and reporting to the Division of Taxation in the Department of
9 the Treasury an exemplified copy of will and probate proceedings from
10 another state, \$5.00 for each page.

11 Recording, microfilming or photostating, docketing, indexing and
12 filing a certified copy of will with proofs from New Jersey, \$5.00 for
13 each page.

14 Recording, microfilming or photostating certified transcripts of
15 wills admitted to probate and probate proceedings or letters of
16 administration and administration proceedings granted by the Superior
17 Court, \$5.00 for each page.

18

19

LETTERS OF TRUSTEESHIP

20

21 Acceptance of trustee and letters of trusteeship, including one
22 certificate, \$50.00.

23

24

LETTERS OF ADMINISTRATION

25

26 General administration, including preparation and execution of
27 complaint, bond, surety affidavits, necessary recording, microfilming
28 or photostating, indexing, filing, report to the Division of Taxation,
29 including power of attorney and death certificate, in the Department
30 of the Treasury and the Clerk of the Superior Court and original letters
31 including authorization to accept service of process and death
32 certificate, \$125.00, and for other documents, \$5.00 per page.

33 Administration ad prosequendum, \$50.00, and for other
34 documents, \$5.00 per page.

35 Exemplifying administration, \$75.00.

36 Certified copy of administration, \$50.00.

37 Affidavits of surviving spouse or next of kin where the value of the
38 real and personal assets of the estate does not exceed \$20,000.00 or
39 \$10,000.00, respectively, \$5.00 for each \$100.00 or part thereof.
40 Total cost shall not exceed \$50.00. This fee is waived where the value
41 of the assets of the estate does not exceed \$200.00.

42

43

LETTERS OF GUARDIANSHIP

44

45 Granting letters of guardianship, acceptance of guardianship and
46 filing of power of attorney, \$50.00.

1 Affidavits of estates of minors where value of real and personal
2 estate does not exceed \$5,000.00, \$5.00 per page.

3 Miscellaneous petitions and orders, \$5.00 per page.

4
5 INVENTORIES

6
7 For all services in appointment of appraisers, \$25.00.

8 Filing, entering and recording, microfilming or photostating,
9 inventory and appraisal, not exceeding one page, and affidavits of
10 appraisers and executor, \$25.00.

11 For each additional page, \$5.00.

12
13 ACCOUNTING

14
15 For filing complaint and one page of accounting, \$175.00.

16 For auditing, stating, reporting and recording, microfilming or
17 photostating, accounts of executors, administrators, guardians,
18 trustees and assignees, including drawing judgment, but exclusive of
19 advertising costs:

20 In estates up to and including \$2,000.00, no additional fee.

21 In estates from \$2,001.00 to and including \$10,000.00, \$100.00.

22 In estates from \$10,001.00 to and including \$30,000.00, \$125.00.

23 In estates from \$30,001.00 to and including \$65,000.00, \$150.00.

24 In estates from \$65,001.00 to and including \$200,000.00, 3/10 of
25 1% but not less than \$300.00.

26 In estates exceeding \$200,000.00--4/10 of 1%, but not less than
27 \$400.00.

28 For each page of accounting in excess of one, \$5.00.

29 In computing the amount of an estate for the purpose of fixing the
30 fees of a surrogate for auditing and reporting the account, the balance
31 from the prior account shall be excluded.

32 For preparing notice of settlement of accounts and copies of the
33 same, forwarding notice to newspaper, with directions as to
34 publication, obtaining proofs of publication, keeping a record of
35 notices and newspapers to which they are sent and of the moneys
36 received to defray the cost of advertising and transmitting advertising
37 charges to newspaper, \$50.00.

38 No fees herein allowed shall be charged against the recipient of any
39 pension, bounty or allowance, for services of the surrogate and the
40 Probate Part of the Chancery Division of the Superior Court in respect
41 thereof, pursuant to N.J.S.3B:13-9 to 3B:13-14.

42
43 MISCELLANEOUS PROCEEDINGS

44
45 Proceedings relative to presumption of death, filing, entering and

- 1 recording, microfilming or photostating (exclusive of letters), with
2 additional fee for advertising, \$175.00.
- 3 Sale of land to pay debts (exclusive of advertising), \$175.00.
- 4 Sale of land in fulfillment of contract made by decedent, \$175.00.
- 5 Sale of lands within one year, \$175.00.
- 6 Sale of minor's land, \$175.00.
- 7 Distribution, filing and entering complaint, recording, microfilming
8 or photostating, and filing judgment, \$175.00.
- 9 Filing of first paper in action in the Superior Court, Chancery
10 Division, Probate Part, \$175.00.
- 11 Filing of answering pleadings or other answering papers in
12 Superior Court, Chancery Division, Probate Part (First paper filed by
13 anyone other than Plaintiff), \$110.00.
- 14 Adoption of adults, filing and entering proceedings (all papers)
15 including one judgment, \$175.00.
- 16 Adoption of minors, filing and entering proceedings (all papers)
17 including one judgment, \$175.00.
- 18 ¹[Application and order to limit time to creditors, \$40.00, but
19 exclusive of advertising costs.]¹
- 20 Application for relief subsequent to final judgment in the Superior
21 Court, Chancery Division, Probate Part, \$25.00.
- 22 ¹[Preparing notices to creditors to present their claims and copies
23 of the same, sending notice to newspapers with directions as to
24 publication, obtaining proofs of publication, keeping a record of
25 notices and newspapers to which they are sent for publication, and of
26 the moneys received to defray the cost of advertising and transmitting
27 advertising charges to newspapers, \$10.00.
- 28 Advertising order of court or notice, when done by the surrogate,
29 \$10.00, in addition to advertising fees.]¹
- 30 Proceedings for the appointment of a conservator, with or without
31 jury trial, \$175.00.
- 32 Proceeding for the determination of incapacity and for the
33 appointment of a guardian for an alleged incapacitated person, with or
34 without jury trial, ~~[\$175.00]~~\$200.00.
- 35 Proceedings in connection with payment into court of proceeds of
36 a judgment in favor of a minor, in lieu of bond, pursuant to N.J.S.
37 3B:15-16 and N.J.S.3B:15-17 (in addition to fees payable under
38 Letters of Guardianship), the following fees are payable upon
39 withdrawal of funds on deposit:
- 40 For each withdrawal including petitions and orders provided and
41 prepared by the surrogate for withdrawal of funds for court approval:
- 42 Up to and including \$500.00, \$20.00.
- 43 From \$501.00 to and including \$1,000.00, \$25.00.
- 44 From \$1,001.00 to and including \$5,000.00, \$30.00.
- 45 From \$5,001.00 to and including \$10,000.00, \$35.00.
- 46 From \$10,001.00 to and including \$25,000, \$40.00.

1 From \$25,001.00 to and including \$50,000.00, \$60.00.
2 In excess of \$50,000.00, \$100.00.

3

4

MISCELLANEOUS CHARGES

5

6 Short certificates, \$5.00.

7 Validating short certificate within one year of issue of date, \$3.00.

8 Subpoenas, each, \$25.00.

9 Marking true copies, subpoenas, each, \$3.00.

10 Marking true copies, orders to show cause, each, \$3.00.

11 Marking true copies of other papers, each, \$3.00.

12 Authorization of process, \$5.00.

13 Swearing each witness, \$2.00.

14 Adjournment or continuance, \$15.00.

15 Miscellaneous orders of court, first page, \$5.00.

16 For each additional page, \$5.00.

17 Recording, microfilming or photostating all papers not herein
18 provided for, \$5.00 for each page.

19 For making copies not otherwise provided for, \$3.00 for each
20 page.

21 Filing transcript of death certificate, \$5.00.

22 Power of attorney, per page \$5.00 plus \$5.00 for certified mail.

23 Search fee, per estate \$10.00.

24 Proceedings relative to appointment of a guardian ad litem, \$25.00.

25 Renunciation by one person, filing, entering and recording, or
26 photostating, \$5.00. Each additional person, \$3.00.

27 Caveat, filing or withdrawing, \$25.00.

28 Combined refunding bond and release of not more than two pages,
29 filing, entering, microfilming and recording, or photostating, \$10.00.
30 \$5.00 for each additional page. Additional charge for county clerk's
31 certificate, \$5.00.

32 Release of not more than two pages of refunding bond and release,
33 \$10.00. \$5.00 for each additional page. Additional charge for county
34 clerk's certificate, \$5.00.

35 Assignments of legacy or interest, \$10.00 per page, plus \$5.00
36 where county clerk's certificate is necessary.

37 Filing all papers not herein provided for, \$5.00, if microfilming
38 process is used, \$5.00 per page.

39 Plain copy of two-page will, \$6.00.

40 Each additional page, \$3.00.

41 Filing of motions in the Superior Court, Chancery Division,
42 Probate Part, \$15.00.

43 Notice of appeal (trial court), \$10.00.

44 Minimum charge for all other papers or services in proceedings in
45 the Superior Court, Chancery Division, Probate Part, \$5.00.

1 3B:14-48 Service of Process by Surrogate, \$25.00.

2 Duplicating or copying of microfiche, digital tape, high density
3 disks, optically scanned and recorded materials or for any other media
4 used to record or preserve records, \$150.00 per medium recorded.

5 Processing fee for returned check, \$20.00 plus bank fee.

6 (cf: P.L.2001, c.370, s.3)

7

8 ²[¹14. (New section) a. There is established in the Department of
9 Health and Senior Services a special nonlapsing fund, to be known as
10 the Registered Professional Guardian Fund, which shall be a dedicated
11 fund to serve as a depository for monies received from county
12 surrogates pursuant to this section. The fund shall be administered by
13 the Commissioner of Health and Senior Services, and all interest on
14 monies in the fund shall be credited to the fund. The monies in the
15 fund shall be made available to the Office of the Public Guardian for
16 Elderly Adults to be used exclusively for the implementation of this
17 act.

18 b. Upon appointment of a guardian of an incapacitated person by
19 the Superior Court pursuant to N.J.S.3B:12-25, the Surrogate shall
20 collect from the estate of the incapacitated person \$150 which shall be
21 deposited into the fund, except that no such charge shall be made to
22 an incapacitated person's estate for an incapacitated person whose
23 income is less than 150% of the federal poverty level and whose assets
24 are less than \$50,000.

25 c. Before issuing letters of guardianship to a guardian appointed
26 pursuant to a Superior Court order authorized by N.J.S.3B:12-25,
27 there shall be paid to the Surrogate the fee of \$150 pursuant to
28 subsection b. of this section, which shall be deposited into the fund,
29 except that no such payment shall be made for an incapacitated person
30 whose income is less than 150% of the federal poverty level and whose
31 assets are less than \$50,000.¹]²

32

33 ²15. (New section) a. There is established in the Department of
34 Health and Senior Service a special non-lapsing fund to be known as
35 the Registered Professional Guardian Fund, which shall be a dedicated
36 fund to serve as a depository for monies collected from the estate of
37 an incapacitated adult pursuant to this section. The fund shall be
38 administered by the Office of the Public Guardian for Elderly Adults,
39 and all interest on monies in the fund shall be credited to the fund. The
40 monies in the fund shall be made available to the Office of the Public
41 Guardian for Elderly Adults to be used exclusively for the
42 implementation of this act.

43 b. Sixty days after receiving plenary letters of guardianship or
44 letters of guardianship of property, a guardian appointed by the
45 Superior Court of New Jersey, with the exception of the appointment
46 of the public guardian pursuant to P.L.1985, c.298 (C.52:27G-20 et

1 seq.), a guardian for a veteran pursuant to N.J.S.3B:13-1 et seq. and
2 guardianship services provided by the Bureau of Guardianship Services
3 in the Division of Developmental Disabilities in the Department of
4 Human Services pursuant to P.L.1965, c.59 (C.30:4-165.1 et seq.),
5 shall pay out of the estate of the incapacitated adult a fee of \$150 to
6 the Office of the Public Guardian for Elderly Adults for deposit into
7 the fund, except that no such charge shall be made to an incapacitated
8 adult's estate for an incapacitated adult whose income is less than
9 150% of the federal poverty level and whose assets are less than
10 \$50,000.

11 c. If the guardian seeks an exemption from the fee based on the
12 ward's income or assets, as set forth in subsection b. of this section,
13 the guardian shall make an application to the Office of the Public
14 Guardian for Elderly Adults on forms adopted by that office.

15 d. If a guardian who is obligated to pay an assessment imposed
16 pursuant to subsection b. of this section fails to pay the assessment,
17 upon application by the Office of the Public Guardian for Elderly
18 Adults, the court shall afford the guardian notice and an opportunity
19 to be heard on the issue of default. Failure to make the assessed
20 payment when due shall be considered a default. The standard of
21 proof shall be by a preponderance of the evidence, and the burden of
22 establishing good cause for a default shall be on the guardian who has
23 defaulted. If the court finds that the guardian has defaulted without
24 good cause, the court may:

25 (1) compel the guardian of the estate to account and ascertain the
26 financial condition of the incapacitated adult's estate;

27 (2) remove the guardian;

28 (3) enter judgment against the guardian of the estate for the
29 amount of the assessment; or

30 (4) take such other action as may be permitted by law.²

31
32 ²[15.] 16.² a. The Commissioner of Health and Senior Services,
33 pursuant to the "Administrative Procedure Act," P.L.1968, ¹[c.413]
34 c.410¹ (C.52:14B-1 et seq.), may adopt rules and regulations
35 necessary for the implementation of this act.

36 b. The Supreme Court may adopt Rules of Court for the
37 implementation of this act.

38
39 ²[16.] 17.² There is appropriated ¹[\$300,000] \$95,000¹ from the
40 General Fund to the Office of the Public Guardian for Elderly Adults
41 in the Department of Health and Senior Services to implement the
42 provisions of this act.

43
44 ²[17.] 18.² This act shall take effect on the 180th day after
45 enactment, but the Commissioner of Health and Senior Services may
46 take such anticipatory administrative action, in advance, as shall be

1 necessary for the implementation of this act, and the Supreme Court
2 of New Jersey may adopt Rules of Court, in advance, for the
3 implementation of the provisions of this act.

4

5

6

7

8 Provides standards for registered professional guardians; appropriates
9 \$95,000.

ASSEMBLY, No. 2869

STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED MAY 17, 2004

Sponsored by:

Assemblyman JEFF VAN DREW

District 1 (Cape May, Atlantic and Cumberland)

Assemblyman PETER C. EAGLER

District 34 (Essex and Passaic)

Assemblyman ANTHONY CHIAPPONE

District 31 (Hudson)

Co-Sponsored by:

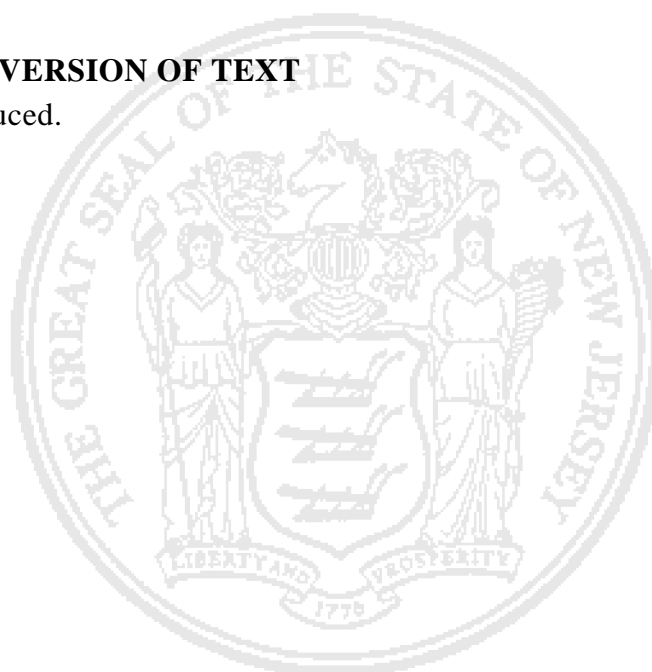
Assemblywoman Voss, Assemblymen Diegnan and Chivukula

SYNOPSIS

Regulates court-appointed professional guardians for elderly adults.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning guardianship for elderly adults, supplementing
2 chapter 12 of Title 3B of the New Jersey Statutes and amending
3 N.J.S.3B:12-25.

4

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

7

8 1. (New section) The Legislature finds and declares that:

9 a. As the elderly population in the State continues to grow, the
10 need for an increasing number of qualified individuals to be available
11 to serve as court-appointed guardians for this population increases;

12 b. To the extent that many elderly adults in the State do not have
13 family or friends available to serve as guardians, it is important to
14 increase the number of persons who can serve as professional
15 guardians, while simultaneously ensuring that only qualified individuals
16 become professional guardians; and

17 c. The establishment of standards for court-appointed professional
18 guardians will help protect those elderly adults who are adjudicated
19 mentally incapacitated and need professional guardianship services.

20

21 2. (New section) a. A person shall not serve as a guardian of a
22 ward who is an elderly adult unless that person has been granted
23 letters of guardianship under N.J.S.3B:12-25 and is:

24 (1) a spouse, heir or friend of the elderly adult;

25 (2) a professional guardian; or

26 (3) the public guardian, appointed pursuant to section 5 of
27 P.L.1985, c.298 (C.52:27G-24).

28 For purposes of this section, "elderly adult" means a person 60
29 years of age or older.

30 b. A person may serve as a professional guardian of an elderly
31 adult if that person is an attorney licensed to practice law in the State
32 of New Jersey or has been certified by the Administrative Office of the
33 Courts as a professional guardian pursuant to this act. The
34 Administrative Director of the Courts shall not certify a person as a
35 professional guardian, unless that person:

36 (1) has a minimum of five years of work experience in the field of
37 care management, case management or other relevant work experience
38 involving the management and care of elderly adults; or, has received
39 a bachelor's degree or an associate's degree and had two years of work
40 experience in the field of care management, case management or other
41 relevant work experience involving the management and care of
42 elderly adults;

43 (2) has supplied proof of current professional liability insurance

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

Matter underlined thus is new matter.

1 coverage to the director;

2 (3) has submitted credit checks to the director from two credit
3 reporting agencies, which have been issued within one month of the
4 date of the application for certification as a professional guardian;

5 (4) has satisfied the criminal history record background check
6 requirements of this act;

7 (5) is not subject to any outstanding warrants for arrest; and

8 (6) has not had a professional license suspended or revoked.

9 c. The director is authorized to charge a fee for the application for
10 certification as a professional guardian.

11

12 3. (New section) a. Upon receipt of an application for
13 certification as a professional guardian, the Administrative Director of
14 the Courts is authorized to determine whether criminal history record
15 information exists on file in the Federal Bureau of Investigation, or in
16 the State Bureau of Identification in the Division of State Police that
17 would disqualify the person from being certified as a professional
18 guardian.

19 A person shall be disqualified from certification if the person's
20 criminal history record background check reveals a record of
21 conviction of any of the following crimes and offenses:

22 (1) In New Jersey, any crime or disorderly persons offense:

23 (a) involving danger to the person, meaning those crimes and
24 disorderly persons offenses set forth in N.J.S.2C:11-1 et seq.,
25 N.J.S.2C:12-1 et seq., N.J.S.2C:13-1 et seq., N.J.S.2C:14-1 et seq. or
26 N.J.S.2C:15-1 et seq.;

27 (b) against the family, children or incompetents, meaning those
28 crimes and disorderly persons offenses set forth in N.J.S.2C:24-1 et
29 seq.;

30 (c) involving theft as set forth in chapter 20 of Title 2C of the New
31 Jersey Statutes, or fraud relating to any health care plan or program as
32 set forth in section 15 of P.L.1989, c.300 (C.2C:21-4.1), sections 2
33 and 3 of P.L.1997, c.353 (C.2C:21-4.2 and 2C:21-4.3), P.L.1999,
34 c.162 (C.2C:21-22.1) or section 17 of P.L.1968, c.413 (C.30:4D-17);
35 or

36 (d) involving any controlled dangerous substance or controlled
37 substance analog as set forth in chapter 35 of Title 2C of the New
38 Jersey Statutes except paragraph (4) of subsection a. of
39 N.J.S.2C:35-10.

40 (2) In any other state or jurisdiction, of conduct which, if
41 committed in New Jersey, would constitute any of the crimes or
42 disorderly persons offenses described in paragraph (1) of this
43 subsection.

44 b. Notwithstanding the provisions of subsection a. of this section
45 to the contrary, no person shall be disqualified from certification on
46 the basis of any conviction disclosed by a criminal history record

1 background check performed pursuant to this act if the person has
2 affirmatively demonstrated to the director clear and convincing
3 evidence of the applicant's rehabilitation. In determining whether a
4 person has affirmatively demonstrated rehabilitation, the following
5 factors shall be considered:

6 (1) the nature and responsibility of the position which the person
7 would hold, has held or currently holds, as the case may be;

8 (2) the nature and seriousness of the offense;

9 (3) the circumstances under which the offense occurred;

10 (4) the date of the offense;

11 (5) the age of the person when the offense was committed;

12 (6) whether the offense was an isolated or repeated incident;

13 (7) any social conditions which may have contributed to the
14 offense; and

15 (8) any evidence of rehabilitation, including good conduct in prison
16 or in the community, counseling or psychiatric treatment received,
17 acquisition of additional academic or vocational schooling, successful
18 participation in correctional work-release programs, or the
19 recommendation of those who have had the person under their
20 supervision.

21 c. If a person refuses to consent to, or cooperate in, the securing
22 of a criminal history record background check, the director shall not
23 certify that person as a professional guardian and shall notify the
24 person of that denial.

25

26 4. (New section) a. A person who is required to undergo a
27 criminal history record background check pursuant to section 3 of
28 P.L. , c. (C.) (pending before the Legislature as this bill), shall
29 submit to the Administrative Director of the Courts that individual's
30 name, address and fingerprints taken on standard fingerprint cards by
31 a State or municipal law enforcement agency. The director is
32 authorized to exchange fingerprint data with and receive criminal
33 history record information from the Federal Bureau of Investigation
34 and the State Bureau of Identification in the Division of State Police
35 for use in making the determinations required pursuant to this act.

36 b. Upon receipt of the criminal history record information for a
37 person from the Federal Bureau of Investigation or the State Bureau
38 of Identification in the Division of State Police, the director shall
39 immediately notify the person in writing of the person's qualification
40 or disqualification for certification under this act. If the person is
41 disqualified, the conviction or convictions which constitute the basis
42 for the disqualification shall be identified in the notice to the person.

43 c. The person shall have 30 days from the date of the written notice
44 of disqualification to petition the director for a hearing on the accuracy
45 of the applicant's criminal history record information or to establish the
46 applicant's rehabilitation under subsection b. of section 3 of P.L. ,

1 c. (C.) (pending before the Legislature as this bill). Upon the
2 issuance of a final decision on a petition to the director, pursuant to
3 this subsection, the director shall notify the person as to whether the
4 person remains disqualified.

5
6 5. (New section) a. In accordance with the provisions of sections
7 3 and 4 of P.L. , c. (C.) (pending before the Legislature as
8 this bill), the Division of State Police in the Department of Law and
9 Public Safety shall conduct a criminal history record background
10 check, including a name and fingerprint identification check, of each
11 person seeking certification as a professional guardian who is required
12 to undergo a criminal history record background check pursuant to
13 P.L. , c. (C.) (pending before the Legislature as this bill).

14 b. For the purpose of conducting a criminal history record
15 background check pursuant to subsection a. of this section, the
16 Division of State Police shall examine its own files and arrange for a
17 similar examination by federal authorities. The division shall
18 immediately forward the information obtained as a result of conducting
19 the check to the Administrative Director of the Courts.

20
21 6. (New section) A person seeking certification as a professional
22 guardian shall assume the cost of the criminal history record
23 background check conducted pursuant to this act, in accordance with
24 Rules of Court as may be adopted by the Supreme Court of New
25 Jersey.

26
27 7. (New section) Upon certification as a professional guardian, the
28 professional guardian shall agree to submit an annual written report to
29 the clerk of the Superior Court of the county in which the ward
30 resides, on the status of each case, each ward's condition and any
31 accountings.

32
33 8. (New section) A professional guardian who seeks more than
34 three court-appointed guardianships shall be certified as a registered
35 professional guardian by the National Guardianship Foundation within
36 two years of the third appointment. The professional guardian shall
37 submit notice of this certification to the Administrative Director of the
38 Courts.

39
40 9. (New section) The Administrative Director of the Courts may
41 revoke a person's certification as a professional guardian if the director
42 has reasonable cause to suspect the trustworthiness or capability of
43 that person to perform the duties of a professional guardian or the
44 person is no longer in compliance with the requirements of section 2
45 of P.L. , c. (C.) (pending before the Legislature as this bill).

1 10. N.J.S.3B:12-25 is amended to read as follows:
2 3B:12-25. The Superior Court may determine the [mental
3 incompetency] incapacity of an alleged [mental incompetent]
4 incapacitated person and appoint a guardian for his person, guardian
5 for his estate or a guardian for his person and estate. Letters of
6 guardianship shall be granted to the spouse, if the spouse is living with
7 the [incompetent] incapacitated person as man and wife at the time
8 the [incompetency] incapacity arose, or to his heirs, or if none of
9 them will accept the letters or it is proven to the court that no
10 appointment from among them will be to the best interest of the
11 [incompetent] incapacitated person or his estate, then to any other
12 proper person as will accept the same , in accordance with the
13 professional guardianship requirements of P.L. , c. (C.)
14 (pending before the Legislature as this bill).
15 (cf: P.L.1981, c.405, s.3B:12-25)

16
17 11. This act shall take effect on the 180th day after enactment, but
18 the Supreme Court of New Jersey may adopt Rules of Court, in
19 advance, for the implementation of the provisions of this act.

20

21

22

STATEMENT

23

24 This bill establishes standards for court-appointed professional
25 guardians by providing that a person may serve as a professional
26 guardian of an elderly adult if that person is an attorney licensed to
27 practice law in the State of New Jersey or has been certified by the
28 Administrative Office of the Courts as a professional guardian.

29 Under the provisions of the bill, the Administrative Director of the
30 Courts shall not certify a person as a professional guardian, unless that
31 person:

32 * has a minimum of five years of work experience in the field of care
33 management, case management or other relevant work experience
34 involving the management and care of elderly adults; or, has
35 received a bachelor's degree or an associate's degree and had two
36 years of work experience in the field of care management, case
37 management or other relevant work experience involving the
38 management and care of elderly adults;

39 * has supplied proof of current professional liability insurance
40 coverage to the director;

41 * has submitted credit checks to the director from two credit
42 reporting agencies, which have been issued within one month of the
43 date of the application for certification as a professional guardian;

44 * has satisfied the criminal history record background check
45 requirements of this bill, the costs of which are borne by the
46 applicant;

1 * is not subject to any outstanding warrants for arrest; and

2 * has not had a professional license suspended or revoked.

3 To help cover the Administrative Office of the Court's costs for
4 certification, the bill provides that the director is authorized to charge
5 a fee for the application for certification as a professional guardian.

6 Also, the bill provides that:

7 * upon certification as a professional guardian, the professional
8 guardian must agree to submit an annual written report to the clerk
9 of the Superior Court of the county in which the ward resides, on
10 the status of each case, each ward's condition and any accountings;

11 * a professional guardian who seeks more than three court-appointed
12 guardianships must be certified as a registered professional guardian
13 by the National Guardianship Foundation within two years of the
14 third appointment, and this certification must be submitted to the
15 director; and

16 * the director may revoke a person's certification as a professional
17 guardian if there is reasonable cause to suspect the trustworthiness
18 or capability of that person to perform the duties of a professional
19 guardian or the person is no longer in compliance with the
20 requirements of section 2 of the bill.

21 The bill also amends N.J.S.A.3B:12-25, concerning appointment of
22 guardians, to reference the requirements for professional guardianship.

23 In addition, the bill has a delayed effective date of 180 days after
24 enactment, but the Supreme Court of New Jersey may adopt Rules of
25 Court, in advance, for the implementation of the bill's provisions.

ASSEMBLY, No. 3093

STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED JUNE 24, 2004

Sponsored by:

Assemblyman JEFF VAN DREW

District 1 (Cape May, Atlantic and Cumberland)

Assemblyman PETER C. EAGLER

District 34 (Essex and Passaic)

Co-Sponsored by:

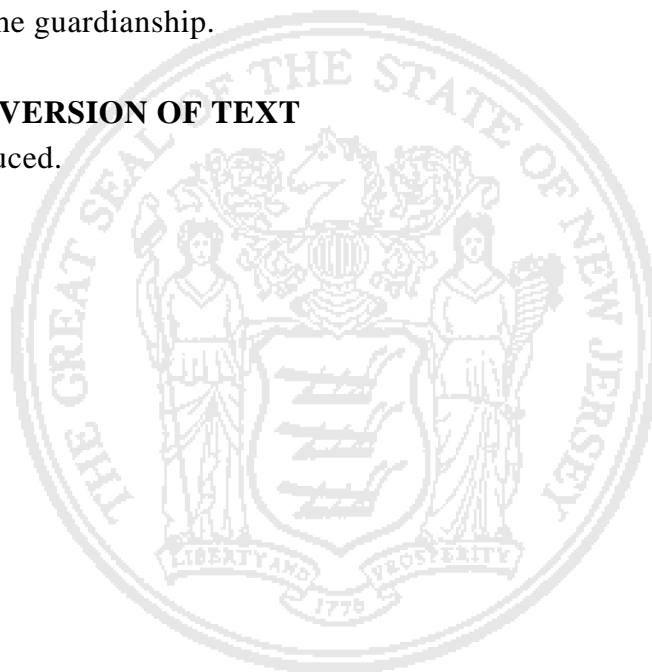
Assemblyman Mayer, Assemblywoman Oliver, Assemblymen Manzo and Gibson

SYNOPSIS

Requires Public Guardian for Elderly Adults to serve as guardian for elderly person adjudicated incompetent in cases where the person's spouse or heirs do not assume the guardianship.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 9/14/2004)

1 AN ACT concerning guardianship and amending N.J.S.3B:12-25.

2

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

5

6 1. N.J.S. 3B:12-25 is amended to read as follows:

7 3B:12-25. Appointment of guardian other than a testamentary
8 guardian.

9 The Superior Court may determine the mental incompetency of an
10 alleged mental incompetent and appoint a guardian for his person,
11 guardian for his estate or a guardian for his person and estate [. Letters], as follows:

12 a. In the case of an alleged mental incompetent who is less than 60
13 years of age, letters of guardianship shall be granted to the spouse, if
14 the spouse is living with the incompetent as man and wife at the time
15 the incompetency arose, or to his heirs, or if none of them will accept
16 the letters or it is proven to the court that no appointment from among
17 them will be to the best interest of the incompetent or his estate, then
18 to any other proper person as will accept the same.

19 b. In the case of an alleged mental incompetent who is 60 years of
20 age or older, letters of guardianship shall be granted to the spouse, if
21 the spouse is living with the incompetent as man and wife at the time
22 the incompetency arose, or to his heirs, or if none of them will accept
23 the letters or it is proven to the court that no appointment from among
24 them will be to the best interest of the incompetent or his estate, then
25 to the Public Guardian for Elderly Adults established pursuant to
26 P.L.1985, c.298 (C.52:27G-20 et seq.).

27 (cf: P.L.1981, c.405, s.3B:12-25)

28

29

30 2. This act shall take effect immediately.

31

32

33

STATEMENT

34

35 Under the provisions of N.J.S.A.3B:12-25, the court may appoint
36 a guardian for a person adjudicated to be incompetent to handle his
37 affairs. The statute provides that guardianship will be granted to the
38 person's spouse; or to his heirs; or, if neither the spouse nor the heirs
39 agree to serve as guardian or if "it is proven to the court that no
40 appointment from among them will be to the best interest of the
41 incompetent or his estate," then guardianship will be granted "to any
42 other proper person as will accept the same."

43 Unfortunately, some elderly persons in these situations have been

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

Matter underlined thus is new matter.

A3093 VAN DREW, EAGLER

3

1 taken advantage of by guardians who dissipate their assets. This bill
2 is intended to protect the assets of elderly, incapacitated adults under
3 these circumstances by requiring that, in the case of persons aged 60
4 or older, if the spouse or heirs are unable or unwilling to serve as
5 guardian, then the Public Guardian for Elderly Adults (set out in
6 N.J.S.A.52:27G-20 et seq.) would be appointed by the court.

ASSEMBLY SENIOR ISSUES COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, Nos. 2869 and 3093

STATE OF NEW JERSEY

DATED: SEPTEMBER 30, 2004

The Assembly Senior Issues Committee reports favorably an Assembly Committee Substitute for Assembly Bill Nos. 2869 and 3093.

This substitute establishes standards for registered professional guardians and authorizes the Office of the Public Guardian for Elderly Adults (OPGEA) to register persons who satisfy these standards as registered professional guardians. The substitute provides that a person shall not serve as a professional guardian of three or more wards who are adults unless that person has been granted letters of guardianship under N.J.S.A.3B:12-25 and is: a spouse, heir, domestic partner or friend of the incapacitated adult; the public guardian appointed pursuant to N.J.S.A.52:27G-24; or a registered professional guardian.

Registration requirements

Under the provisions of the substitute, OPGEA shall not register a person as a professional guardian unless that person:

- C is a full-time New Jersey resident or maintains an office in New Jersey;
- C has a minimum of five years of work experience in the field of care management, case management or other relevant work experience involving the management and care of elderly adults; or has received a bachelor's degree or an associate's degree and has two years of work experience in the field of care management, case management or other relevant work experience involving the management and care of elderly adults;
- C has supplied proof of current professional liability insurance coverage to the OPGEA;
- C has submitted a credit check to OPGEA from one national credit reporting agency;
- C has satisfied the criminal history record background, child abuse registry and domestic violence central registry check requirements of the substitute;
- C is not subject to any outstanding warrants for arrest;
- C has not had a professional license suspended or revoked;
- C has completed approved initial training and biennial continuing

education courses; and

C is not otherwise ineligible under the substitute.

Criteria that render a person ineligible for registration

The substitute provides that a person is ineligible if the person:

- C is an attorney who has been disbarred or suspended from the practice of law;
- C is a professional removed from good-standing status;
- C has a criminal or disorderly persons conviction or has been found to be civilly liable for any matter involving moral turpitude, abuse, neglect, fraud, misappropriation, misrepresentation, theft or conversion;
- C is adjudicated a bankrupt within the past 10 years;
- C is found to have committed abuse, neglect or exploitation of another person;
- C is the subject of any other disciplinary decision or civil adjudication that would prohibit the person by law from providing services to children or vulnerable adults;
- C fails to fulfill initial training or continuing education requirements;
- C misrepresents, conceals or falsifies information on the registered guardian application or annual renewal form;
- C is found to have committed any act which results in a substantial change in the registered guardian's qualifications to serve as a guardian;
- C engages in conduct which demonstrates unfitness to work as a registered professional guardian;
- C fails to cooperate during the course of an investigation by OPGEA or any law enforcement agency;
- C fails to accept indigent cases when assigned by the court; or
- C is the subject of certain court orders, findings of fact or conclusions of law.

In addition, a person shall not serve as a registered professional guardian for any incapacitated adult who is a resident or confined to any facility or institution where the registered professional guardian is employed or has any duties or responsibilities, with the exception of an employee who has duties and responsibilities at the facility or institution and is a relative of the ward.

Prohibited activities by a registered professional guardian

The substitute prohibits a registered professional guardian from acting as an executor or being a beneficiary of the estate of an incapacitated adult, unless the registered professional guardian is also an heir at law of the incapacitated adult. In addition, no registered professional guardian may be granted power of attorney by the incapacitated adult or co-ownership of a financial account of the incapacitated adult without explicit court approval, unless the registered professional guardian is also an heir at law of the incapacitated adult.

Unless authorized by a court order and all interested persons have been notified, a registered professional guardian shall not: loan an

incapacitated adult's property or funds to himself or an affiliate; make, revoke or change an incapacitated adult's beneficiary designation to himself or an affiliate; purchase or participate in the purchase of property from an incapacitated adult's estate for the professional guardian's own or an affiliate's account or benefit; transfer an incapacitated adult's property or funds by inter vivos transaction to himself or an affiliate or receive by operation of survivorship rights any of an incapacitated adult's property or funds for himself or an affiliate; or engage in any transaction involving self-dealing or a conflict of interest concerning an incapacitated adult's property or funds.

Application and checks of criminal history record background, child abuse registry and domestic violence central registry

OPGEA shall charge an initial application fee and an annual registration fee. The initial application fee would be in addition to the cost of a credit history report and child abuse registry and criminal history record background checks required by the substitute. The initial and annual fees shall not exceed \$300 and shall be retained by OPGEA for the implementation of the substitute.

In addition to criminal history record background and child abuse registry checks, the substitute requires persons to undergo a check of the domestic violence central registry in the Administrative Office of the Courts. The person seeking registration must assume the cost of the criminal history record background and child abuse registry checks.

Upon registration, a professional guardian shall agree, in conformance with any judgment appointing a professional guardian, to submit an annual written report to the Surrogate in the Surrogate's capacity as deputy clerk of the Superior Court of the county in which the ward resides, on the status of each case, each ward's condition and any accountings.

Statewide registry

The substitute requires OPGEA to maintain a Statewide registry of registered professional guardians and make the information in the registry available to the Administrative Director of the Courts for the use of the Superior Court, or to other interested parties upon request.

Information in the registry must include: full name used within the past 10 years; date of birth; business address; business telephone number; educational background and professional experience, including work in any related field germane to furnishing of guardianship services; and the insurance company issuing professional liability insurance coverage to the professional guardian.

If known to OPGEA, the registry must include the following:

- C whether the registered guardian has ever been removed for cause or resigned as guardian in a specific case, the circumstances of the removal or resignation, and the case names, court locations and case numbers;
- C any judgment entered against the person as a result of the performance of services as a guardian;

- Ⓒ any finding by a court that the person is accountable for malfeasance, nonfeasance or misfeasance;
- Ⓒ any finding by a court that the person has violated the guardian's duties to the incapacitated adult, his estate or his insurance policy; and
- Ⓒ any known pending or final licensing or disciplinary actions.

The substitute authorizes OPGEA to suspend or revoke a person's registration as a professional guardian and remove the person from the Statewide registry if: the public guardian has reasonable cause to suspect the trustworthiness or capability of that person to perform the duties of a professional guardian; or the person is no longer in compliance with the requirements this substitute or becomes ineligible for registration as a professional guardian under the substitute. Notice of the suspension or revocation of the registration and removal from the registry must be sent to the Administrative Office of the Courts and the known local Surrogates on behalf of the Superior Court, Chancery Division, Probate Part having jurisdiction over the professional guardian's wards.

Amendments to existing law

The substitute also amends N.J.S.A.3B:12-25 concerning the order of appointment of guardians. After appointment to a spouse, heir, domestic partner or friend, appointment is then to OPGEA. If the public guardian deems guardianship is inappropriate or in conflict with the office, then appointment is to any other person who is a registered professional guardian.

The substitute also amends N.J.S.A. 22A:2-30 to increase the court filing fee for a proceeding for appointment of a guardian, from \$175 to \$200.

Adoption of rules, appropriation and effective date

The substitute provides the Commissioner of Health and Senior Services with rulemaking authority and provides that the Supreme Court may adopt Rules of Court for the implementation of the substitute.

Lastly, the substitute appropriates \$300,000 to OPGEA for the implementation of the substitute, and has a delayed effective date of 180 days after enactment; however, the substitute allows rulemaking, in advance, as necessary for implementation of the substitute.

ASSEMBLY SENIOR ISSUES COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, Nos. 2869 and 3093**

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 5, 2005

The Assembly Senior Issues Committee reports favorably and with committee amendments an Assembly Committee Substitute for Assembly Bill Nos. 2869 and 3093.

As amended by the committee, this substitute establishes standards for registered professional guardians and authorizes the Office of the Public Guardian for Elderly Adults (OPGEA) to register persons who satisfy these standards as registered professional guardians.

The substitute provides that a person shall not serve as a professional guardian of five or more wards who are adults unless that person has been granted letters of guardianship under N.J.S.A.3B:12-25 and is:

- C a spouse, heir, domestic partner as defined in N.J.S.A.26:8A-3 or friend of the incapacitated adult;
- C the public guardian appointed pursuant to N.J.S.A.52:27G-24;
- C a registered professional guardian; or
- C an attorney licensed to practice law in this State.

Registration requirements

Under the provisions of the substitute, OPGEA shall not register a person as a professional guardian unless that person:

- C is a full-time New Jersey resident or maintains an office in New Jersey;
- C has, prior to the substitute's effective date, had a minimum of five years of work experience as a court-appointed guardian of a non-related person; or, on or after the effective date of the substitute, has received a bachelor's degree and has two years of work experience in the field of care management, case management or other relevant work experience involving the management and care of elderly adults;
- C has supplied proof of current professional liability insurance coverage to the OPGEA;
- C has submitted a credit check to OPGEA from one national credit reporting agency;
- C has satisfied the criminal history record background, child abuse

registry and domestic violence central registry check requirements of the substitute;

- C is not subject to any outstanding warrants for arrest;
- C has completed approved initial training and biennial continuing education courses; and
- C is not otherwise ineligible under the substitute.

In addition, except for legal services authorized by a court, a person serving as a registered professional guardian shall only provide guardianship services to a ward and shall not bill the ward for other professional or licensed services while serving as guardian. A registered professional guardian shall not contract for professional or licensed services with a person, organization or agency with which the guardian has a vested interest.

Criteria that render a person ineligible for registration

The substitute provides that a person is ineligible if the person:

- C is an attorney who has been disbarred or suspended from the practice of law;
- C was engaged in a profession or occupation and had his license, certification or registration suspended or revoked;
- C has a criminal or disorderly persons conviction or has been found to be civilly liable for any matter involving moral turpitude, abuse, neglect, fraud, misappropriation, misrepresentation, theft or conversion;
- C is adjudicated a bankrupt within the past 10 years;
- C is found to have committed abuse, neglect or exploitation of another person;
- C is the subject of any other disciplinary decision or civil adjudication that would prohibit the person by law from providing services to children or vulnerable adults;
- C fails to fulfill initial training or continuing education requirements;
- C misrepresents, conceals or falsifies information on the registered guardian application or annual renewal form;
- C is found to have committed any act which results in a substantial change in the registered guardian's qualifications to serve as a guardian;
- C engages in conduct which demonstrates unfitness to work as a registered professional guardian;
- C fails to cooperate during the course of an investigation by OPGEA or any law enforcement agency;
- C fails to accept indigent cases when assigned by the court; or
- C is the subject of certain court orders, findings of fact or conclusions of law.

In addition, a person shall not serve as a registered professional guardian for any incapacitated adult who is a resident or confined to any facility or institution where the registered professional guardian is employed or has any duties or responsibilities, with the exception of an employee who has duties and responsibilities at the facility or institution and is a relative of the ward.

Prohibited activities by a registered professional guardian

The substitute prohibits a registered professional guardian and a family member of the guardian from acting as an executor or being a beneficiary of the estate of an incapacitated adult, unless the registered professional guardian or family member is also an heir at law of the incapacitated adult. In addition, a registered professional guardian and a family member of the guardian shall not be granted power of attorney by the incapacitated adult or co-ownership of a financial account of the incapacitated adult without explicit court approval, unless the registered professional guardian or family member is also an heir at law of the incapacitated adult.

Unless authorized by a court order and all interested persons have been notified, a registered professional guardian shall not: loan an incapacitated adult's property or funds to himself or an affiliate; make, revoke or change an incapacitated adult's beneficiary designation to himself or an affiliate; purchase or participate in the purchase of property from an incapacitated adult's estate for the professional guardian's own or an affiliate's account or benefit; transfer an incapacitated adult's property or funds by inter vivos transaction to himself or an affiliate, or receive by operation of survivorship rights any of an incapacitated adult's property or funds for himself or an affiliate; engage in any transaction involving self-dealing or a conflict of interest concerning an incapacitated adult's property or funds; or make any renovation to the ward's real property in an amount greater than \$10,000.

Application and registration fee

OPGEA shall charge an initial application fee and an annual registration fee, not to exceed \$300. The initial application fee would be in addition to the cost of a credit history report and child abuse registry and criminal history record background checks required by the substitute.

Statewide registry

The substitute requires OPGEA to maintain a Statewide registry of registered professional guardians and make the information in the registry available to the Administrative Director of the Courts for the use of the Superior Court, or to other interested parties upon request. The substitute specifies the information about each registered guardian that must be included in the registry.

OPGEA is authorized to suspend or revoke a person's registration as a professional guardian and remove the person from the Statewide registry if: the public guardian has reasonable cause to suspect the trustworthiness or capability of that person to perform the duties of a professional guardian; or the person is no longer in compliance with the requirements of this substitute or becomes ineligible for registration as a professional guardian under the substitute.

Amendments to existing law

The substitute amends N.J.S.A.3B:12-25 concerning the order of appointment of guardians. After appointment to a spouse, heir,

domestic partner or friend, appointment is then to OPGEA in the case of adults within OPGEA's statutory mandate. If the public guardian deems guardianship is inappropriate or in conflict with the office, then appointment is to any other person, in accordance with the professional guardianship requirements of this substitute.

The substitute also amends N.J.S.A.22A:2-30 to: increase the court filing fee for a proceeding for appointment of a guardian, from \$175 to \$200; and delete provisions relating to notices to creditors, since these provisions have been obviated by the enactment of P.L. 2004, c.132, which amended N.J.S.3B:22-4.

Registered professional guardian fund

The substitute establishes a special nonlapsing fund, to be known as the Registered Professional Guardian Fund, which shall be a dedicated fund to serve as a depository for fees received from county surrogates. Upon appointment of a guardian, county surrogates would collect a fee of \$150 from the estate of certain incapacitated persons and those fees would be deposited into the fund. The monies in the fund would be made available to the OPGEA to be used exclusively for the implementation of this substitute.

Adoption of rules, appropriation and effective date

The substitute provides the Commissioner of Health and Senior Services with rule-making authority and provides that the Supreme Court may adopt Rules of Court for the implementation of the substitute.

The substitute appropriates \$95,000 to OPGEA for the implementation of the substitute, and has a delayed effective date of 180 days after enactment; however, the substitute allows rule-making, in advance, as necessary for implementation of the substitute.

COMMITTEE AMENDMENTS:

The committee amendments:

- increase the number of wards that trigger registration as a professional guardian, from three or more to five or more wards;
- provide that attorneys licensed to practice law in this State are not required to register as professional guardians;
- change the education requirements so that a person with a minimum of five years of work experience as a court-appointed guardian of a non-related person prior to the substitute's effective date may be registered as a professional guardian;
- delete language that had allowed a person with an associate's degree and two years of certain work experience to register as a professional guardian;
- provide that, except for legal services authorized by a court, a person serving as a registered professional guardian shall only provide guardianship services to a ward and shall not bill the ward for other professional or licensed services while serving as guardian;
- provide that a person serving as a registered professional guardian shall not contract for professional or licensed services with

a person, organization or agency with which the guardian has a vested interest;

- clarify that a person is ineligible for registration as a professional guardian if the person was engaged in a profession or occupation for which the person was licensed, certified or registered by a board or other authorized entity in the State and his license, certification or registration was suspended or revoked by the applicable board or other authorized entity of the profession or occupation;

- prohibit a family member of the registered professional guardian (as well as the professional guardian) from: acting as an executor or being a beneficiary of the estate of an incapacitated adult (unless also an heir at law of the incapacitated adult); and being granted power of attorney by the incapacitated adult or co-ownership of a financial account of the incapacitated adult without explicit court approval (unless also an heir at law of the incapacitated adult);

- prohibit a registered professional guardian from making any renovation to the ward's real property in an amount greater than \$10,000, unless authorized by a court order and notice has been provided to interested parties;

- update the procedures for fingerprinting applicants;

- delete language in the substitute (section 10) that had required the registered professional guardian to submit an annual written report to the Surrogate;

- provide that notice of suspension or revocation of registration and removal from the Statewide registry must be sent, within 30 days, to the Administrative Office of the Courts and certain local Surrogates;

- delete provisions of N.J.S.A.22A-2-30 relating to notices to creditors;

- establish the Registered Professional Guardian Fund;

- reduce the substitute's appropriation from \$300,000 to \$95,000;

and

- make technical amendments to the substitute, including, but not limited to, clarifying that "domestic partner" means a domestic partner as defined in N.J.S.A.26:8A-3.

STATEMENT TO

[First Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, Nos. 2869 and 3093**

with Assembly Floor Amendments
(Proposed By Assemblyman VAN DREW)

ADOPTED: JUNE 20, 2005

These floor amendments:

- delete the exemption for attorneys licensed to practice law in this State and require them to register as professional guardians if they have five or more wards;

- amend the findings section (section 1) to clarify that it is prudent, after giving first consideration for guardianship of elderly adults to the Office of the Public Guardian for Elderly Adults (OPGEA), or when that office is not available, to develop other qualified individuals who can serve as professional guardians;

- clarify that a person is ineligible for registration as a registered professional guardian if the person repeatedly fails to accept pro bono cases;

- delete the provision that violation of State law, court rule or court procedure would render a person ineligible for registration as a professional guardian;

- delete the prohibition on a registered professional guardian acting as an executor or being a beneficiary of the estate of an incapacitated adult and the prohibition on granting a registered professional guardian a power of attorney without court approval. Instead, the amendments provide that an inter vivos transaction (gift, contract, conveyance, disposition, transfer, trust, change in beneficiary designation, appointment, or re-titling of an account or property), or a testamentary instrument affecting an incapacitated adult's money or property in favor of a registered professional guardian or a family member or business associate of the registered professional guardian, that is made or executed during the two-year period before the establishment of a guardianship in which the registered professional guardian is appointed as guardian shall be void, unless the court determines that:

- the registered professional guardian or a family member or business associate of the registered professional guardian who benefits from the inter vivos transaction or testamentary instrument is a spouse, domestic partner or heir at law of the incapacitated adult; or

- the registered professional guardian has proved by a preponderance of the evidence that the inter vivos transaction or testamentary instrument: was not made or executed when the

incapacitated adult was under the disability that caused the incapacitated adult to be subsequently declared incapacitated; was authorized and not the result of undue influence, fraud, coercion, duress, deception or misrepresentation; and was reviewed by an independent attorney, and the independent attorney counseled the incapacitated adult and certified that the intended inter vivos transaction or testamentary instrument was not the result of undue influence, fraud, coercion, duress or misrepresentation;

- amend N.J.S.A. 3B:12-25 to provide that after appointment to a spouse, domestic partner, heir or friend, first consideration is to be given to the OPGEA in the case of adults within OPGEA's statutory mandate. Consideration may be given to surrogate decision-makers, if any, chosen by the incapacitated person before the person became incapacitated by way of a durable power of attorney, health care proxy or advance directive. If the OPGEA deems guardianship is inappropriate or in conflict with the office, then appointment is to any other person, in accordance with the requirements of this substitute, if applicable.

- establish a Registered Professional Guardian Fund, which would be a dedicated fund to serve as a depository for monies collected from the estate of an incapacitated adult. Sixty days after receiving plenary letters of guardianship or letters of guardianship of property, a guardian appointed by the Superior Court of New Jersey (except for the public guardian appointed pursuant to N.J.S.A.52:27G-20 et seq., a guardian for a veteran pursuant to N.J.S.A.3B:13-1 et seq., and guardianship services provided by the Bureau of Guardianship Services in the Division of Developmental Disabilities in the Department of Human Services pursuant to N.J.S.A.30:4-165.1 et seq.) would pay out of the incapacitated adult's estate a fee of \$150 to the OPGEA for deposit into the fund. However, no charge would be made if the incapacitated adult's income is less than 150% of the federal poverty level and assets are less than \$50,000. The substitute also sets forth procedures for a guardian who seeks an exemption from the \$150 fee based on the ward's income or assets, and for a guardian who fails to pay the assessment; and

- make technical amendments to the bill.

STATEMENT TO

[Second Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 2869 and 3093

with Senate Floor Amendments
(Proposed By Senators SINGER and ASSELTA)

ADOPTED: DECEMBER 15, 2005

This floor amendment amends the criteria that renders a person ineligible to register as a professional guardian so that a person with a criminal, but not a disorderly persons conviction, is ineligible to be a registered professional guardian. In addition, the amendment replaces adjudication of bankruptcy as a reason for ineligibility with "lacks financial responsibility to serve as a registered professional guardian, as determined by the Office of the Public Guardian for Elderly Adults."

SENATE, No. 221

STATE OF NEW JERSEY 211th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2004 SESSION

Sponsored by:

Senator ROBERT W. SINGER

District 30 (Burlington, Mercer, Monmouth and Ocean)

Senator NICHOLAS ASSELTA

District 1 (Cape May, Atlantic and Cumberland)

SYNOPSIS

Provides standards for professional guardians for elderly adults.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 6/18/2004)

1 AN ACT concerning guardianship for elderly adults, supplementing
2 chapter 12 of Title 3B of the New Jersey Statutes and amending
3 N.J.S.3B:12-25 and N.J.S.22A:2-30.

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

7
8 1. (New section) The Legislature finds and declares that:

9 a. As the elderly population in the State continues to grow, the
10 need for an increasing number of qualified individuals to be available
11 to serve as court-appointed guardians for this population increases;

12 b. To the extent that many elderly adults in the State do not have
13 family or friends available to serve as guardians, it is important to
14 increase the number of persons who can serve as professional
15 guardians, while simultaneously ensuring that only qualified individuals
16 become professional guardians; and

17 c. The establishment of standards for court-appointed professional
18 guardians will help protect those elderly adults who are adjudicated
19 mentally incapacitated and need professional guardianship services.

20

21 2. (New section) a. A person shall not serve as a guardian of a
22 ward who is an elderly adult unless that person has been granted
23 letters of guardianship under N.J.S.3B:12-25 and is:

24 (1) a spouse, heir or friend of the elderly adult;

25 (2) a professional guardian; or

26 (3) the public guardian, appointed pursuant to section 5 of
27 P.L.1985, c.298 (C.52:27G-24).

28 For purposes of this section, "elderly adult" means a person 60
29 years of age or older.

30 b. A person may serve as a professional guardian of an elderly
31 adult if that person is a member of the Bar of the State of New Jersey
32 or has been certified by the Administrative Office of the Courts as a
33 professional guardian pursuant to this act. The Administrative
34 Director of the Courts shall not certify a person as a professional
35 guardian, unless that person:

36 (1) has received a bachelor's degree and had a minimum of two
37 years of work experience in the field of care management, case
38 management or other relevant work experience involving the
39 management and care of elderly adults; or, has received an associate's
40 degree and had five years of work experience in the field of care
41 management, case management or other relevant work experience
42 involving the management and care of elderly adults;

43 (2) has supplied proof of current professional liability insurance

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 coverage to the director;

2 (3) has submitted credit checks to the director from two credit
3 reporting agencies, which have been issued within one month of the
4 date of the application for certification as a professional guardian;

5 (4) has satisfied the criminal history record background check
6 requirements of this act;

7 (5) is not subject to any outstanding warrants for arrest; and

8 (6) has not had a professional license suspended or revoked.

9 c. The director is authorized to charge a fee for the application for
10 certification as a professional guardian.

11

12 3. (New section) a. Upon receipt of an application for
13 certification as a professional guardian, the Administrative Director of
14 the Courts is authorized to determine whether criminal history record
15 information exists on file in the Federal Bureau of Investigation,
16 Identification Division or in the State Bureau of Identification in the
17 Division of State Police that would disqualify the person from being
18 certified as a professional guardian.

19 A person shall be disqualified from certification if the person's
20 criminal history record background check reveals a record of
21 conviction of any of the following crimes and offenses:

22 (1) In New Jersey, any crime or disorderly persons offense:

23 (a) involving danger to the person, meaning those crimes and
24 disorderly persons offenses set forth in N.J.S.2C:11-1 et seq.,
25 N.J.S.2C:12-1 et seq., N.J.S.2C:13-1 et seq., N.J.S.2C:14-1 et seq. or
26 N.J.S.2C:15-1 et seq.;

27 (b) against the family, children or incompetents, meaning those
28 crimes and disorderly persons offenses set forth in N.J.S.2C:24-1 et
29 seq.;

30 (c) involving theft as set forth in chapter 20 of Title 2C of the New
31 Jersey Statutes, or fraud relating to any health care plan or program as
32 set forth in section 15 of P.L.1989, c.300 (C.2C:21-4.1), sections 2
33 and 3 of P.L.1997, c.353 (C.2C:21-4.2 and 2C:21-4.3), P.L.1999,
34 c.162 (C.2C:21-22.1) or section 17 of P.L.1968, c.413 (C.30:4D-17);
35 or

36 (d) involving any controlled dangerous substance or controlled
37 substance analog as set forth in chapter 35 of Title 2C of the New
38 Jersey Statutes except paragraph (4) of subsection a. of
39 N.J.S.2C:35-10.

40 (2) In any other state or jurisdiction, of conduct which, if
41 committed in New Jersey, would constitute any of the crimes or
42 disorderly persons offenses described in paragraph (1) of this
43 subsection.

44 b. Notwithstanding the provisions of subsection a. of this section
45 to the contrary, no person shall be disqualified from certification on
46 the basis of any conviction disclosed by a criminal history record

1 background check performed pursuant to this act if the person has
2 affirmatively demonstrated to the director clear and convincing
3 evidence of the applicant's rehabilitation. In determining whether a
4 person has affirmatively demonstrated rehabilitation, the following
5 factors shall be considered:

6 (1) the nature and responsibility of the position which the person
7 would hold, has held or currently holds, as the case may be;

8 (2) the nature and seriousness of the offense;

9 (3) the circumstances under which the offense occurred;

10 (4) the date of the offense;

11 (5) the age of the person when the offense was committed;

12 (6) whether the offense was an isolated or repeated incident;

13 (7) any social conditions which may have contributed to the
14 offense; and

15 (8) any evidence of rehabilitation, including good conduct in prison
16 or in the community, counseling or psychiatric treatment received,
17 acquisition of additional academic or vocational schooling, successful
18 participation in correctional work-release programs, or the
19 recommendation of those who have had the person under their
20 supervision.

21 c. If a person refuses to consent to, or cooperate in, the securing
22 of a criminal history record background check, the director shall not
23 certify that person as a professional guardian and shall notify the
24 person of that denial.

25

26 4. (New section) a. A person who is required to undergo a
27 criminal history record background check pursuant to section 3 of this
28 act shall submit to the Administrative Director of the Courts that
29 individual's name, address and fingerprints taken on standard
30 fingerprint cards by a State or municipal law enforcement agency. The
31 director is authorized to exchange fingerprint data with and receive
32 criminal history record information from the Federal Bureau of
33 Investigation and the Division of State Police for use in making the
34 determinations required pursuant to this act.

35 b. Upon receipt of the criminal history record information for a
36 person from the Federal Bureau of Investigation or the Division of
37 State Police, the director shall immediately notify the person in writing
38 of the person's qualification or disqualification for certification under
39 this act. If the person is disqualified, the conviction or convictions
40 which constitute the basis for the disqualification shall be identified in
41 the notice to the person.

42 c. The person shall have 30 days from the date of the written notice
43 of disqualification to petition the director for a hearing on the accuracy
44 of the applicant's criminal history record information or to establish the
45 applicant's rehabilitation under subsection b. of section 3 of this act.
46 Upon the issuance of a final decision on a petition to the director,

1 pursuant to this subsection, the director shall notify the person as to
2 whether the person remains disqualified.

3

4 5. (New section) a. In accordance with the provisions of sections
5 3 and 4 of P.L. , c. (C.)(pending before the Legislature as this
6 bill), the Division of State Police in the Department of Law and Public
7 Safety shall conduct a criminal history record background check,
8 including a name and fingerprint identification check, of each person
9 seeking certification as a professional guardian who is required to
10 undergo a criminal history record background check pursuant to
11 P.L. , c. (C.)(pending before the Legislature as this bill).

12 b. For the purpose of conducting a criminal history record
13 background check pursuant to subsection a. of this section, the
14 Division of State Police shall examine its own files and arrange for a
15 similar examination by federal authorities. The division shall
16 immediately forward the information obtained as a result of conducting
17 the check to the Administrative Director of the Courts.

18

19 6. (New section) A person seeking certification as a professional
20 guardian shall assume the cost of the criminal history record
21 background check conducted pursuant to this act, in accordance with
22 Rules of Court as may be adopted by the Supreme Court of New
23 Jersey.

24

25 7. (New section) Upon certification as a professional guardian, the
26 professional guardian shall agree to submit an annual written report to
27 the clerk of the Superior Court of the county in which the ward
28 resides, on the status of each case, each ward's condition and any
29 accountings.

30

31 8. (New section) A professional guardian who seeks more than
32 three court-appointed guardianships shall be certified as a registered
33 professional guardian by the National Guardianship Foundation within
34 two years of the third appointment. The professional guardian shall
35 submit notice of this certification to the Administrative Director of the
36 Courts.

37

38 9. (New section) The Administrative Director of the Courts may
39 revoke a person's certification as a professional guardian if the director
40 has reasonable cause to suspect the trustworthiness or capability of
41 that person to perform the duties of a professional guardian or the
42 person is no longer in compliance with the requirements of section 2
43 of this act.

44

45 10. N.J.S.3B:12-25 is amended to read as follows:

46 3B:12-25. The Superior Court may determine the [mental

1 incompetency] incapacity of an alleged [mental incompetent]
2 incapacitated person and appoint a guardian for his person, guardian
3 for his estate or a guardian for his person and estate. Letters of
4 guardianship shall be granted to the spouse, if the spouse is living with
5 the [incompetent] incapacitated person as man and wife at the time the
6 [incompetency] incapacity arose, or to his heirs, or if none of them will
7 accept the letters or it is proven to the court that no appointment from
8 among them will be to the best interest of the [incompetent]
9 incapacitated person or his estate, then to any other proper person as
10 will accept the same, in accordance with the professional guardianship
11 requirements of P.L. , c. (C.)(pending before the Legislature as
12 this bill).

13 (cf: P.L.1981, c.405, s.3B:12-25)

14

15 11. N.J.S.22A:2-30 is amended to read as follows:

16 22A:2-30. Fees of surrogate and deputy clerk of the Superior
17 Court.

18 Fees for services of the surrogate and deputy clerk of the Superior
19 Court enumerated below shall be as follows and shall be for the use of
20 the county in which the fees are collected:

21

22 PROBATE OF WILLS AND COPIES

23

24 Probate of a will of not more than two pages, \$100.00.

25 Each additional page, \$ 5.00.

26 The above fee is for all services in preparation and execution of
27 complaint, filing proof of death, deposition of one witness,
28 qualification of executor, filing power of attorney, surrogate's
29 certificate, judgment for probate, letters testamentary, plain copy of
30 will, binding, recording, microfilming or photostating, comparing,
31 docketing, report to the Division of Taxation in the Department of the
32 Treasury, report and transmission to the Clerk of the Superior Court.

33 Probate of will of not more than two pages without letters, \$50.00.

34 Each additional page, \$ 5.00. This fee is for the same services as are
35 enumerated in the preceding paragraph, except letters, surrogate's
36 certificate and qualification of executor.

37 Probate of each codicil, not exceeding one page, \$25.00.

38 Where codicil requires an additional witness, \$5.00.

39 To reopen probate proceedings for qualification of executor or
40 taking proof of extra witness, \$25.00.

41 One witness in the above probate proceedings, no charge.

42 Each additional witness, \$5.00.

43 Recording and comparing, microfilming or photostating, each
44 additional page of will or codicil, \$5.00.

45 Filing, entering, issuing and recording, microfilming or
46 photostating, proceedings in commission for deposition of foreign

1 witness to a will or codicil, \$35.00. Plain extra copy of will, \$3.00 for
2 each page.

3 Certified extra copy of will, \$5.00 for each page, plus \$5.00 for
4 certificate.

5 Certified copy of will with proofs for New Jersey county, not
6 exceeding two pages including will and codicil, \$50.00. For pages in
7 excess of two, \$5.00 for each page.

8 Wills filed but not probated (as, where there are no assets), \$10.00
9 for first two pages, \$5.00 for each additional page, \$5.00 for cover
10 letter stating no assets, \$5.00 for death certificate.

11 Exemplifying will for another state, not exceeding two pages
12 including will and codicil, plus cost of certificate of Secretary of State
13 when requisite, \$75.00 (not including \$9.00 fee for exemplified forms).
14 For pages in excess of two, \$5.00 for each page.

15 Recording, microfilming or photostating, docketing, indexing, filing
16 and reporting to the Division of Taxation in the Department of the
17 Treasury an exemplified copy of will and probate proceedings from
18 another state, \$5.00 for each page.

19 Recording, microfilming or photostating, docketing, indexing and
20 filing a certified copy of will with proofs from New Jersey, \$5.00 for
21 each page.

22 Recording, microfilming or photostating certified transcripts of
23 wills admitted to probate and probate proceedings or letters of
24 administration and administration proceedings granted by the Superior
25 Court, \$5.00 for each page.

26

27 LETTERS OF TRUSTEESHIP

28

29 Acceptance of trustee and letters of trusteeship, including one
30 certificate, \$50.00.

31

32 LETTERS OF ADMINISTRATION

33

34 General administration, including preparation and execution of
35 complaint, bond, surety affidavits, necessary recording, microfilming
36 or photostating, indexing, filing, report to the Division of Taxation,
37 including power of attorney and death certificate, in the Department
38 of the Treasury and the Clerk of the Superior Court and original letters
39 including authorization to accept service of process and death
40 certificate, \$125.00, and for other documents, \$5.00 per page.

41 Administration ad prosequendum, \$50.00, and for other documents,
42 \$5.00 per page.

43 Exemplifying administration, \$75.00.

44 Certified copy of administration, \$50.00.

45 Affidavits of surviving spouse or next of kin where the value of the
46 real and personal assets of the estate does not exceed \$20,000.00 or

S221 SINGER, ASSELTA

8

1 \$10,000.00, respectively, \$5.00 for each \$100.00 or part thereof.
2 Total cost shall not exceed \$50.00. This fee is waived where the value
3 of the assets of the estate does not exceed \$200.00.

4
5 LETTERS OF GUARDIANSHIP

6
7 Granting letters of guardianship, acceptance of guardianship and
8 filing of power of attorney, \$50.00.

9 Affidavits of estates of minors where value of real and personal
10 estate does not exceed \$5,000.00, \$5.00 per page.

11 Miscellaneous petitions and orders, \$5.00 per page.

12
13 INVENTORIES

14
15 For all services in appointment of appraisers, \$25.00.

16 Filing, entering and recording, microfilming or photostating,
17 inventory and appraisal, not exceeding one page, and affidavits of
18 appraisers and executor, \$25.00.

19 For each additional page, \$5.00.

20
21 ACCOUNTING

22
23 For filing complaint and one page of accounting, \$175.00.

24 For auditing, stating, reporting and recording, microfilming or
25 photostating, accounts of executors, administrators, guardians,
26 trustees and assignees, including drawing judgment, but exclusive of
27 advertising costs:

28 In estates up to and including \$2,000.00, no additional fee.

29 In estates from \$2,001.00 to and including \$10,000.00, \$100.00.

30 In estates from \$10,001.00 to and including \$30,000.00, \$125.00.

31 In estates from \$30,001.00 to and including \$65,000.00, \$150.00.

32 In estates from \$65,001.00 to and including \$200,000.00, 3/10 of
33 1% but not less than \$300.00.

34 In estates exceeding \$200,000.00--4/10 of 1%, but not less than
35 \$400.00.

36 For each page of accounting in excess of one, \$5.00.

37 In computing the amount of an estate for the purpose of fixing the
38 fees of a surrogate for auditing and reporting the account, the balance
39 from the prior account shall be excluded.

40 For preparing notice of settlement of accounts and copies of the
41 same, forwarding notice to newspaper, with directions as to
42 publication, obtaining proofs of publication, keeping a record of
43 notices and newspapers to which they are sent and of the moneys
44 received to defray the cost of advertising and transmitting advertising
45 charges to newspaper, \$50.00.

46 No fees herein allowed shall be charged against the recipient of any

1 pension, bounty or allowance, for services of the surrogate and the
2 Probate Part of the Chancery Division of the Superior Court in respect
3 thereof, pursuant to N.J.S.3B:13-9 to 3B:13-14.

4
5 MISCELLANEOUS PROCEEDINGS

6
7 Proceedings relative to presumption of death, filing, entering and
8 recording, microfilming or photostating (exclusive of letters), with
9 additional fee for advertising, \$175.00.

10 Sale of land to pay debts (exclusive of advertising), \$175.00.

11 Sale of land in fulfillment of contract made by decedent, \$175.00.

12 Sale of lands within one year, \$175.00.

13 Sale of minor's land, \$175.00.

14 Distribution, filing and entering complaint, recording, microfilming
15 or photostating, and filing judgment, \$175.00.

16 Filing of first paper in action in the Superior Court, Chancery
17 Division, Probate Part, \$175.00.

18 Filing of answering pleadings or other answering papers in Superior
19 Court, Chancery Division, Probate Part (First paper filed by anyone
20 other than Plaintiff), \$110.00.

21 Adoption of adults, filing and entering proceedings (all papers)
22 including one judgment, \$175.00.

23 Adoption of minors, filing and entering proceedings (all papers)
24 including one judgment, \$175.00.

25 Application and order to limit time to creditors, \$40.00, but
26 exclusive of advertising costs.

27 Application for relief subsequent to final judgment in the Superior
28 Court, Chancery Division, Probate Part, \$25.00.

29 Preparing notices to creditors to present their claims and copies of
30 the same, sending notice to newspapers with directions as to
31 publication, obtaining proofs of publication, keeping a record of
32 notices and newspapers to which they are sent for publication, and of
33 the moneys received to defray the cost of advertising and transmitting
34 advertising charges to newspapers, \$10.00.

35 Advertising order of court or notice, when done by the surrogate,
36 \$10.00, in addition to advertising fees.

37 Proceedings for the appointment of a conservator, with or without
38 jury trial, \$175.00.

39 Proceeding for the determination of incapacity and for the
40 appointment of a guardian for an alleged incapacitated person, with or
41 without jury trial, ~~[\$175.00]~~ \$200.00.

42 Proceedings in connection with payment into court of proceeds of
43 a judgment in favor of a minor, in lieu of bond, pursuant to N.J.S.
44 3B:15-16 and N.J.S.3B:15-17 (in addition to fees payable under
45 Letters of Guardianship), the following fees are payable upon
46 withdrawal of funds on deposit:

1 For each withdrawal including petitions and orders provided and
2 prepared by the surrogate for withdrawal of funds for court approval:

3 Up to and including \$500.00, \$20.00.

4 From \$501.00 to and including \$1,000.00, \$25.00.

5 From \$1,001.00 to and including \$5,000.00, \$30.00.

6 From \$5,001.00 to and including \$10,000.00, \$35.00.

7 From \$10,001.00 to and including \$25,000, \$40.00.

8 From \$25,001.00 to and including \$50,000.00, \$60.00.

9 In excess of \$50,000.00, \$100.00.

10

11 MISCELLANEOUS CHARGES

12

13 Short certificates, \$5.00.

14 Validating short certificate within one year of issue of date, \$3.00.

15

Subpoenas, each, \$25.00.

16

Marking true copies, subpoenas, each, \$3.00.

17

Marking true copies, orders to show cause, each, \$3.00.

18

Marking true copies of other papers, each, \$3.00.

19

Authorization of process, \$5.00.

20

Swearing each witness, \$2.00.

21

Adjournment or continuance, \$15.00.

22

Miscellaneous orders of court, first page, \$5.00.

23

For each additional page, \$5.00.

24

Recording, microfilming or photostating all papers not herein
25 provided for, \$5.00 for each page.

26

For making copies not otherwise provided for, \$3.00 for each page.

27

Filing transcript of death certificate, \$5.00.

28

Power of attorney, per page \$5.00 plus \$5.00 for certified mail.

29

Search fee, per estate \$10.00.

30

Proceedings relative to appointment of a guardian ad litem, \$25.00.

31

Renunciation by one person, filing, entering and recording, or
32 photostating, \$5.00. Each additional person, \$3.00.

33

Caveat, filing or withdrawing, \$25.00.

34

Combined refunding bond and release of not more than two pages,
35 filing, entering, microfilming and recording, or photostating, \$10.00.
36 \$5.00 for each additional page. Additional charge for county clerk's
37 certificate, \$5.00.

38

Release of not more than two pages of refunding bond and release,
39 \$10.00. \$5.00 for each additional page. Additional charge for county
40 clerk's certificate, \$5.00.

41

Assignments of legacy or interest, \$10.00 per page, plus \$5.00
42 where county clerk's certificate is necessary.

43

Filing all papers not herein provided for, \$5.00, if microfilming
44 process is used, \$5.00 per page.

45

Plain copy of two-page will, \$6.00.

46

Each additional page, \$3.00.

1 Filing of motions in the Superior Court, Chancery Division, Probate
2 Part, \$15.00.

3 Notice of appeal (trial court), \$10.00.

4 Minimum charge for all other papers or services in proceedings in
5 the Superior Court, Chancery Division, Probate Part, \$5.00.

6 3B:14-48 Service of Process by Surrogate, \$25.00.

7 Duplicating or copying of microfiche, digital tape, high density
8 disks, optically scanned and recorded materials or for any other media
9 used to record or preserve records, \$150.00 per medium recorded.

10 Processing fee for returned check, \$20.00 plus bank fee.

11 (cf: P.L.2001, c.370, s.3)

12

13 12. (New section) This act shall take effect on the 180th day after
14 enactment, but the Supreme Court of New Jersey may adopt Rules of
15 Court, in advance, for the implementation of the provisions of this act.

16

17

18

STATEMENT

19

20 This bill establishes standards for court-appointed professional
21 guardians by providing that a person may serve as a professional
22 guardian of an elderly adult if that person is a member of the Bar of
23 the State of New Jersey or has been certified by the Administrative
24 Office of the Courts as a professional guardian.

25 Under the provisions of the bill, the Administrative Director of the
26 Courts shall not certify a person as a professional guardian, unless that
27 person:

28 * has received a bachelor's degree and had a minimum of two years
29 of work experience in the field of care management, case
30 management or other relevant work experience involving the
31 management and care of elderly adults; or, has received an
32 associate's degree and had five years of work experience in the field
33 of care management, case management or other relevant work
34 experience involving the management and care of elderly adults;

35 * has supplied proof of current professional liability insurance
36 coverage to the director;

37 * has submitted credit checks to the director from two credit
38 reporting agencies, which have been issued within one month of the
39 date of the application for certification as a professional guardian;

40 * has satisfied the criminal history record background check
41 requirements of this bill, the costs of which are borne by the
42 applicant;

43 * is not subject to any outstanding warrants for arrest; and

44 * has not had a professional license suspended or revoked.

45 To help cover the Administrative Office of the Court's costs for
46 certification, the bill provides that the director is authorized to charge

1 a fee for the application for certification as a professional guardian.

2 Also, the bill provides that:

- 3 * upon certification as a professional guardian, the professional
4 guardian must agree to submit an annual written report to the clerk
5 of the Superior Court of the county in which the ward resides, on
6 the status of each case, each ward's condition and any accountings;
7 * a professional guardian who seeks more than three court-appointed
8 guardianships must be certified as a registered professional guardian
9 by the National Guardianship Foundation within two years of the
10 third appointment, and this certification must be submitted to the
11 director; and
12 * the director may revoke a person's certification as a professional
13 guardian if there is reasonable cause to suspect the trustworthiness
14 or capability of that person to perform the duties of a professional
15 guardian or the person is no longer in compliance with the
16 requirements of section 2 of the bill.

17 The bill amends N.J.S.A.3B:12-25, concerning appointment of
18 guardians, to reference the requirements for professional guardianship,
19 and also amends N.J.S.A.22A:2-30 to increase the court filing fee for
20 a proceeding for the appointment of a guardian from \$175 to \$200.
21 The additional \$25 would be used to cover the costs for professional
22 guardians for indigent elderly adults.

23 Lastly, the bill has a delayed effective date of 180 days after
24 enactment, but the Supreme Court of New Jersey may adopt Rules of
25 Court, in advance, for the implementation of the bill's provisions.

SENATE HEALTH, HUMAN SERVICES AND SENIOR
CITIZENS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 221

STATE OF NEW JERSEY

DATED: FEBRUARY 28, 2005

The Senate Health, Human Services and Senior Citizens Committee reports favorably Senate Bill No. 221.

This substitute establishes standards for registered professional guardians and authorizes the Office of the Public Guardian for Elderly Adults (OPGEA) to register persons who satisfy these standards as registered professional guardians. The substitute provides that a person shall not serve as a professional guardian of five or more wards who are adults unless that person has been granted letters of guardianship under N.J.S.A.3B:12-25 and is: a spouse, heir, domestic partner as defined in N.J.S.A.26:8A-3 or friend of the incapacitated adult; the public guardian appointed pursuant to N.J.S.A.52:27G-24; or a registered professional guardian.

Registration requirements

Under the provisions of the substitute, OPGEA shall not register a person as a professional guardian unless that person:

- C is a full-time New Jersey resident or maintains an office in New Jersey;
- C prior to the substitute's effective date, had a minimum of five years of work experience as a court-appointed guardian of a non-related person; or, on or after the effective date of the substitute, has received a bachelor's degree and has two years of work experience in the field of care management, case management or other relevant work experience involving the management and care of elderly adults;
- C has supplied proof of current professional liability insurance coverage to the OPGEA;
- C has submitted a credit check to OPGEA from one national credit reporting agency;
- C has satisfied the criminal history record background, child abuse registry and domestic violence central registry check requirements of the substitute;
- C is not subject to any outstanding warrants for arrest;

- C has completed approved initial training and biennial continuing education courses; and
- C is not otherwise ineligible under the substitute.

In addition, except for legal services authorized by a court, a person serving as a registered professional guardian shall only provide guardianship services to a ward and shall not bill the ward for other professional or licensed services while serving as guardian. A registered professional guardian shall not contract for professional or licensed services with a person, organization or agency with which the guardian has a vested interest.

Criteria that render a person ineligible for registration

The substitute provides that a person is ineligible if the person:

- C is an attorney who has been disbarred or suspended from the practice of law;
- C was engaged in a profession or occupation and had his license, certification or registration suspended or revoked;
- C has a criminal or disorderly persons conviction or has been found to be civilly liable for any matter involving moral turpitude, abuse, neglect, fraud, misappropriation, misrepresentation, theft or conversion;
- C is adjudicated a bankrupt within the past 10 years;
- C is found to have committed abuse, neglect or exploitation of another person;
- C is the subject of any other disciplinary decision or civil adjudication that would prohibit the person by law from providing services to children or vulnerable adults;
- C fails to fulfill initial training or continuing education requirements;
- C misrepresents, conceals or falsifies information on the registered guardian application or annual renewal form;
- C is found to have committed any act which results in a substantial change in the registered guardian's qualifications to serve as a guardian;
- C engages in conduct which demonstrates unfitness to work as a registered professional guardian;
- C fails to cooperate during the course of an investigation by OPGEA or any law enforcement agency;
- C fails to accept indigent cases when assigned by the court; or
- C is the subject of certain court orders, findings of fact or conclusions of law.

In addition, a person shall not serve as a registered professional guardian for any incapacitated adult who is a resident or confined to any facility or institution where the registered professional guardian is employed or has any duties or responsibilities, with the exception of an employee who has duties and responsibilities at the facility or institution and is a relative of the ward.

Prohibited activities by a registered professional guardian

The substitute prohibits a registered professional guardian and a family member of the guardian from acting as an executor or being a

beneficiary of the estate of an incapacitated adult, unless the registered professional guardian or family member is also an heir at law of the incapacitated adult. In addition, a registered professional guardian and a family member of the guardian shall not be granted power of attorney by the incapacitated adult or co-ownership of a financial account of the incapacitated adult without explicit court approval, unless the registered professional guardian or family member is also an heir at law of the incapacitated adult.

Unless authorized by a court order and all interested persons have been notified, a registered professional guardian shall not: loan an incapacitated adult's property or funds to himself or an affiliate; make, revoke or change an incapacitated adult's beneficiary designation to himself or an affiliate; purchase or participate in the purchase of property from an incapacitated adult's estate for the professional guardian's own or an affiliate's account or benefit; transfer an incapacitated adult's property or funds by inter vivos transaction to himself or an affiliate or receive by operation of survivorship rights any of an incapacitated adult's property or funds for himself or an affiliate; engage in any transaction involving self-dealing or a conflict of interest concerning an incapacitated adult's property or funds; or make any renovation to the ward's real property in an amount greater than \$10,000.

Application and checks of criminal history record background, child abuse registry and domestic violence central registry

OPGEA shall charge an initial application fee and an annual registration fee. The initial application fee would be in addition to the cost of a credit history report and child abuse registry and criminal history record background checks required by the substitute. The initial and annual fees shall not exceed \$300 and shall be retained by OPGEA for the implementation of the substitute.

In addition to criminal history record background and child abuse registry checks, the substitute requires persons to undergo a check of the domestic violence central registry in the Administrative Office of the Courts. The person seeking registration must assume the cost of the criminal history record background and child abuse registry checks.

Statewide registry

The substitute requires OPGEA to maintain a Statewide registry of registered professional guardians and make the information in the registry available to the Administrative Director of the Courts for the use of the Superior Court, or to other interested parties upon request.

Information in the registry must include for each registered guardian: full name used within the past 10 years; date of birth; business address; business telephone number; educational background and professional experience, including work in any related field germane to furnishing of guardianship services; and the insurance company issuing professional liability insurance coverage to the professional guardian.

If known to OPGEA, the registry must include the following:

- C whether the registered guardian has ever been removed for cause or resigned as guardian in a specific case, the circumstances of the removal or resignation, and the case names, court locations and case numbers;
- C any judgment entered against the person as a result of the performance of services as a guardian;
- C any finding by a court that the person is accountable for malfeasance, nonfeasance or misfeasance;
- C any finding by a court that the person has violated the guardian's duties to the incapacitated adult, his estate or his insurance policy; and
- C any known pending or final licensing or disciplinary actions.

The substitute authorizes OPGEA to suspend or revoke a person's registration as a professional guardian and remove the person from the Statewide registry if: the public guardian has reasonable cause to suspect the trustworthiness or capability of that person to perform the duties of a professional guardian; or the person is no longer in compliance with the requirements this substitute or becomes ineligible for registration as a professional guardian under the substitute. Notice of the suspension or revocation of the registration and removal from the registry must be sent, within 30 days, to the Administrative Office of the Courts and the known local Surrogates on behalf of the Superior Court, Chancery Division, Probate Part having jurisdiction over the professional guardian's wards.

Amendments to existing law

The substitute amends N.J.S.A.3B:12-25 concerning the order of appointment of guardians. After appointment to a spouse, heir, domestic partner or friend, appointment is then to OPGEA. If the public guardian deems guardianship is inappropriate or in conflict with the office, then appointment is to any other person, in accordance with the professional guardianship requirements of this substitute.

The substitute also amends N.J.S.A.22A:2-30 to: increase the court filing fee for a proceeding for appointment of a guardian, from \$175 to \$200; and delete provisions relating to notices to creditors, since these provisions have been obviated by the enactment of P.L. 2004, c.132, which amended N.J.S.3B:22-4.

Registered professional guardian fund

The substitute establishes a special nonlapsing fund, to be known as the Registered Professional Guardian Fund, which shall be a dedicated fund to serve as a depository for monies received from county surrogates. The monies in the fund would be made available to the Office of the Public Guardian for Elderly Adults to be used exclusively for the implementation of this substitute. Upon appointment of a guardian of an incapacitated person by the Superior Court pursuant to N.J.S.A.3B:12-25, the Surrogate would collect from the estate of the incapacitated person \$150 which would be deposited into the fund, except that no charge would be made to an

incapacitated person's estate for an incapacitated person whose income is less than 150% of the federal poverty level and whose assets are less than \$50,000.

Adoption of rules, appropriation and effective date

The substitute provides the Commissioner of Health and Senior Services with rulemaking authority and provides that the Supreme Court may adopt Rules of Court for the implementation of the substitute.

Lastly, the substitute appropriates \$95,000 to OPGEA for the implementation of the substitute, and has a delayed effective date of 180 days after enactment; however, the substitute allows rulemaking, in advance, as necessary for implementation of the substitute.

STATEMENT TO

SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 221

with Senate Floor Amendments
(Proposed By Senators SINGER and ASSELTA)

ADOPTED: DECEMBER 15, 2005

This floor amendment amends the criteria that renders a person ineligible to register as a professional guardian so that a person with a criminal, but not a disorderly persons conviction, is ineligible to be a registered professional guardian. In addition, the amendment replaces adjudication of bankruptcy as a reason for ineligibility with "lacks financial responsibility to serve as a registered professional guardian, as determined by the Office of the Public Guardian for Elderly Adults."