

3B:15-1

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2009 **CHAPTER:** 140
NJSA: 3B:15-1 (Requires certain fiduciaries to post bond, and provides for accounting to court if beneficiary is developmentally disabled)
BILL NO: S550 (Substituted for A1478)
SPONSOR(S) Sweeney and Others
DATE INTRODUCED: January 8, 2008
COMMITTEE: **ASSEMBLY:** Judiciary
 SENATE: Judiciary
AMENDED DURING PASSAGE: Yes
DATE OF PASSAGE: **ASSEMBLY:** June 25, 2009
 SENATE: May 21, 2009
DATE OF APPROVAL: October 19, 2009

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Second reprint enacted)

S550

SPONSOR'S STATEMENT: (Begins on page 3 of original bill) Yes
COMMITTEE STATEMENT: **ASSEMBLY:** Yes
 SENATE: Yes

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, **may possibly** be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: Yes
LEGISLATIVE FISCAL ESTIMATE: No

A1478

SPONSOR'S STATEMENT: (Begins on page 3 of original bill) Yes
COMMITTEE STATEMENT: **ASSEMBLY:** Yes
 SENATE: No
FLOOR AMENDMENT STATEMENT: No
LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

(continued)

GOVERNOR'S PRESS RELEASE ON SIGNING:

No

FOLLOWING WERE PRINTED:

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REPORTS:

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HEARINGS:

No

NEWSPAPER ARTICLES:

No

LAW/RWH

[Second Reprint]
SENATE, No. 550

STATE OF NEW JERSEY
213th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2008 SESSION

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Salem, Cumberland and Gloucester)

Senator PAUL A. SARLO

District 36 (Bergen, Essex and Passaic)

Assemblyman JOHN J. BURZICHELLI

District 3 (Salem, Cumberland and Gloucester)

Co-Sponsored by:

Senator Ruiz

SYNOPSIS

Requires certain fiduciaries to post bond and provides for accounting to court if beneficiary is developmentally disabled.

CURRENT VERSION OF TEXT

As amended by the Senate on March 16, 2009.



(Sponsorship Updated As Of: 6/26/2009)

1 AN ACT concerning certain ¹**[executors,] fiduciaries and**¹ amending
2 ¹**[N.J.S.3B:3-17 and supplementing Title 3B of the New Jersey**
3 **Statutes] N.J.S.3B:15-1^{1 2}, N.J.S.3B:12-16 and N.J.S.3B:12-33².**
4

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

8 ¹**[1. N.J.S.3B:3-17 is amended to read as follows:**
9 **3B:3-17. Probate of will and grant of letters.**

10 **a.** The surrogates of the several counties or the Superior Court
11 may take depositions to wills, admit the same to probate, and grant
12 thereon letters testamentary or letters of administration with the will
13 annexed.

14 **b.** No person nominated as executor in a will where a
15 beneficiary to the will has a developmental disability shall be
16 granted letters testamentary unless the person furnishes bond to the
17 Superior Court in a sum and with proper conditions and sureties,
18 having due regard to the value of the estate in his charge and the
19 extent of his authority, as the court shall approve. If such executor
20 fails to furnish an appropriate bond approved by the court, the court
21 shall appoint an administrator in the place of the executor who shall
22 furnish bond in accordance with the provisions of N.J.S.3B:15-1.

23 As used in this subsection, "developmental disability" means a
24 severe, chronic disability of a person which: (1) is attributable to a
25 mental or physical impairment or combination of mental or physical
26 impairments; (2) is manifest before age 22; (3) is likely to continue
27 indefinitely; (4) results in substantial functional limitations in three
28 or more of the following areas of major life activity, that is, self-
29 care, receptive and expressive language, learning, mobility, self-
30 direction and capacity for independent living or economic self-
31 sufficiency; and (5) reflects the need for a combination and
32 sequence of special interdisciplinary or generic care, treatment or
33 other services which are of lifelong or extended duration and are
34 individually planned and coordinated. Developmental disability
35 includes but is not limited to severe disabilities attributable to
36 mental retardation, autism, cerebral palsy, epilepsy, spina bifida and
37 other neurological impairments where the above criteria are met.
38 (cf: P.L.2004, c.132, s.19)]¹
39

40 ¹**1. N.J.S.3B:15-1 is amended to read as follows:**

41 **3B:15-1.** The court or surrogate appointing a fiduciary in any of
42 the instances enumerated below shall secure faithful performance of
43 the duties of his office by requiring the fiduciary thereby authorized

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**Senate SJU committee amendments adopted February 9, 2009.**

²**Senate floor amendments adopted March 16, 2009.**

- 1 to act to furnish bond to the Superior Court in a sum and with
2 proper conditions and sureties, having due regard to the value of the
3 estate in his charge and the extent of his authority, as the court shall
4 approve:
- 5 a. When an appointment is made upon failure of the will, or
6 other instrument creating or continuing a fiduciary relationship, to
7 name a fiduciary;
- 8 b. When a person is appointed in the place of the person named
9 as fiduciary in the will, or other instrument creating or continuing
10 the fiduciary relationship;
- 11 c. When the office to which the person is appointed is any form
12 of administration, except (1) administration ad litem which may be
13 granted with or without bond; or (2) administration granted to a
14 surviving spouse where the decedent's entire estate is payable to the
15 surviving spouse;
- 16 d. When the office to which the person is appointed is any form
17 of guardianship of a minor or ²**[mental incompetent]** incapacitated
18 person², except as otherwise provided in N.J.S. 3B:12-16 or N.J.S.
19 3B:12-33 with respect to a guardian appointed by will;
- 20 e. When letters are granted to a nonresident executor, except in
21 cases where the will provides that no security shall be required of
22 the person named as executor therein;
- 23 f. When an additional or substituted fiduciary is appointed;
- 24 g. When an appointment is made under chapter 26 of this title,
25 of a fiduciary for the estate or property, or any part thereof, of an
26 absentee; **[or]**
- 27 h. When a fiduciary moves from the State, the court may
28 require him to give such security as it may determine; or
- 29 i. (1) When an appointment is made, regardless of any
30 direction in a last will and testament relieving a personal
31 representative, testamentary guardian or testamentary trustee or
32 their successors from giving bond, that person shall, before
33 receiving letters or exercising any authority or control over the
34 property, provide bond to secure performance of his duties with
35 respect to property to which a developmentally disabled person as
36 defined in section 3 of P.L.1985, c.145 (C.30:6D-25) is, or shall be
37 entitled, if:
- 38 (a) the testator has identified that a devisee or beneficiary of
39 property of the decedent's estate is such a developmentally disabled
40 person; or
- 41 (b) the person seeking appointment has ²actual² knowledge that
42 a devisee or beneficiary of property of the decedent's estate is such
43 a developmentally disabled person.
- 44 (2) No bond shall be required pursuant to paragraph (1) of this
45 subsection if:

1 (a) the court has appointed another person as guardian of the
2 person or guardian of the estate for the developmentally disabled
3 person;

4 (b) the person seeking the appointment is a family member
5 within the third degree of consanguinity of the developmentally
6 disabled person; or

7 (c) the total value of the real and personal assets of the estate or
8 trust does not exceed \$25,000.

9 (3) A personal representative, testamentary guardian or
10 testamentary trustee who is required to provide bond pursuant to
11 paragraph (1) of this subsection shall file with the ²[court] Superior
12 Court² an initial inventory and a final accounting of the estate in his
13 charge containing a true account of all assets of the estate. ²Such
14 person shall file an interim accounting every five years, or a lesser
15 period of time if so ordered by the Superior Court, in the case of an
16 extended estate or trust administration.² A copy of the accountings
17 shall be ²[submitted to] served on² the ²[Department of the]²
18 Public Advocate. ²The Public Advocate, on behalf of the
19 developmentally disabled person or that person's estate, may file
20 exceptions and objections to interim or final accountings and may
21 initiate an action to compel the person to file an accounting of the
22 trust or estate. ²

23 (4) A personal representative, testamentary guardian or
24 testamentary trustee who is required to provide bond pursuant to
25 paragraph (1) of this subsection may make application to the court
26 to waive the bond or reduce the amount of bond for good cause
27 shown, including the need to preserve assets of the estate.

28 This subsection shall not apply to qualified financial institutions
29 pursuant to section 30 of P.L. 1948, c. 67 (C.17:9A-30) ²or to non-
30 profit community trusts organized pursuant to P.L.1985, c.424
31 (C.3B:11-19 et seq.)² .

32 Nothing contained in this section shall be construed to require a
33 bond in any case where it is specifically provided by law that a
34 bond need not be required.¹

35 (cf: P.L.1985, c. 34, s. 1)

36
37 ¹[2. (New section) a. Where a beneficiary to a will is
38 developmentally disabled as defined in subsection b. of N.J.S.3B:3-
39 17:

40 (1) Within two months after receiving letters testamentary or
41 letters of administration, the fiduciary shall file with the clerk of the
42 court, under oath, an inventory of all property of the decedent, duly
43 appraised, with the Superior Court. The court may, for good cause
44 shown, extend the time for the filing of such inventory to not more
45 than four months after the grant of letters testamentary or letters of
46 administration.

1 (2) The fiduciary shall render to the Superior Court at six-month
2 intervals, until the final accounting of the estate, a true account of
3 all the assets of the estate in his charge.

4 b. Nothing in this act shall be deemed to preclude the authority
5 of the court to require the fiduciary to render an account of the
6 performance of his office upon application by the surety pursuant to
7 N.J.S.3B:15-10.】¹

8
9 ²2. N.J.S.3B:12-16 is amended to read as follows:

10 3B:12-16. Bond of testamentary guardian.

11 Before receiving his letters, a testamentary guardian of a minor
12 shall give bond in accordance with N.J.S.3B:15-1 et seq., unless the
13 guardian is relieved from doing so by direction of the will of the
14 parent appointing the guardian or by order of the court. However,
15 regardless of the direction, the guardian shall, with respect to
16 property to which the ward is or shall be entitled from any source,
17 other than the parent or other than any policy of life insurance upon
18 the life of the parent, give bond in accordance with that section
19 before exercising any authority or control over the property.

20 The provisions of this section relieving a testamentary guardian
21 of a minor from giving bond by direction of the will of the parent
22 shall not apply to a testamentary guardian of a minor with a
23 developmental disability. Such guardian shall be bonded pursuant
24 to paragraph (1) of subsection i. of N.J.S.3B:15-1, unless the
25 guardian is relieved from doing so pursuant to paragraph (2) of
26 subsection i. of N.J.S.3B:15-1. ²

27 (cf: P.L.2005, c.304, s.10)

28
29 ²3. N.J.S.3B:12-33 is amended to read as follows:

30 3B:12-33. Bond of testamentary guardian.

31 Before receiving his letters, a testamentary guardian of an
32 incapacitated person shall give bond in accordance with
33 N.J.S.3B:15-1 unless the guardian is relieved from doing so by
34 direction of the will of the parent, spouse or domestic partner as
35 defined in section 3 of P.L. 2003, c.246 (C.26:8A-3) appointing the
36 guardian. However, regardless of any direction, the guardian shall,
37 with respect to property to which the ward is or shall be entitled
38 from any source, other than the parent, spouse or domestic partner
39 as defined in section 3 of P.L. 2003, c. 246 (C.26:8A-3) or other
40 than any policy of life insurance upon the life of the parent, spouse
41 or domestic partner as defined in section 3 of P.L. 2003, c. 246
42 (C.26:8A-3), give bond in accordance with that section before
43 exercising any authority or control over that property.

44 The provisions of this section relieving a testamentary guardian
45 of an incapacitated person from giving bond by direction of the will
46 of the parent, spouse or domestic partner shall not apply to a
47 testamentary guardian of a minor with a developmental disability.

1 Such guardian shall be bonded pursuant to paragraph (1) of
2 subsection i. of N.J.S.3B:15-1, unless the guardian is relieved from
3 doing so pursuant to paragraph (2) of subsection i. of N.J.S.3B:15-
4 1.²
5 (cf: P.L.2005, c.304, s.21)
6
7 ¹[3.] ²[2.] ^{4.}² This act shall take effect on the 60th day
8 following enactment.

SENATE, No. 550

STATE OF NEW JERSEY
213th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2008 SESSION

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Salem, Cumberland and Gloucester)

SYNOPSIS

Requires executors to post bond and provide periodic accountings to the court where beneficiary is developmentally disabled.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



S550 SWEENEY

2

1 AN ACT concerning certain executors, amending N.J.S.3B:3-17 and
2 supplementing Title 3B of the New Jersey Statutes.

3

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

6

7 1. N.J.S.3B:3-17 is amended to read as follows:

8 3B:3-17. Probate of will and grant of letters.

9 a. The surrogates of the several counties or the Superior Court
10 may take depositions to wills, admit the same to probate, and grant
11 thereon letters testamentary or letters of administration with the will
12 annexed.

13 b. No person nominated as executor in a will where a
14 beneficiary to the will has a developmental disability shall be
15 granted letters testamentary unless the person furnishes bond to the
16 Superior Court in a sum and with proper conditions and sureties,
17 having due regard to the value of the estate in his charge and the
18 extent of his authority, as the court shall approve. If such executor
19 fails to furnish an appropriate bond approved by the court, the court
20 shall appoint an administrator in the place of the executor who shall
21 furnish bond in accordance with the provisions of N.J.S.3B:15-1.

22 As used in this subsection, "developmental disability" means a
23 severe, chronic disability of a person which: (1) is attributable to a
24 mental or physical impairment or combination of mental or physical
25 impairments; (2) is manifest before age 22; (3) is likely to continue
26 indefinitely; (4) results in substantial functional limitations in three
27 or more of the following areas of major life activity, that is, self-
28 care, receptive and expressive language, learning, mobility, self-
29 direction and capacity for independent living or economic self-
30 sufficiency; and (5) reflects the need for a combination and
31 sequence of special interdisciplinary or generic care, treatment or
32 other services which are of lifelong or extended duration and are
33 individually planned and coordinated. Developmental disability
34 includes but is not limited to severe disabilities attributable to
35 mental retardation, autism, cerebral palsy, epilepsy, spina bifida and
36 other neurological impairments where the above criteria are met.

37 (cf: P.L.2004, c.132, s.19)

38

39 2. (New section) a. Where a beneficiary to a will is
40 developmentally disabled as defined in subsection b. of N.J.S.3B:3-
41 17:

42 (1) Within two months after receiving letters testamentary or
43 letters of administration, the fiduciary shall file with the clerk of the
44 court, under oath, an inventory of all property of the decedent, duly
45 appraised, with the Superior Court. The court may, for good cause

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 shown, extend the time for the filing of such inventory to not more
2 than four months after the grant of letters testamentary or letters of
3 administration.

4 (2) The fiduciary shall render to the Superior Court at six-month
5 intervals, until the final accounting of the estate, a true account of
6 all the assets of the estate in his charge.

7 b. Nothing in this act shall be deemed to preclude the authority
8 of the court to require the fiduciary to render an account of the
9 performance of his office upon application by the surety pursuant to
10 N.J.S.3B:15-10.

11

12 3. This act shall take effect on the 60th day following
13 enactment.

14

15

16

SPONSOR'S STATEMENT

17

18 This bill protects beneficiaries with developmental disabilities by
19 imposing certain requirements on will executors. Under current
20 law, a person appointed by the court as administrator of a will
21 generally must post a bond with the Superior Court to ensure the
22 appropriate administration of the estate (N.J.S.A.3B:15-1), but there
23 is no requirement for a person named in the will as executor to post
24 a bond. Under this bill, if a beneficiary is developmentally disabled
25 any executor named in the will must post a bond with the court.

26 The bill would also give the court ongoing supervisory authority
27 over the administration of estates in situations where the beneficiary
28 is developmentally disabled by requiring the executor to file an
29 inventory of all property of the decedent within two months of his
30 or her appointment, and by requiring the executor to file an
31 accounting with the court every six months until the final
32 accounting of the estate. The bill's definition of "developmental
33 disability" is identical to that contained in N.J.S.A.30:6D-25
34 (P.L.1985, c.145), which established a Division of Developmental
35 Disabilities in the State Department of Human Services: "a severe,
36 chronic disability of a person which: (1) is attributable to a mental
37 or physical impairment or combination of mental or physical
38 impairments; (2) is manifest before age 22; (3) is likely to continue
39 indefinitely; (4) results in substantial functional limitations in three
40 or more of the following areas of major life activity, that is, self-
41 care, receptive and expressive language, learning, mobility, self-
42 direction and capacity for independent living or economic self-
43 sufficiency; and (5) reflects the need for a combination and
44 sequence of special interdisciplinary or generic care, treatment or
45 other services which are of lifelong or extended duration and are
46 individually planned and coordinated. Developmental disability
47 includes but is not limited to severe disabilities attributable
48 to mental retardation, autism, cerebral palsy, epilepsy, spina bifida

S550 SWEENEY

4

1 and other neurological impairments where the above criteria are
2 met."

3 It is the sponsor's intention that this bill be referred to as
4 "Ronnie's Law" after former Audobon resident Ronnie Mich. Mr.
5 Mich had been the beneficiary of a \$1.2 million estate, left to him
6 by his father, but the funds were apparently stolen by the executor
7 and Mr. Mich's home was sold to pay debts.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 550

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 9, 2009

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 550.

This bill as introduced protected beneficiaries with developmental disabilities by imposing certain requirements on will executors. Under current law, a person appointed by the court as administrator of a will generally must post a bond with the Superior Court to ensure the appropriate administration of the estate (N.J.S.A.3B:15-1), but there is no requirement for a person named in the will as executor to post a bond.

The committee amendments amend N.J.S.A.3B:15-1 rather than N.J.S.A.3B:3-17 to make the bonding requirement of that section applicable to fiduciaries such as personal representatives, testamentary guardians or testamentary trustees. The amendments provide that a bond would be required if the testator has identified that a devisee or beneficiary of property of the decedent's estate is a developmentally disabled person, or the person seeking appointment as fiduciary has knowledge that a devisee or beneficiary is a developmentally disabled person.

The committee amendments provide that no bond will be required if: the court has appointed another person as guardian of the developmentally disabled person or guardian of the estate; the person seeking the appointment is a family member within the third degree of consanguinity of the developmentally disabled person; or the total value of the real and personal assets of the estate or trust does not exceed \$25,000. The amendments also provide that a fiduciary who is required to post a bond may make application to the court to waive the bond or reduce the amount of the bond for good cause shown, including the need to preserve the assets of the estate.

The committee amendments provide that qualified financial institutions pursuant to section 30 of P.L. 1948, c. 67 (C.17:9A-30) are exempt from the bonding requirements.

In addition, the committee amendments provide that a personal representative, testamentary guardian or testamentary trustee who is required to provide bond shall file with the court an initial inventory and a final accounting of the estate containing a true account of all

assets of the estate, and that a copy of the accountings shall be submitted to the Department of the Public Advocate.

The bill's definition of "developmental disability" is identical to that contained in N.J.S.A.30:6D-25 (P.L.1985, c.145), which established a Division of Developmental Disabilities in the State Department of Human Services: "a severe, chronic disability of a person which: (1) is attributable to a mental or physical impairment or combination of mental or physical impairments; (2) is manifest before age 22; (3) is likely to continue indefinitely; (4) results in substantial functional limitations in three or more of the following areas of major life activity, that is, self-care, receptive and expressive language, learning, mobility, self-direction and capacity for independent living or economic self-sufficiency; and (5) reflects the need for a combination and sequence of special interdisciplinary or generic care, treatment or other services which are of lifelong or extended duration and are individually planned and coordinated. Developmental disability includes but is not limited to severe disabilities attributable to mental retardation, autism, cerebral palsy, epilepsy, spina bifida and other neurological impairments where the above criteria are met."

It is the sponsor's intention that this bill be referred to as "Ronnie's Law" after former Audobon resident Ronnie Mich. Mr. Mich had been the beneficiary of a \$1.2 million estate, left to him by his father, but the funds were stolen by the executor and Mr. Mich's home was sold to pay debts.

This bill was pre-filed for introduction in the 2008-2009 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

[Second Reprint]
SENATE, No. 550

STATE OF NEW JERSEY

DATED: JUNE 8, 2009

The Assembly Judiciary Committee reports favorably Senate Bill No. 550 (2R).

This bill imposes certain requirements on fiduciaries in order to protect beneficiaries with developmental disabilities. Under current law, a person appointed by the court as administrator of a will generally must post a bond with the Superior Court to ensure the appropriate administration of the estate. However, there is no requirement for a person named in the will as executor to post a bond. Under the bill, fiduciaries such as personal representatives, testamentary guardians or testamentary trustees would be required to post a bond with the court under certain circumstances. The bond would be required if a beneficiary is developmentally disabled and if the testator has identified that a devisee or beneficiary of property of the decedent's estate is a developmentally disabled person, or if the person seeking appointment as fiduciary has actual knowledge that a devisee or beneficiary is a developmentally disabled person. The bill incorporates by reference to section 3 of P.L.1985, c.145 (C.30:6D-25) the definition of "developmental disability."

No bond would be required if the court has appointed another person as guardian of the developmentally disabled person or guardian of the estate; if the person seeking the appointment is a family member within the third degree of consanguinity of the developmentally disabled person; or if the total value of the real and personal assets of the estate or trust does not exceed \$25,000. A fiduciary who is required to post a bond may make application to the court to waive the bond or reduce the amount of the bond for good cause shown, including the need to preserve the assets of the estate.

Qualified financial institutions pursuant to section 30 of P.L. 1948, c.67 (C.17:9A-30) and non-profit community trusts organized pursuant to P.L.1985, c.424 (C.3B:11-19 et seq.) are exempt from the bonding requirements.

The bill provides that a fiduciary who is required to give bond shall file with the Superior Court an initial inventory and a final accounting of the estate. In the case of an extended estate or trust administration, the fiduciary would be required to file an interim accounting every five

years, or a lesser period of time if so ordered by the Superior Court.

A copy of the accountings would be served on the Public Advocate. On behalf of the developmentally disabled person or that person's estate, the Public Advocate would be authorized to file exceptions and objections to interim or final accountings and to initiate an action to compel the person to file an accounting of the trust or estate.

Under current law, testamentary guardians are relieved from giving bond under certain circumstances. N.J.S.3B:12-16 relieves a testamentary guardian of a minor from giving bond by direction of the will of the parent, and N.J.S.3B:12-33 relieves a testamentary guardian of an incapacitated person from giving bond by direction of the will of the parent, spouse or domestic guardian. The bill provides that these two statutes would not apply in situations where, pursuant to the bill, the guardians would be required to give bond.

It is the sponsor's intention that this bill be referred to as "Ronnie's Law" after former Audobon resident Ronnie Mich. Mr. Mich had been the beneficiary of a \$1.2 million estate, left to him by his father, but the funds were stolen by the executor and Mr. Mich's home was sold to pay debts.

This bill is identical to A-1478 (1R).

STATEMENT TO

[First Reprint]

SENATE, No. 550

with Senate Floor Amendments
(Proposed by Senator SWEENEY)

ADOPTED: MARCH 16, 2009

This bill requires certain fiduciaries with authority or control over the property of a developmentally disabled person to file a bond with the Superior Court.

These floor amendments provide that a personal representative, testamentary guardian or testamentary trustee who is required to give bond under the bill shall file an interim accounting every five years, or a lesser period of time if so ordered by the Superior Court, in the case of an extended estate or trust administration. The floor amendments provide that the bonding requirement shall not apply to non-profit community trusts organized pursuant to P.L.1985, c.424 (C.3B:11-19 et seq.).

The amendments also provide that the Public Advocate, on behalf of the developmentally disabled person or that person's estate, may file exceptions and objections to interim or final accountings and may initiate an action to compel the person to file an accounting of the trust or estate.

As released from committee, this bill had provided that a bond is required if the person seeking appointment has knowledge that a devisee or beneficiary is a developmentally disabled person. The floor amendments provide that a bond is required if the person has actual knowledge.

Under current law, N.J.S.3B:12-16 relieves a testamentary guardian of a minor from giving bond by direction of the will of the parent, and N.J.S.3B:12-33 relieves a testamentary guardian of an incapacitated person from giving bond by direction of the will of the parent, spouse or domestic guardian. These amendments provide that these statutes would not apply in situations where, pursuant to the substitute, the guardians would be required to give bond.

The amendments also make several minor language changes.

ASSEMBLY, No. 1478

STATE OF NEW JERSEY

213th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2008 SESSION

Sponsored by:

Assemblyman JOHN J. BURZICHELLI

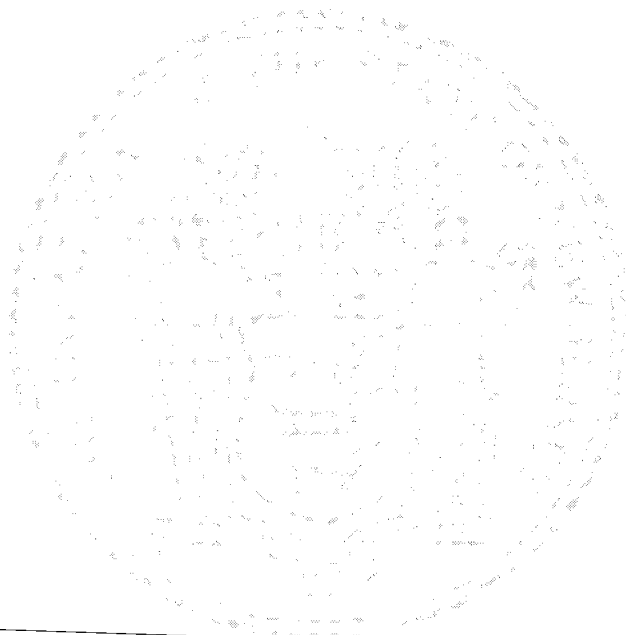
District 3 (Salem, Cumberland and Gloucester)

SYNOPSIS

Requires executors to post bond and provide periodic accountings to the court where beneficiary is developmentally disabled.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



A1478 BURZICHELLI

2

1 AN ACT concerning certain executors, amending N.J.S.3B:3-17 and
2 supplementing Title 3B of the New Jersey Statutes.

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

6
7 1. N.J.S.3B:3-17 is amended to read as follows:
8 3B:3-17. Probate of will and grant of letters.

9 a. The surrogates of the several counties or the Superior Court
10 may take depositions to wills, admit the same to probate, and grant
11 thereon letters testamentary or letters of administration with the will
12 annexed.

13 b. No person nominated as executor in a will where a
14 beneficiary to the will has a developmental disability shall be
15 granted letters testamentary unless the person furnishes bond to the
16 Superior Court in a sum and with proper conditions and sureties,
17 having due regard to the value of the estate in his charge and the
18 extent of his authority, as the court shall approve. If such executor
19 fails to furnish an appropriate bond approved by the court, the court
20 shall appoint an administrator in the place of the executor who shall
21 furnish bond in accordance with the provisions of N.J.S.3B:15-1.

22 As used in this subsection, "developmental disability" means a
23 severe, chronic disability of a person which: (1) is attributable to a
24 mental or physical impairment or combination of mental or physical
25 impairments; (2) is manifest before age 22; (3) is likely to continue
26 indefinitely; (4) results in substantial functional limitations in three
27 or more of the following areas of major life activity, that is, self-
28 care, receptive and expressive language, learning, mobility, self-
29 direction and capacity for independent living or economic self-
30 sufficiency; and (5) reflects the need for a combination and
31 sequence of special interdisciplinary or generic care, treatment or
32 other services which are of lifelong or extended duration and are
33 individually planned and coordinated. Developmental disability
34 includes but is not limited to severe disabilities attributable to
35 mental retardation, autism, cerebral palsy, epilepsy, spina bifida and
36 other neurological impairments where the above criteria are met.

37 (cf: P.L.2004, c.132, s.19)

38
39 2. (New section) a. Where a beneficiary to a will is
40 developmentally disabled as defined in subsection b. of N.J.S.3B:3-
41 17:

42 (1) Within two months after receiving letters testamentary or
43 letters of administration, the fiduciary shall file with the clerk of the
44 court, under oath, an inventory of all property of the decedent, duly
45 appraised, with the Superior Court. The court may, for good cause

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 shown, extend the time for the filing of such inventory to not more
2 than four months after the grant of letters testamentary or letters of
3 administration.

4 (2) The fiduciary shall render to the Superior Court at six-month
5 intervals, until the final accounting of the estate, a true account of
6 all the assets of the estate in his charge.

7 b. Nothing in this act shall be deemed to preclude the authority
8 of the court to require the fiduciary to render an account of the
9 performance of his office upon application by the surety pursuant to
10 N.J.S.3B:15-10.

11
12 3. This act shall take effect on the 60th day following
13 enactment.

14
15 SPONSOR'S STATEMENT
16

17
18 This bill protects beneficiaries with developmental disabilities by
19 imposing certain requirements on will executors. Under current
20 law, a person appointed by the court as administrator of a will
21 generally must post a bond with the Superior Court to ensure the
22 appropriate administration of the estate (N.J.S.A.3B:15-1), but there
23 is no requirement for a person named in the will as executor to post
24 a bond. Under this bill, if a beneficiary is developmentally disabled
25 any executor named in the will must post a bond with the court.

26 The bill would also give the court ongoing supervisory authority
27 over the administration of estates in situations where the beneficiary
28 is developmentally disabled by requiring the executor to file an
29 inventory of all property of the decedent within two months of his
30 or her appointment, and by requiring the executor to file an
31 accounting with the court every six months until the final
32 accounting of the estate.

33 The bill's definition of "developmental disability" is identical to
34 that contained in N.J.S.A.30:6D-25 (P.L.1985, c.145), which
35 established a Division of Developmental Disabilities in the State
36 Department of Human Services: "a severe, chronic disability of a
37 person which: (1) is attributable to a mental or physical impairment
38 or combination of mental or physical impairments; (2) is manifest
39 before age 22; (3) is likely to continue indefinitely; (4) results in
40 substantial functional limitations in three or more of the following
41 areas of major life activity, that is, self-care, receptive and
42 expressive language, learning, mobility, self-direction and capacity
43 for independent living or economic self-sufficiency; and (5) reflects
44 the need for a combination and sequence of special interdisciplinary
45 or generic care, treatment or other services which are of lifelong or
46 extended duration and are individually planned and coordinated.
47 Developmental disability includes but is not limited to severe
48 disabilities attributable to mental retardation, autism, cerebral palsy,

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4

1 epilepsy, spina bifida and other neurological impairments where the
2 above criteria are met."

3 It is the sponsor's intention that this bill be referred to as
4 "Ronnie's Law" after former Audobon resident Ronnie Mich. Mr.
5 Mich had been the beneficiary of a \$1.2 million estate, left to him
6 by his father, but the funds were apparently stolen by the executor
7 and Mr. Mich's home was sold to pay debts.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1478

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 8, 2009

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 1478.

This bill imposes certain requirements on fiduciaries in order to protect beneficiaries with developmental disabilities. Under current law, a person appointed by the court as administrator of a will generally must post a bond with the Superior Court to ensure the appropriate administration of the estate, but there is no requirement for a person named in the will as executor to post a bond. Under the bill as introduced, any executor named in the will would have been required to post a bond with the court if a beneficiary was developmentally disabled. The bill as introduced would also have required the executor to file with the Superior Court an inventory of all property of the decedent within two months of appointment, and to file an accounting every six months until the final accounting of the estate.

As amended by the committee, the bonding requirement would apply to fiduciaries such as personal representatives, testamentary guardians or testamentary trustees. The amendments provide that a bond would be required if the testator has identified that a devisee or beneficiary of property of the decedent's estate is a developmentally disabled person, or if the person seeking appointment as fiduciary has actual knowledge that a devisee or beneficiary is a developmentally disabled person.

The committee amendments provide that no bond will be required if the court has appointed another person as guardian of the developmentally disabled person or guardian of the estate; if the person seeking the appointment is a family member within the third degree of consanguinity of the developmentally disabled person; or if the total value of the real and personal assets of the estate or trust does not exceed \$25,000. The amendments provide that a fiduciary who is required to post a bond may make application to the court to waive the bond or reduce the amount of the bond for good cause shown, including the need to preserve the assets of the estate.

The amendments also provide that qualified financial institutions pursuant to section 30 of P.L.1948, c.67 (C.17:9A-30) and non-profit

community trusts organized pursuant to P.L.1985, c.424 (C.3B:11-19 et seq.) are exempt from the bonding requirements.

The amendments provide that a fiduciary who is required to give bond shall file with the Superior Court an initial inventory and a final accounting of the estate. In the case of an extended estate or trust administration, the fiduciary would be required to file an interim accounting every five years, or a lesser period of time if so ordered by the Superior Court.

The amendments provide that a copy of the accountings shall be served on the Public Advocate and that the Public Advocate, on behalf of the developmentally disabled person or that person's estate, may file exceptions and objections to interim or final accountings and may initiate an action to compel the person to file an accounting of the trust or estate.

Under current law, testamentary guardians are relieved from giving bond under certain circumstances. N.J.S.3B:12-16 relieves a testamentary guardian of a minor from giving bond by direction of the will of the parent, and N.J.S.3B:12-33 relieves a testamentary guardian of an incapacitated person from giving bond by direction of the will of the parent, spouse or domestic guardian. The amendments provide that these two statutes would not apply in situations where, pursuant to the bill, the guardians would be required to give bond.

Finally, the amendments incorporate by reference the definition of "developmental disability" in the bill.

It is the sponsor's intention that this bill be referred to as "Ronnie's Law" after former Audobon resident Ronnie Mich. Mr. Mich had been the beneficiary of a \$1.2 million estate, left to him by his father, but the funds were stolen by the executor and Mr. Mich's home was sold to pay debts.

These amendments make this bill identical to Senate Bill No. 550 (2R).

COMMITTEE AMENDMENTS

The amendments omit sections 1 and 2 in their entirety and insert new sections 1, 2 and 3 as follows:

1. New section 1 amends N.J.S.A.3B:15-1 to provide:

(a) The requirement to post a bond would apply to fiduciaries such as personal representatives, testamentary guardians or testamentary trustees. A bond would be required if the testator has identified that a devisee or beneficiary of property of the decedent's estate is a developmentally disabled person, or if the person seeking appointment as fiduciary has actual knowledge that a devisee or beneficiary is a developmentally disabled person.

(b) No bond will be required if the court has appointed another person as guardian of the developmentally disabled person or guardian of the estate; if the person seeking the appointment is a family member within the third degree of consanguinity of the developmentally

disabled person; or if the total value of the real and personal assets of the estate or trust does not exceed \$25,000.

(c) A fiduciary who is required to post a bond may make application to the court to waive the bond or reduce the amount of the bond for good cause shown, including the need to preserve the assets of the estate.

(d) Qualified financial institutions pursuant to section 30 of P.L.1948, c.67 (C.17:9A-30) and non-profit community trusts organized pursuant to P.L.1985, c.424 (C.3B:11-19 et seq.) are exempt from the bonding requirements.

(e) A fiduciary who is required to give bond shall file with the Superior Court an initial inventory and a final accounting of the estate. In the case of an extended estate or trust administration, the fiduciary would be required to file an interim accounting every five years, or a lesser period of time if so ordered by the Superior Court.

(f) A copy of the accountings shall be served on the Public Advocate. The Public Advocate, on behalf of the developmentally disabled person or that person's estate, may file exceptions and objections to interim or final accountings and may initiate an action to compel the person to file an accounting of the trust or estate.

(g) The definition of "developmental disability" is incorporated by reference in the bill.

2. New sections 2 and 3 amend N.J.S.A.3B:12-16 and 3B:12-33 which currently relieve testamentary guardian of a minor from giving bonds when required to do so at the direction of a will of the parent, spouse or domestic partner. The amendments provide that the provisions of these statutes would not apply when the minor is developmental disabled and thereby require the guardians to post bonds.
