

3A:38A-1 to 8

LEGISLATIVE HISTORY CHECKLIST

NJ A 3A:38A-1 to 3A:38A-8 (Probate--Decedent's estate--surviving spouse--elective share)  
LAWS 1979 CHAPTER 483  
Bill No. A18  
Sponsor(s) Burstein and Bate  
Date Introduced Pre-filed  
Committee: Assembly Judiciary, Law, Public Safety and Defense  
Senate Judiciary

Amended during passage Yes ~~No~~ Amendments during passage denoted by asterisks

Date of Passage: Assembly April 20, 1978  
Senate Dec. 3, 1979

Date of approval Feb. 28, 1980

Following statements are attached if available:

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

Following were printed:

Reports	<del>Yes</del>	No
Hearings	<del>Yes</del>	No

Earlier proposed legislation:

A1698 (1976-77)  
S1006, A1185 (1974-75)  
S899, A2280 (1972-72)

(over)

6/22/81

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

- 974.90 New Jersey. Assembly. Judiciary. Law, Public  
C866 Safety and Defense Committee.  
1974c Public hearing on Assembly Bills 1185 and 1186  
(Uniform Probate Code), held 5-23-74. Newark, 1974.
- 974.90 New Jersey. Legislative Services Agency. Division  
C866 of Law Revision.  
1973k 1972-1973 legislation adopted from the proposed  
uniform probate code. Trenton, 1973.  
(See pp.20-27).
- 974.90 New Jersey. Legislature. Senate. Judiciary  
C866 Committee.  
1973h Public hearing on Uniform probate code bills,  
held 9-11-73. Trenton, 1973.

Recommendation for legislation of A18 and A20 (1979)

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

(See pp. 66-67)

MAR 25 1980

[SECOND OFFICIAL COPY REPRINT]

## ASSEMBLY, No. 18

## STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1978 SESSION

By Assemblymen BURSTEIN and BATE

AN ACT granting the surviving spouse of a decedent the right to an elective share of that decedent's estate and supplementing Title 3A of the New Jersey Statutes.

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

1 1. a. If a married person dies domiciled in this State *\*\*on or after*  
2 *the effective date of this act\*\**, the surviving spouse has a right of  
3 election to take an elective share of one-third of the augmented  
4 estate under the limitations and conditions hereinafter stated,  
5 provided that at the time of death the decedent and the surviving  
6 spouse had not been living separate and apart in different habita-  
7 tions *\*[and]\* \*or\** had not ceased to cohabit as man and wife,  
8 either as the result of judgment of divorce from bed and board or  
9 under circumstances which would have given rise to a cause of  
10 action for divorce or nullity of marriage to a decedent prior to his  
10a death under the laws of this State.

11 b. If a married person not domiciled in this State dies, the right,  
12 if any, of the surviving spouse to take an elective share in property  
13 in this State is governed by the law of the decedent's domicile at  
14 death.

1 2. The "augmented estate" means the estate reduced by funeral  
2 and administration expenses, and enforceable claims, to which is  
3 added the sum of the following amounts:

4 a. The value of property transferred by the decedent at any  
5 time during marriage, to or for the benefit of any person other  
6 than the surviving spouse, to the extent that the decedent did not  
7 receive adequate and full consideration in money or money's worth  
8 for the transfer, if the transfer is of any of the following types:  
9 (1) Any transfer hereafter made under which the decedent re-  
10 tained at the time of his death the possession or enjoyment of, or  
11 right to income from, the property;

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

12 (2) Any transfer hereafter made to the extent that the decedent  
13 retained at the time of his death a power, either alone or in con-  
14 junction with any other person, to revoke or to consume, invade  
15 or dispose of the principal for his own benefit;

16 (3) Any transfer hereafter made whereby property is held at  
17 the time of decedent's death by decedent and another with right  
18 of survivorship;

19 (4) Any transfer hereafter made, if made within 2 years of  
20 death of the decedent, to the extent that the aggregate transfers  
21 to any one donee in either of the years exceed \$3,000.00.

22 Any transfer is excluded if made with the written consent or  
23 joinder of the surviving spouse. Property is valued as of the  
24 decedent's death except that property given irrevocably to a donee  
25 during lifetime of the decedent is valued as of the date the donee  
26 came into possession or enjoyment if that occurs first. Nothing  
27 herein shall cause to be included in the augmented estate any life  
28 insurance, accident insurance, joint annuity, or pension payable to  
29 a person other than the surviving spouse.

30 b. (1) The value of property owned by the surviving spouse at  
31 the time of, or as a result of, the decedent's death to the extent that  
32 the property is derived from the decedent by means other than by  
33 testate or intestate succession without a full consideration in money  
34 or money's worth.

35 (2) The value of the property described in subsection b. (1) of  
36 this section 2. which has been transferred by the surviving spouse at  
37 any time during marriage without a full consideration in money  
38 or money's worth to any person other than the decedent which  
39 would have been includable in the spouse's augmented estate if  
40 the surviving spouse had predeceased the decedent.

41 (3) For the purposes of subsections b. (1) and b. (2):

42 (a) Property derived from the decedent includes, but is not  
43 limited to, any beneficial interest of the surviving spouse in a trust  
44 created by the decedent during his lifetime, any property appointed  
45 to the spouse by the decedent's exercise of a general or special  
46 power of appointment also exercisable in favor of others than the  
47 spouse, any proceeds of insurance (including accidental death  
48 benefits on the life of the decedent attributable to premiums paid  
49 by him, any lump sum immediately payable and the commuted value  
50 of the proceeds of annuity contracts under which the decedent was  
51 the primary annuitant attributable to premiums paid by him, the  
52 commuted value of amounts payable after the decedent's death  
53 under any public or private pension, disability compensation, death

54 benefit or retirement plan, exclusive of the Federal Social Security  
 55 system, by reason of service performed or disabilities incurred by  
 56 the decedent, the value of the share of the surviving spouse result-  
 57 ing from rights in community property acquired in any other state  
 58 formerly owned with the decedent and the value of any rights of  
 59 dower and curtesy. Premiums paid by the decedent's employer,  
 60 his partner, a partnership of which he was a member, or his credi-  
 61 tors, are deemed to have been paid by the decedent.

62 (b) Property owned by the spouse at the decedent's death is  
 63 valued as of the date of death. Property transferred by the spouse  
 64 is valued at the time the transfer became irrevocable, or at the  
 65 decedent's death, whichever occurred first. Income earned by  
 66 included property prior to the decedent's death is not treated as  
 67 property derived from the decedent.

68 (c) Property owned by the surviving spouse as of the decedent's  
 69 death, or previously transferred by the surviving spouse, is pre-  
 70 sumed to have been derived from the decedent except to the extent  
 71 that any party in interest establishes that it was derived from  
 72 another source.

1 3. The right of election to take an elective share by a surviving  
 2 spouse may be exercised only during his lifetime. In the case of  
 3 a surviving spouse for whom the court has appointed a fiduciary  
 4 to manage his estate, the right of election may be exercised only  
 5 by order of the court making the appointment after finding that  
 6 such election is necessary to provide adequate support for the  
 7 surviving spouse during his probable life expectancy.

1 4. The right of election of a surviving spouse and the rights of  
 2 the surviving spouse may be waived, wholly or partially, before  
 3 or after marriage before, on or after the effective date of this act,  
 4 by a written contract, agreement or waiver, signed by the party  
 5 waiving after fair disclosure. Unless it provides to the contrary,  
 6 a waiver of "all rights" (or equivalent language) in the property  
 7 or estate of a present or prospective spouse or a complete property  
 8 settlement entered into after or in anticipation of separation or  
 9 divorce is a waiver of all rights to an elective share by each spouse  
 10 in the property of the other and a renunciation by each of all  
 11 benefits which would otherwise pass to him from the other by  
 12 intestate succession or by virtue of the provisions of any will  
 13 executed before the waiver or property settlement.

1 5. a. The surviving spouse may elect to take his elective share  
 2 in the augmented estate by filing in the Superior Court \*\*[or in the  
 3 County Court of]\*\* \*\*in\*\* the county in which the personal repre-

4   sentative was appointed a complaint in an action applying for the  
5   elective share, within 6 months after the appointment of a personal  
6   representative. Before the time for election has expired, the court  
7   may for good cause shown by the surviving spouse extend the time  
8   for election upon notice to persons interested in the estate and to  
9   distributees and recipients of portions of the augmented estate  
10  whose interests will be adversely affected by the taking of the  
11  elective share.

12   b. The surviving spouse shall give notice of the time and place  
13  set for hearing to persons interested in the estate and to the dis-  
14  tributees and recipients of portions of the augmented estate whose  
15  interests will be adversely affected by the taking of the elective  
16  share.

17   c. The surviving spouse may withdraw his demand for an elec-  
18  tive share at any time before entry of a final determination by  
19  the court.

20   d. After notice and hearing, the court shall determine the amount  
21  of the elective share and shall order its payment from the assets  
22  of the augmented estate or by contribution as appears appropriate  
23  under section 7. of this act. If it appears that a fund or property  
24  included in the augmented estate has not come into the possession  
25  of the personal representative, or has been distributed by the per-  
26  sonal representative, the court nevertheless shall fix the liability  
27  of any person who has any interest in the fund or property or who  
28  has possession thereof, whether as trustee or otherwise. The pro-  
29  ceeding may be maintained against fewer than all persons against  
30  whom relief could be sought, but no person is subject to contribu-  
31  tion in any greater amount than he would have been if relief had  
32  been secured against all persons subject to contribution.

33   e. The order or judgment of the court may be enforced as other  
34  judgments are enforced by law.

1   6. In an action for an elective share, the electing spouse's total  
2  or proportional beneficial interest in any life estate in real or  
3  personal property or in any trust shall be valued at one-half of  
4  the total value of the property or trust or of the portion of the  
5  property or trust subject to the life estate.

1   7. In an action for an elective share,

2   a. The amount of the surviving spouse's elective share shall be  
3  satisfied by applying:

4   (1) The value of all property, estate or interest therein, owned  
5  by the surviving spouse in his own right at the time of the de-  
6  cedent's death from whatever source acquired, or succeeded to by

7 the surviving spouse as a result of decedent's death notwithstand-  
8 ing that the property, estate or interest or part thereof, succeeded  
9 to by the surviving spouse as the result of decedent's death has  
10 been renounced by the surviving spouse, and

11 (2) The value of property described in subsection b (2) of  
12 section 2 of this act.

13 b. Remaining property of the augmented estate is so applied  
14 that liability for the balance of the elective share of the surviving  
15 spouse is equitably apportioned among the recipients of the aug-  
16 mented estate in proportion to the value of their interests therein.

17 c. Only original transferees from, or appointees of, the decedent  
18 and their donees, to the extent the donees have the property or its  
19 proceeds, are subject to the contribution to make up the elective  
20 share of the surviving spouse. A person liable to contribution may  
21 choose to give up the property transferred to him or to pay its  
22 value as fixed in the manner provided in section 2 a. of this act.

1 8. A surviving spouse who intentionally kills the decedent is not  
2 entitled to any benefits under this act. *\*A final judgment of con-*  
3 *viction of intentional killing is conclusive for purposes of this sec-*  
4 *tion. In the absence of a conviction of intentional killing the court*  
5 *may determine by a preponderance, of evidence whether the killing*  
6 *was intentional for purposes of this section.\**

1 9. This act shall take effect 90 days after enactment.

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11 (2) The value of property described in subsection b (2) of  
12 section 2 of this act.

13 b. Remaining property of the augmented estate is so applied  
14 that liability for the balance of the elective share of the surviving  
15 spouse is equitably apportioned among the recipients of the aug-  
16 mented estate in proportion to the value of their interests therein.

17 c. Only original transferees from, or appointees of, the decedent  
18 and their donees, to the extent the donees have the property or its  
19 proceeds, are subject to the contribution to make up the elective  
20 share of the surviving spouse. A person liable to contribution may  
21 choose to give up the property transferred to him or to pay its  
22 value as fixed in the manner provided in section 2 a. of this act.

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2 entitled to any benefits under this act.

1 9. This act shall take effect 90 days after enactment.

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#### STATEMENT

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

This bill, if adopted, will introduce a new concept into New Jersey law. It provides for an "elective share" to a decedent's surviving spouse so that a surviving spouse is entitled to a portion of the assets of the decedent's augmented estate where necessary for the survivor's support and maintenance.

Under existing New Jersey law, a decedent may deplete his entire estate during lifetime by gift or otherwise, so that at the time of death his assets or estate have been either completely or considerably depreciated. The effect is to disinherit the surviving spouse to the extent of such depreciation and can result in complete disinheritance. The object of this bill is to prohibit disinheritance of a surviving spouse who needs continuous support.

The right of the surviving spouse to an elective share is governed by the law of the decedent's domicile at the time of his death. If the decedent dies domiciled in this State, the surviving spouse will not be entitled to take an elective share if the parties have been living separate and apart in different habitations and ceased to cohabit as man and wife as the result of a judgment of divorce from bed and board or under circumstances which would have given rise to a cause of action for divorce or nullity of marriage to

A18(1979)

the decedent prior to his death. This is similar to a provision in the Pennsylvania law which provides for a forfeiture of the right of election where the parties have been living separate and apart as therein provided.

As provided in the bill, the elective share is one-third of the decedent's "augmented estate." The "augmented estate" is defined as the decedent's estate reduced by expenses and increased by: (1) property transferred by the decedent after the effective date of the act during marriage in which he retained any interest, unless the spouse consented or joined in the transfer; (2) any transfer hereafter made, if made within 2 years of the death of the decedent to one donee in excess of \$3,000.00 in either of said years, unless the spouse consented or joined in the transfer; and (3) property owned by the surviving spouse which was derived from the decedent by means other than testate or intestate succession and the value of any such property transferred by the surviving spouse at any time during marriage to any person other than the decedent. Such property includes life insurance proceeds, any inter vivos trust created by the decedent, any property appointed to the surviving spouse by the decedent's execution of a power of appointment, pension or retirement payments exclusive of those under the Federal social security system, and the value of any rights of dower and curtesy.

The bill further provides for the manner in which property shall be valued.

The purpose of the "augmented estate" is twofold: to prevent the decedent from transferring property to others so as to defeat the right of the surviving spouse, and, to prevent the surviving spouse from electing a share of the decedent's estate when the spouse has already received a fair share of the decedent's wealth during his lifetime or at death from other assets.

The elective share is satisfied by applying, first: the value of all of the property owned by the surviving spouse in his own right at the time of the decedent's death including the property to which the spouse succeeds by reason of the decedent's death, and second, the value of all property received by the spouse from the decedent during decedent's lifetime and given away by the surviving spouse without receiving full consideration. Thus a surviving spouse who has a personal estate equal to one-third of decedent's augmented estate would not be entitled to an elective share.

The valuation put on life estates in section 6, is designed to make it impossible for a surviving spouse to take an elective share of

one-third the augmented estate in the ordinary case in which the spouse is bequeathed the income for life from the bulk of decedent's probate estate which is not appreciably augmented as provided in section 2. Placing a valuation of one-half of the principal on the life estate, which would be its present value to a surviving spouse who was 56-57 years of age at decedent's death, compels the surviving spouse to take the bequest, rather than an elective share, unless the decedent has attempted to reduce the size of his estate by non-testamentary gifts.

The right of a surviving spouse to take an elective share must be exercised during his lifetime, and the right to an election must be made within 6 months after the appointment of a personal representative. The court may extend the time for election before the time for election has expired.

The right of election of a surviving spouse may be waived, wholly or partially, before or after marriage. Unless it appears to the contrary, a waiver of "all rights" or a complete property settlement entered into or in anticipation of a separation or divorce is a waiver of all rights to an elective share and a renunciation of all benefits which would otherwise pass by intestate succession or a will executed before the waiver or property settlement.

The bill also provides the manner for electing and determining the spouse's share. If necessary, the court may require apportionment among the recipients of property required to be included in the augmented estate to make up the elective share to the extent that they still have the property given to them or its proceeds.

The bill further provides that a surviving spouse who intentionally kills the decedent is not entitled to any benefits under this act.

ASSEMBLY JUDICIARY, LAW, PUBLIC SAFETY AND  
DEFENSE COMMITTEE

STATEMENT TO  
**ASSEMBLY, No. 18**  
with committee amendments

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**STATE OF NEW JERSEY**

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DATED: FEBRUARY 23, 1978

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

This bill, if adopted, will introduce a new concept into New Jersey law. It provides for an "elective share" to a decedent's surviving spouse so that a surviving spouse is entitled to a portion of the assets of the decedent's augmented estate where necessary for the survivor's support and maintenance.

Under existing New Jersey law, a decedent may deplete his entire estate during lifetime by gift or otherwise, so that at the time of death his assets or estate have been either completely or considerably depreciated. The effect is to disinherit the surviving spouse to the extent of such depreciation and can result in complete disinheritance. The object of this bill is to prohibit disinheritance of a surviving spouse who needs continuous support.

The right of the surviving spouse to an elective share is governed by law of the decedent's domicile at the time of his death. If the decedent dies domiciled in this State, the surviving spouse will not be entitled to take an elective share if the parties have been living separate and apart in different habitations or, as the result of the committee amendment, if they had ceased to cohabit as man and wife as the result of a judgment of divorce from bed and board or under circumstances which would have given rise to a cause of action for divorce or nullity of marriage to the decedent prior to his death. This is similar to a provision in the Pennsylvania law which provides for a forfeiture of the right of election where the parties have been living separate and apart as therein provided.

As provided in the bill, the elective share is one-third of the decedent's "augmented estate." The "augmented estate" is defined as the decedent's estate reduced by expenses and increased by: (1) property transferred by the decedent after the effective date of the act during marriage in which he retained any interest, unless the spouse consented or joined in the transfer; (2) any transfer hereafter made, if made within 2 years of the death of the decedent to one donee in excess of \$3,000.00 in either of said years, unless the spouse consented or joined in the transfer; and (3) property owned by the surviving spouse which was derived from the decedent by means other than testate or intestate succession and the value of any such property transferred by the surviving spouse at any time during marriage to any person other than the decedent. Such property includes life insurance proceeds, any inter vivos trust created by the decedent, any property appointed to the surviving spouse by the decedent's execution of a power of appointment, pension or retirement payments exclusive of those under the Federal social security system, and the value of any rights of dower and curtesy.

The bill further provides for the manner in which property shall be valued.

The purpose of the "augmented estate" is twofold: to prevent the decedent from transferring property to others so as to defeat the right of the surviving spouse, and, to prevent the surviving spouse from electing a share of the decedent's estate when the spouse has already received a fair share of the decedent's wealth during his lifetime or at death from other assets.

The elective share is satisfied by applying, first: the value of all of the property owned by the surviving spouse in his own right at the time of the decedent's death including the property to which the spouse succeeds by reason of the decedent's death, and second, the value of all property received by the spouse from the decedent during decedent's lifetime and given away by the surviving spouse without receiving full consideration. Thus a surviving spouse who has a personal estate equal to one-third of decedent's augmented estate would not be entitled to an elective share.

The valuation put on life estates in section 6, is designed to make it impossible for a surviving spouse to take an elective share of one-third the augmented estate in the ordinary case in which the spouse is bequeathed the income for life from the bulk of decedent's probate estate which is not appreciably augmented as provided in section 2. Placing a valuation of one half of the principal on the life estate, which would be its present value to a surviving spouse who was 56-57 years of

age at decedent's death, compels the surviving spouse to take the bequest, rather than an elective share, unless the decedent has attempted to reduce the size of his estate by nontestamentary gifts.

The right of a surviving spouse to take an elective share must be exercised during his lifetime, and the right to an election must be made within 6 months after the appointment of a personal representative. The court may extend the time for election before the time for election has expired.

The right of election of a surviving spouse may be waived, wholly or partially, before or after marriage. Unless it appears to the contrary, a waiver of "all rights" or a complete property settlement entered into or in anticipation of a separation or divorce is a waiver of all rights to an elective share and a renunciation of all benefits which would otherwise pass by intestate succession or a will executed before the waiver or property settlement.

The bill also provides the manner for electing and determining the spouse's share. If necessary, the court may require apportionment among the recipients of property required to be included in the augmented estate to make up the elective share to the extent that they still have the property given to them or its proceeds.

The bill further provides that a surviving spouse who intentionally kills the decedent is not entitled to any benefits under this act. The committee amendments clarify the intent of this section by providing that a surviving spouse who is convicted of the intentional killing of the decedent may not receive any benefits under this act. If a conviction of intentional killing is not returned, the court determines upon a preponderance of the evidence whether the killing was intentional for purposes of this section. The language conforms to that used for a similar purpose in a companion bill concerning intestate succession.

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SENATE JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 18

STATE OF NEW JERSEY

DATED: NOVEMBER 19, 1979

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

This bill, if adopted, will introduce a new concept into New Jersey law. It provides for an "elective share" to a decedent's surviving spouse so that a surviving spouse is entitled to a portion of the assets of the decedent's augmented estate where necessary for the survivor's support and maintenance.

Under existing New Jersey law, a decedent may deplete his entire estate during lifetime by gift or otherwise, so that at the time of death his assets or estate have been either completely or considerably depreciated. The effect is to disinherit the surviving spouse to the extent of such depreciation and can result in complete disinheritance. The object of this bill is to prohibit disinheritance of a surviving spouse who needs continuous support.

The right of the surviving spouse to an elective share is governed by law of the decedent's domicile at the time of his death. If the decedent dies domiciled in this State, the surviving spouse will not be entitled to take an elective share if the parties have been living separate and apart in different habitations or, as the result of the committee amendment, if they had ceased to cohabit as man and wife as the result of a judgment of divorce from bed and board or under circumstances which would have given rise to a cause of action for divorce or nullity of marriage to the decedent prior to his death. This is similar to a provision in the Pennsylvania law which provides for a forfeiture of the right of election where the parties have been living separate and apart as therein provided.

As provided in the bill, the elective share is one-third of the decedent's "augmented estate." The "augmented estate" is defined as the decedent's estate reduced by expenses and increased by: (1) property transferred by the decedent after the effective date of the act during marriage in which he retained any interest, unless the spouse consented or joined in the transfer; (2) any transfer hereafter made, if made

within 2 years of the death of the decedent to one donee in excess of \$3,000.00 in either of said years, unless the spouse consented or joined in the transfer; and (3) property owned by the surviving spouse which was derived from the decedent by means other than testate or intestate succession and the value of any such property transferred by the surviving spouse at any time during marriage to any person other than the decedent. Such property includes life insurance proceeds, any inter vivos trust created by the decedent, any property appointed to the surviving spouse by the decedent's execution of a power of appointment, pension or retirement payments exclusive of those under the Federal social security system, and the value of any rights of dower and curtesy.

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The purpose of the "augmented estate" is twofold: to prevent the decedent from transferring property to others so as to defeat the right of the surviving spouse, and, to prevent the surviving spouse from electing a share of the decedent's estate when the spouse has already received a fair share of the decedent's wealth during his lifetime or at death from other assets.

The elective share is satisfied by applying, first: the value of all of the property owned by the surviving spouse in his own right at the time of the decedent's death including the property to which the spouse succeeds by reason of the decedent's death, and second, the value of all property received by the spouse from the decedent during decedent's lifetime and given away by the surviving spouse without receiving full consideration. Thus a surviving spouse who has a personal estate equal to one-third of decedent's augmented estate would not be entitled to an elective share.

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The right of election of a surviving spouse may be waived, wholly or partially, before or after marriage. Unless it appears to the contrary, a waiver of "all rights" or a complete property settlement entered into or in anticipation of a separation or divorce is a waiver of all rights to an elective share and a renunciation of all benefits which would otherwise pass by intestate succession or a will executed before the waiver or property settlement.

The bill also provides the manner for electing and determining the spouse's share. If necessary, the court may require apportionment among the recipients of property required to be included in the augmented estate to make up the elective share to the extent that they still have the property given to them or its proceeds.

The bill further provides that a surviving spouse who intentionally kills the decedent is not entitled to any benefits under this act. The Assembly committee amendments clarified that the intent of this section by providing that a surviving spouse who is convicted of the intentional killing of the decedent may not receive any benefits under this act. If a conviction of intentional killing is not returned, the court determines upon a preponderance of the evidence whether the killing was intentional for purposes of this section. The language conforms to that used for a similar purpose in a companion bill concerning intestate succession.

The purpose of the Senate committee amendments is to clarify that the elective share is applicable only to the estates of persons who died domicile in New Jersey on or after the effective date of the act.

The amendments also delete an incorrect reference to the county court.

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FROM THE OFFICE OF THE GOVERNOR

FOR IMMEDIATE RELEASE

FEBRUARY 28, 1980

FOR FURTHER INFORMATION

KATHRYN FORSYTH

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

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

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

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

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

These are the bills the Governor signed today:

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

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

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

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