

3A:20-12 to 3A:20-14

LEGISLATIVE HISTORY CHECKLIST

WJA 3A:20-12 to 3A:20-14 (Probate--Minors and incompetents--
Protective arrangements)
LAIS OF 1979 CHAPTER 486
Bill No. A21
Sponsor(s) Burstein and Bate
Date Introduced Pre-filed
Committee: Assembly Judiciary, Law, Public Safety and Defense
Senate Judiciary

Amended during passage Yes ~~xxx~~ Amendments during passage
denoted by asterisks
Date of Passage: Assembly April 20, 1978
Senate Nov. 13, 1979
Date of approval Feb. 28, 1980

Following statements are attached if available:

Sponsor statement	Yes	xx	Senate amendment, adopted 9-10-79 (with statement)-- attached
Committee Statement: Assembly	Yes	xx	
Senate	Yes	xx	
Fiscal Note	xxx	No	
Veto message	xxx	No	
Message on signing	Yes	xx	
Following were printed:			
Reports	xxx	No	
Hearings	xxx	No	

Earlier proposed legislation:

A1705 (1976-77)
S1012, A3139 (1974-75)

9/1/79

[SECOND OFFICIAL COPY REPRINT]

ASSEMBLY, No. 21

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1978 SESSION

By Assemblymen BURSTEIN and BATE

AN ACT concerning protective arrangements for minors and mental incompetents 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. If it is established that a minor or mental incompetent has
2 property which may be wasted or dissipated or that a basis exists
3 for affecting the property and affairs of a minor or mental in-
4 competent, or that funds are needed for the support, care and
5 welfare of the minor or mental incompetent or those entitled to
6 be supported by him, the court may, *"subject to the ****[approval]****"*
7 ***appointment** of a guardian ad litem and upon notice to the*
8 *guardian ad litem,** without appointing a guardian of his estate,
9 authorize, direct or ratify any single or more than one transaction
10 necessary or desirable to achieve any security, service, care or pro-
11 tective arrangement meeting the foreseeable needs of the minor or
12 mental incompetent or those dependent upon him. Protective
13 arrangements include, but are not limited to, payment, delivery,
14 deposit or retention of funds or property, sale, mortgage, lease or
15 other transfer of property, entry into an annuity contract, a contract
16 for life care, a deposit contract, a contract for training and educa-
17 tion, or addition to, or establishment of suitable trust. The court
18 may authorize, direct or ratify any contract, trust or other
19 transaction relating to the minor's or mental incompetent's
20 financial affairs or involving his estate if the court determines that
21 the transaction is in the best interests of the minor or mental
22 incompetent or those dependent upon him.

1 2. Before approving a protective arrangement or other trans-
2 action the court shall consider the interests of creditors and

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

3 dependents of the minor or mental incompetent and, in view of
4 his disability, whether the minor or mental incompetent needs the
5 continuing protection of a guardian. The court may appoint a
6 special guardian to assist in the accomplishment of any protective
7 arrangement or other transaction authorized under this section
8 who shall have authority conferred by the order and serve until
9 discharged by order after report to the court of all matters done
10 pursuant to the order of appointment.

1 3. Where application is made to the court for proceedings to
2 affect the property and affairs of a mental incompetent, and the
3 alleged mental incompetent has not been adjudicated as such, the
4 alleged mental incompetent or someone in his behalf may apply
5 for a trial of the issue of mental incompetency in accordance with
6 N. J. S. 3A:6-35 and the rules governing the courts of the State
7 of New Jersey.

1 4. This act shall take effect immediately.

6 special guardian to assist in the accomplishment of any protective
7 arrangement or other transaction authorized under this section
8 who shall have authority conferred by the order and serve until
9 discharged by order after report to the court of all matters done
10 pursuant to the order of appointment.

1 3. Where application is made to the court for proceedings to
2 affect the property and affairs of a mental incompetent, and the
3 alleged mental incompetent has not been adjudicated as such, the
4 alleged mental incompetent or someone in his behalf may apply
5 for a trial of the issue of mental incompetency in accordance with
6 N. J. S. 3A:6-35 and the rules governing the courts of the State
7 of New Jersey.

1 4. This act shall take effect immediately.

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 by the American Bar Association, and incorporates some changes which have been found to be desirable as a result of study given by the Division of Law Revision of the Legislative Services Agency.

This bill will introduce a new feature in New Jersey statutory law, "protective arrangements."

As prescribed in the bill the court may without appointing a guardian for the estate of a minor or mental incompetent establish a protective arrangement when necessary or desirable to prevent waste or dissipation of property, and to meet the foreseeable needs of a minor or mental incompetent or those dependent upon him. Protective arrangements are concerned with individual transactions which are necessary or desirable for the best interest of the minor or mental incompetent or those dependent upon him. The court will also take into consideration the need for the continuing protection of a guardian. It preserves the constitutional and statutory rights of a mental incompetent to a jury trial on the question of incompetency.

A 21 (1979)

ASSEMBLY JUDICIARY, LAW, PUBLIC SAFETY AND
DEFENSE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 21

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 22, 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 by the American Bar Association, and incorporates some changes which have been found to be desirable as a result of study given by the Division of Law Revision of the Legislative Services Agency.

This bill will introduce a new feature in New Jersey statutory law, "protective arrangements."

As prescribed in the bill the court may without appointing a guardian for the estate of a minor or mental incompetent establish a protective arrangement when necessary or desirable to prevent waste or dissipation of property, and to meet the foreseeable needs of a minor or mental incompetent or those dependent upon him. Protective arrangements are concerned with individual transactions which are necessary or desirable for the best interest of the minor or mental incompetent or those dependent upon him. The court will also take into consideration the need for the continuing protection of a guardian. It preserves the constitutional and statutory rights of a mental incompetent to a jury trial on the question of incompetency.

The committee amendments make clear that the court will appoint a guardian ad litem for the minor or mental incompetent and provide the guardian ad litem with sufficient notice before proceeding with the establishment of a "protective arrangement" as authorized by this act. This procedure is consistent with court rule.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 21

STATE OF NEW JERSEY

DATED: JUNE 25, 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 by the American Bar Association, and incorporates some changes which have been found to be desirable as a result of study given by the Division of Law Revision of the Legislative Services Agency.

This bill will introduced a new feature in New Jersey statutory law, "protective arrangements."

As prescribed in the bill the court may without appointing a guardian for the estate of a minor or mental incompetent establish a protective arrangement when necessary or desirable to prevent waste or dissipation of property, and to meet the foreseeable needs of a minor or mental incompetent or those dependent upon him. Protective arrangements are concerned with individual transactions which are necessary or desirable for the best interest of the minor or mental incompetent or those dependent upon him. The court will also take into consideration the need for the continuing protection of a guardian. It preserves the constitutional and statutory rights of a mental incompetent to a jury trial on the question of incompetency.

The Assembly committee amendments make clear that the court will appoint a guardian ad litem for the minor or mental incompetent and provide the guardian ad litem with sufficient notice before proceeding with the establishment of a "protective arrangement" as authorized by this act. This procedure is consistent with court rule.

SENATE AMENDMENT TO
ASSEMBLY, No. 21
[OFFICIAL COPY REPRINT]

STATE OF NEW JERSEY

ADOPTED SEPTEMBER 10, 1979

Amend page 1, section 1, line 6, omit "approval", insert "appointment".

STATEMENT

The amendment corrects a technical error in the Assembly Committee amendments, which were intended to require the appointment of a guardian ad litem, not to require the guardian's consent to the action of the Court.

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.

A-8, which revises the New Jersey law governing the appointments, duties, rights and obligations of guardians for minors or mental incompetents.

The bill modernizes the definition of a mental incompetent to mean a person impaired by mental illness or mental deficiency or by a physical illness or disability, chronic use of drugs, chronic alcoholism or other cause "to the extent that he lacks sufficient capacity to govern himself or manage his affairs."

The bill sets forth rules and guidelines governing the powers and duties of the guardian of a minor or of a minor's estate and the powers of the courts in such cases.

A-6, which permits a sum of up to \$5,000 per year from an estate to be paid to or on behalf of a minor beneficiary without the necessity of formally appointing a guardian of the estate in certain cases.

The money, which can be paid to the parent, legal guardian of the minor, adult who has custody of the child and with whom he resides, or a financial institution, must be applied to the "support and educational needs of the minor."

Any excess in a given year must be preserved for the future support of the child and any balance remaining must be delivered to the minor when he reaches the age of 18.

A-19, which clarifies the law governing disclaimers of testamentary and intestate transfers.

Clarification of the law was particularly important because of the federal gift tax consequences a beneficiary may face if he makes a disclaimer deemed untimely under the law.

A-20, which abolishes the ancient rights of dower and curtesy. Dower is the right of a surviving wife to possession for the rest of her life of one half the real estate owned in her husband's name. Curtesy is the corresponding right for surviving husbands.

A-21, which permits the court to authorize, direct or ratify transactions regarding the estate of a minor or mental incompetent in situations where the continuing services of a legal guardian are unnecessary.