

3B-5-10

LEGISLATIVE HISTORY CHECKLIST
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(Parentage intestacy)

NJSA: 3B:5-10

LAWS OF: 1997 CHAPTER: 376

BILL NO: S1253

SPONSOR(S): Cafiero

DATE INTRODUCED: June 3, 1997

COMMITTEE: ASSEMBLY: Judiciary

SENATE: women's issues

AMENDED DURING PASSAGE: Yes Amendments during passage denoted
Second reprint enacted by superscript numbers

DATE OF PASSAGE: ASSEMBLY: January 8, 1997

SENATE: March 10, 1996

DATE OF APPROVAL: January 19, 1998

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes

SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:
REPORTS: No

HEARINGS: No

KBP:pp

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P.L. 1997, CHAPTER 376, *approved January 19, 1998*
Senate, No. 1253 (*Second Reprint*)

1 AN ACT concerning ²[time limitations on establishing]² the parent-
2 child relationship ²and paternity² and amending N.J.S.3B:5-10 ¹and
3 P.L.1983, c.17¹.

4

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

7

8 1. N.J.S.3B:5-10 is amended to read as follows:

9 3B:5-10. Establishment of Parent-Child Relationship.

10 If, for the purposes of intestate succession, a relationship of parent
11 and child must be established to determine succession by, through, or
12 from a person, in cases not covered by N.J.S.3B:5-9, a person is the
13 child of the person's parents regardless of the marital state of the
14 person's parents, and the parent and child relationship may be
15 established as provided by the "New Jersey Parentage Act," P.L.1983,
16 c.17 (C.9:17-38 et seq.). The parent and child relationship may be
17 established for purposes of this section regardless of the time
18 limitations set forth in subsection b. of section 8 of P.L.1983, c.17
19 (C.9:17-45).

20 (cf: P.L.1991, c.22, s.1).

21

22 ¹2. Section 8 of P.L. 1983, c. 17 (C. 9:17-45) is amended to read
23 as follows:

24 8. a. A child, a legal representative of the child, the natural
25 mother, the estate or legal representative of the mother, if the mother
26 has died or is a minor, a man alleged or alleging himself to be the
27 father, the estate or legal representative of the alleged father, if the
28 alleged father has died or is a minor, the Division of **[Public Welfare]**
29 Family Development in the Department of Human Services, or the
30 county welfare agency, or any person with an interest recognized as
31 justiciable by the court may bring or defend an action or be made a

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SWF committee amendments adopted March 3, 1997.

² Assembly AJU committee amendments adopted November 17, 1997.

1 party to an action at any time for the purpose of determining the
2 existence or nonexistence of the parent and child relationship.

3 b. No action shall be brought under this act more than 5 years after
4 the child attains the age of majority.

5 c. The death of the alleged father shall not cause abatement of any
6 action to establish paternity, and an action to determine the existence
7 or nonexistence of the parent and child relationship may be instituted
8 or continued against the estate or the legal representative of the
9 alleged father.

10 d. Regardless of its terms, an agreement, other than an agreement
11 approved by the court in accordance with subsection [11c.] c. of
12 section 11 of P.L.1983, c.17 (C.9:17-48) between an alleged or
13 presumed father and the mother of the child, shall not bar an action
14 under this section.

15 e. If an action under this section is brought before the birth of the
16 child, all proceedings shall be stayed until after the birth, except
17 service of process and the taking of depositions to perpetuate
18 testimony. The court may consider the issue of medical expenses and
19 may order the alleged father to pay the reasonable expenses of the
20 mother's pregnancy and postpartum disability.

21 f. This section does not extend the time within which a right of
22 inheritance or a right to succession may be asserted beyond the time
23 provided by law relating to distribution and closing of decedents'
24 estates or to the determination of heirship, or otherwise ,or limit any
25 time period for the determination of any claims arising under the laws
26 governing probate, including the construction of wills and trust
27 instruments.¹

28 (cf: P.L.1983, c.17, s.8)

29

30 ¹3. Section 4 of P.L.1983, c.17 (C.9:17-41) is amended to read as
31 follows:

32 4. The parent and child relationship between a child and:

33 a. The natural mother, may be established by proof of her having
34 given birth to the child, or under this act;

35 b. The natural father, may be established by proof that his paternity
36 has been adjudicated under prior law; under the laws governing
37 probate; by giving full faith and credit to a determination of paternity
38 made by any other state, whether established through voluntary
39 acknowledgment or through judicial or administrative processes; by a
40 Certificate of Parentage as provided in section 7 of P.L.1994, c.164
41 (C.26:8-28.1) that is executed by the father prior to or after the birth
42 of a child, and filed with the appropriate State agency; by a default
43 judgment or order of the court; by an order of the court based on a
44 blood test or genetic test that meets or exceeds the specific threshold
45 probability as set by [the State] subsection i. of section 11 of
46 P.L.1983, c.19 (C.9:17-48) creating a [conclusive] rebuttable

1 presumption of paternity; or under this act;

2 c. An adoptive parent, may be established by proof of adoption;

3 d. The natural mother or the natural father, may be terminated by
4 an order of a court of competent jurisdiction in granting a judgment of
5 adoption or as the result of an action to terminate parental rights.

6 e. The establishment of the parent and child relationship pursuant
7 to subsections a., b., and c. of this section shall be the basis upon
8 which an action for child support may be brought by a party and acted
9 upon by the court without further evidentiary proceedings.¹

10 (cf: P.L.1994, c.164, s.1.)

11

12 ¹4. Section 11 of P.L.1983, c.17 (C.9:17-48) is amended to read
13 as follows:

14 11. a. As soon as practicable after an action to declare the
15 existence or nonexistence of the father and child relationship has been
16 brought, a consent conference shall be held by the Superior Court,
17 Chancery Division, Family Part intake service, the county probation
18 department or the county welfare agency. A court appearance shall be
19 scheduled in the event that a consent agreement cannot be reached.

20 b. On the basis of the information produced at the conference, an
21 appropriate recommendation for settlement shall be made to the
22 parties, which may include any of the following:

23 (1) That the action be dismissed with or without prejudice; or

24 (2) That the alleged father voluntarily acknowledge his paternity
25 of the child.

26 c. If the parties accept a recommendation made in accordance with
27 subsection b. of this section, which has been approved by the court,
28 judgment shall be entered accordingly.

29 d. If a party refuses to accept a recommendation made under
30 subsection b. of this section or the consent conference is terminated
31 because it is unlikely that all parties would accept a recommendation
32 pursuant to subsection b. of this section, and blood tests or genetic
33 tests have not been taken, the court shall require the parties to submit
34 to blood tests or genetic tests if the court determines that there is an
35 articulable reason for suspecting that the alleged father is the natural
36 father. The tests shall be scheduled within 10 days and shall be
37 performed by qualified experts. Thereafter the Family Part intake
38 service, with the approval of the court, shall make an appropriate final
39 recommendation. If a party refuses to accept the final
40 recommendation, the action shall be set for trial [, except when the
41 results of the blood test or genetic test indicate that the specific
42 threshold probability as set by the State to establish paternity has been
43 met or exceeded].

44 If the results of the blood test or genetic test indicate that the
45 specific threshold probability as set by [the State] subsection i. of this
46 section to establish paternity has been met or exceeded, the results

1 shall be received in evidence as a [conclusive] rebuttable presumption
2 of paternity and no additional foundation testimony or proof of
3 authenticity or accuracy shall be required to establish paternity. In
4 actions based on allegations of fraud or inaccurate analysis, the court
5 shall require that the additional blood test or genetic test be scheduled
6 within 10 days and be performed by qualified experts. The test shall
7 be paid for by the moving party.

8 If a party objects to the blood test or genetic test, the party shall
9 make the objection to the appropriate agency, in writing, within 10
10 days of receipt of the results.

11 e. The guardian ad litem may accept or refuse to accept a
12 recommendation under this section.

13 f. (Deleted by amendment, P.L.1994, c.164).

14 g. No evidence, testimony or other disclosure from the consent
15 conference shall be admitted as evidence in a civil action except by
16 consent of the parties. However, blood tests or genetic tests ordered
17 pursuant to subsection d. of this section may be admitted as evidence.

18 h. The refusal to submit to a blood test or genetic test required
19 pursuant to subsection d. of this section, or both, shall be admitted
20 into evidence and shall give rise to the presumption that the results of
21 the test would have been unfavorable to the interests of the party who
22 refused to submit to the test. Refusal to submit to a blood test or
23 genetic test, or both, is also subject to the contempt power of the
24 court.

25 i. Blood test or genetic test results indicating a 95% or greater
26 probability that the alleged father is the father of the child shall create
27 a presumption of paternity which may be rebutted only by clear and
28 convincing evidence that the results of the tests are not reliable in that
29 particular case.¹

30 (cf: P.L.1994, c.164, s.2.)

31
32 ¹[2.]¹ This act shall take effect immediately and shall apply to any
33 ¹[pending]¹ matter ¹pending before any trial or appellate court ¹for
34 which the time limitations ¹[set forth in] established by¹ Title 3B of the
35 New Jersey Statutes ¹or any rule or ²[principal]¹ principle² of equity¹
36 have not expired.

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41 Provides that time limitations in "New Jersey Parentage Act" do not
42 preclude the establishment of a parent and child relationship for
43 purposes of intestate succession or under the laws governing probate.

SENATE, No. 1253

STATE OF NEW JERSEY

INTRODUCED JUNE 3, 1996

By Senator CAFIERO

1 AN ACT concerning time limitations on establishing the parent-child
2 relationship and amending N.J.S.3B:5-10.

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:5-10 is amended to read as follows:

8 3B:5-10. Establishment of Parent-Child Relationship.

9 If, for the purposes of intestate succession, a relationship of parent
10 and child must be established to determine succession by, through, or
11 from a person, in cases not covered by N.J.S.3B:5-9, a person is the
12 child of the person's parents regardless of the marital state of the
13 person's parents, and the parent and child relationship may be
14 established as provided by the "New Jersey Parentage Act," P.L.1983,
15 c.17 (C.9:17-38 et seq.). The parent and child relationship may be
16 established for purposes of this section regardless of the time
17 limitations set forth in subsection b. of section 8 of P.L.1983, c.17
18 (C.9:17-45).

19 (cf: P.L.1991, c.22, s.1).

20

21 2. This act shall take effect immediately and shall apply to any
22 pending matter for which the time limitations set forth in Title 3B of
23 the New Jersey Statutes have not expired .

24

25

26

STATEMENT

27

28 This bill amends N.J.S.3B:5-10 to clarify that the limitations on
29 actions under the "New Jersey Parentage Act" which is set at no more
30 than 5 years after the child attains the age of majority shall not apply
31 to actions under the probate act solely for the purpose of establishing
32 the parent and child relationship as permitted by N.J.S.3B:5-10. That
33 section of the probate code concerns intestate succession. The parent
34 and child relationship must be established to determine succession by,

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Matter underlined thus is new matter.

1 through or from a person.

2 The "New Jersey Parentage Act" already provides in subsection f.
3 of N.J.S.A.9:17-45 that it does not extend the time within which a
4 right of inheritance or a right to succession may be asserted beyond
5 the time provided by law relating to distribution and closing of
6 decedents' estates or to the determination of heirship, or otherwise.
7 Thus, the provisions of the probate code control the limitations for
8 claims on distribution of an intestate estate. However, this bill clarifies
9 that the general time limitations of the "Parentage Act" as set forth in
10 subsection b. of N.J.S.A.9:17-45 do not cut off efforts to establish a
11 parent and child relationship consistent with the procedures of the
12 "Parentage Act" for the purposes of intestate succession. Thus, a
13 person beyond the age of 23 years may be able to establish a
14 relationship with a parent for the purpose of inheritance.

15 The sponsor wishes to note that the purpose of this bill is to accord
16 an opportunity to illegitimate children of any age to establish
17 parentage for purposes of intestate inheritance. Those persons should
18 not be cut off from this opportunity at the age of 23 years. The bill is
19 not intended in any way to change any of the statutes of limitations
20 provided for in the probate code itself.

21

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24

25 Provides that time limitations in "New Jersey Parentage Act" do not
26 preclude the establishment of a parent and child relationship for
27 purposes of intestate succession.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 1253

with committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 17, 1997

The Assembly Judiciary Committee reports favorably and with committee amendments Senate Bill No. 1253 (1R).

This bill amends N.J.S.3B:5-10 and section 8 of P.L.1983, c.17 (C.9:17-45) to clarify that the limitation on actions under the "New Jersey Parentage Act" (which is set at no more than five years after the child attains the age of majority) does not apply to actions under the laws governing probate, including any actions for the purpose of establishing the parent and child relationship as permitted by N.J.S.3B:5-10, concerning intestate succession and any action to construe wills and trust instruments. Thus, whether or not a relationship with a parent exists with respect to a child may be established beyond the child's age of 23 years for the purpose of probate and inheritance, including intestate inheritance.

The New Jersey Supreme Court in a decision issued May 19, 1997 in Wingate, et al. v. Estate of Ryan (A-83-96) held that the limitations period under the Parentage Act does not apply to claims filed under the Probate Code.

In addition, the bill clarifies that the statutory threshold of the "New Jersey Parentage Act" establishes a rebuttable rather than conclusive presumption with regard to paternity. The bill provides that blood test or genetic test results indicating a 95% or greater probability that the alleged father is the father of the child would create a presumption of paternity which may be rebutted only by clear and convincing evidence.

The committee amendments are technical to correct the title to reflect the broader subject matter of the bill which now addresses the rebuttable presumption and testing for paternity.

This bill is identical to Assembly Bill No. 2135 (1R).

SENATE WOMEN'S ISSUES, CHILDREN AND FAMILY
SERVICES COMMITTEE

STATEMENT TO

SENATE, No. 1253

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 3, 1998

The Senate Women's Issues, Children and Family Services Committee favorably reports Senate Bill No. 1253 with committee amendments.

As amended, this bill amends N.J.S.3B:5-10 and section 8 of P.L.1983, c.17 (C.9:17-45) to clarify that the limitations on actions under the "New Jersey Parentage Act" which is set at no more than five years after the child attains the age of majority do not apply to actions under the laws governing probate, including any actions for the purpose of establishing the parent and child relationship as permitted by N.J.S.3B:5-10, concerning intestate succession and any action to construe wills and trust instruments.

The "New Jersey Parentage Act" already provides in subsection f. of section 8 of P.L.1983, c.17 (C.9:17-45) that it does not extend the time within which a right of inheritance or a right to succession may be asserted beyond the time provided by law relating to distribution and closing of decedents' estates or to the determination of heirship, or otherwise. Thus, the provisions of the probate code control the limitations for claims on distribution of an intestate estate. However, this bill clarifies that the general time limitations of the "New Jersey Parentage Act" as set forth in subsection b. of section 8 of P.L.1983, c.17 (C.9:17-45) do not cut off efforts to establish whether or not a parent and child relationship exists consistent with the procedures of that act for the purposes of intestate succession. Similarly, those time limitations do not cut off rights to establish whether or not a parent and child relationship exists in other proceedings under the laws governing probate, such as proceedings to construe wills or trust documents. Thus, whether or not a relationship with a parent exists with respect to a child may be established beyond the child's age of 23 years for the purpose of probate and inheritance.

Claims arising under the laws governing probate affecting the rights of non-parties to a paternity action may not be ripe for determination under long standing legal principals until after the person has attained the age of 23 years. If the event of inheritance

occurs after the child in question attains the age of 23 years and the determination of parentage were to be time-barred, the child or other affected parties would never have the opportunity for a judicial determination of the existence of the parent and child relationship, despite the purpose of the "New Jersey Parentage Act" to provide for judicial determination. To prevent a judicial determination of parentage in such circumstances raises serious issues of fundamental fairness and due process under the State and federal constitutions and was not the intent of the Legislature in enacting the "New Jersey Parentage Act."

The committee amended the bill to clarify that the general time limitations of the "New Jersey Parentage Act" as set forth in subsection f. of section 8 of P.L.1983, c.17 (C.9:17-45) do not cut off rights to establish whether or not a parent and child relationship exists in other proceedings under the laws governing probate, such as proceedings to construe wills or trust documents. The committee also amended the effective date of the bill to allow its provisions to apply to any matter pending before any trial or appellate court for which the time limitations established by Title 3B of the New Jersey Statutes or any rule or principal of equity have not expired.

The committee also amended the bill to clarify that the statutory threshold of the "New Jersey Parentage Act" establishes a rebuttable rather than conclusive presumption with regard to paternity. The bill was also amended by committee to provide that blood test or genetic test results indicating a 95% or greater probability that the alleged father is the father of the child would create a presumption of paternity which may be rebutted only by clear and convincing evidence. Other amendments are technical to correct references in the law.
