

3A:36-2
LEGISLATIVE HISTORY CHECKLIST
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("Mental incompetent"--terminolgy change)

NJSA: 3A:36-2

LAWS OF: 1997 CHAPTER: 379

BILL NO: S1336

SPONSOR(S): Cafiero

DATE INTRODUCED: June 20, 1996

COMMITTEE: ASSEMBLY: ---

SENATE: Judiciary

AMENDED DURING PASSAGE: Yes Amendments during passage denoted
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FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

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COMMITTEE STATEMENT: ASSEMBLY: No

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REPORTS: No

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§13
Note To
N.J.S.3B:1-1
&
30:1-1
&
1:1-2

P.L. 1997, CHAPTER 379, *approved January 19, 1998*
Senate, No. 1336 (*First Reprint*)

1 AN ACT concerning mental incompetents and amending N.J.S.3A:36-
2 2, N.J.S.3B:1-1, P.L.1970, c.289, P.L.1985, c.133, P.L.1976,
3 c.120, and P.L.1977, c.239, and amending and supplementing
4 N.J.S.3B:1-2.

5

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

8

9 1. N.J.S.3A:36-2 is amended to read as follows:

10 3A:36-2. A widow or widower entitled to dower or curtesy in real
11 estate whereof her or his spouse died seized, an heir, devisee, or
12 guardian of a minor or **[mental incompetent]** incapacitated person
13 entitled to an estate in the real estate, or a purchaser thereof, may
14 institute an action in the Superior Court for the assignment to the
15 widow or widower of her or his dower or curtesy therein.
16 (cf: P.L.1991, c.91, s.149)

17

18 2. N.J.S.3B:1-1 is amended to read as follows:

19 N.J.S.3B:1-1. As used in this title, unless otherwise defined:

20 "Administrator" includes general administrators of an intestate and
21 unless restricted by the subject or context, administrators with the will
22 annexed, substituted administrators, substituted administrators with
23 the will annexed, temporary administrators and administrators
24 pendente lite.

25 "Beneficiary," as it relates to trust beneficiaries, includes a person
26 who has any present or future interest, vested or contingent, and also
27 includes the owner of an interest by assignment or other transfer and
28 as it relates to a charitable trust, includes any person entitled to
29 enforce the trust.

30 "Child" means any individual, including a natural or adopted child,
31 entitled to take by intestate succession from the parent whose

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 SJU committee amendments adopted June 5, 1997.

1 relationship is involved and excludes any person who is only a
2 stepchild, a foster child, a grandchild or any more remote descendant.

3 "Claims" include liabilities whether arising in contract, or in tort or
4 otherwise, and liabilities of the estate which arise at or after the death
5 of the decedent, including funeral expenses and expenses of
6 administration, but does not include estate or inheritance taxes,
7 demands or disputes regarding title to specific assets alleged to be
8 included in the estate.

9 "Cofiduciary" means each of two or more fiduciaries jointly serving
10 in a fiduciary capacity.

11 "Devise," when used as a noun, means a testamentary disposition
12 of real or personal property and when used as a verb, means to
13 dispose of real or personal property by will.

14 "Devisee" means any person designated in a will to receive a
15 devise. In the case of a devise to an existing trust or trustee, or to a
16 trustee on trust described by will, trust or trustee is the devisee and the
17 beneficiaries are not devisees.

18 "Distributee" means any person who has received property of a
19 decedent from his personal representative other than as a creditor or
20 purchaser. A trustee is a distributee only to the extent of a distributed
21 asset or increment thereto remaining in his hands. A beneficiary of a
22 trust to whom the trustee has distributed property received from a
23 personal representative is a distributee of the personal representative.

24 "Domiciliary foreign fiduciary" means any fiduciary who has
25 received letters, or has been appointed, or is authorized to act as a
26 fiduciary, in the jurisdiction in which the decedent was domiciled at the
27 time of his death, in which the ward is domiciled or in which is located
28 the principal place of the administration of a trust.

29 "Estate" means all of the property of a decedent, minor or [mental
30 incompetent] incapacitated person, trust or other person whose affairs
31 are subject to this title as the property is originally constituted and as
32 it exists from time to time during administration.

33 "Fiduciary" includes executors, general administrators of an
34 intestate, administrators with the will annexed, substituted
35 administrators, substituted administrators with the will annexed,
36 guardians, substituted guardians, trustees, substituted trustees and,
37 unless restricted by the subject or context, temporary administrators,
38 administrators pendente lite, administrators ad prosequendum,
39 administrators ad litem and other limited fiduciaries.

40 "Guardian" means a person who has qualified as a guardian of the
41 person or estate of a minor or [mental incompetent] incapacitated
42 person pursuant to testamentary or court appointment, but excludes
43 one who is merely a guardian ad litem.

44 "Heirs" means those persons, including the surviving spouse, who

1 are entitled under the statutes of intestate succession to the property
2 of a decedent.

3 (cf: N.J.S.3B:1-1)

4

5 3. N.J.S.3B:1-2 is amended to read as follows:

6 N.J.S.3B:1-2. "Issue" of a person includes all of his lineal
7 descendants, natural or adopted, of all generations, with the
8 relationship of parent and child at each generation being determined by
9 the definition of child and parent.

10 "Local administration" means administration by a personal
11 representative appointed in this State.

12 "Local fiduciary" means any fiduciary who has received letters in
13 this State and excludes foreign fiduciaries who acquire the power of
14 local fiduciary pursuant to this title.

15 ["Mental incompetent"] "Incapacitated person" means a person
16 who is impaired by reason of mental illness or mental deficiency to the
17 extent that he lacks sufficient capacity to govern himself and manage
18 his affairs.

19 The term ["mental incompetent"] incapacitated person is also used
20 to designate a person who is impaired by reason of physical illness or
21 disability, chronic use of drugs, chronic alcoholism or other cause
22 (except minority) to the extent that he lacks sufficient capacity to
23 govern himself and manage his affairs.

24 The terms [mental incompetency] incapacity and ["mental
25 incompetent"] incapacitated person refer to the state or condition of
26 [a "mental incompetent"] an incapacitated person as hereinbefore
27 defined.

28 "Minor" means a person who is under 18 years of age.

29 "Nonresident decedent" means a decedent who was domiciled in
30 another jurisdiction at the time of his death.

31 "Parent" means any person entitled to take or would be entitled to
32 take if the child, natural or adopted, died without a will, by intestate
33 succession from the child whose relationship is in question and
34 excludes any person who is a stepparent, foster parent or grandparent.

35 "Personal representative" includes executor, administrator,
36 successor personal representative, special administrator, and persons
37 who perform substantially the same function under the law governing
38 their status. "General personal representative" excludes special
39 administrator.

40 "Resident creditor" means a person domiciled in, or doing business
41 in this State, who is, or could be, a claimant against an estate.

42 "Security" includes any note, stock, treasury stock, bond,
43 mortgage, financing statement, debenture, evidence of indebtedness,
44 certificate of interest or participation in an oil, gas or mining title or
45 lease or in payments out of production under the title or lease,
46 collateral, trust certificate, transferable share, voting trust certificate

1 or, in general, any interest or instrument commonly known as a
2 security or as a security interest or any certificate of interest or
3 participation, any temporary or interim certificate, receipt or certificate
4 of deposit for, or any warrant or right to subscribe to or purchase, any
5 of the foregoing.

6 "Successor personal representative" means a personal
7 representative, other than a special administrator, who is appointed to
8 succeed a previously appointed personal representative.

9 "Successors" means those persons, other than creditors, who are
10 entitled to real and personal property of a decedent under his will or
11 the laws governing intestate succession.

12 "Testamentary trustee" means a trustee designated by will or
13 appointed to exercise a trust created by will.

14 "Trust" includes any express trust, private or charitable, with
15 additions thereto, wherever and however created. It also includes a
16 trust created by judgment under which the trust is to be administered
17 in the manner of an express trust. "Trust" excludes other
18 constructive trusts, and it excludes resulting trusts, guardianships,
19 personal representatives, trust accounts created under the
20 "Multiple-party Deposit Account Act," P.L.1979, c.491 (C.17:161-1
21 et seq.), gifts to minors under the "New Jersey Uniform Gifts to
22 Minors Act," P.L.1963, c.177 (C.46:38-13 et seq.), business trusts
23 providing for certificates to be issued to beneficiaries, common trusts,
24 security arrangements, liquidation trusts, and trusts for the primary
25 purpose of paying debts, dividends, interest, salaries, wages, profits,
26 pensions or employee benefits of any kind, and any arrangement under
27 which a person is nominee or escrowee for another.

28 "Ward" means a person for whom a guardian is appointed or a
29 person under the protection of the court.

30 "Will" means the last will and testament of a testator or testatrix
31 and includes any codicil.

32 (cf: N.J.S.3B:1-2)

33

34 4. Section 1 of P.L.1970, c.289 (C.30:4-165.7) is amended to read
35 as follows:

36 1. The commissioner or any parent, spouse, relative, or interested
37 party, on behalf of an alleged [mental incompetent] incapacitated
38 person who is receiving functional or other services and is over
39 18 years of age, may file a complaint upon notice to the alleged
40 [mental incompetent]incapacitated person with the Superior Court in
41 the county furnishing the services or in which such parent, spouse,
42 relative, or interested party resides, for a judgment designating a
43 guardian. The county of settlement shall be served with a copy of the
44 moving papers, however, the county may waive service of the moving
45 papers if it has no reason to oppose the action. If the county elects to
46 oppose the action it shall do so within 30 days after being served with

1 a copy of the moving papers.

2 (cf: P.L.1995, c.155, s.25)

3

4 5. Section 2 of P.L.1970, c.289 (C.30:4-165.8) is amended to read
5 as follows:

6 2. The moving papers shall include a verified complaint, an
7 affidavit from a practicing physician or a psychologist licensed
8 pursuant to P.L.1966, c.282 (C.45:14B-1 et seq.), and an affidavit
9 from the chief executive officer, medical director or other officer
10 having administrative control over the program from which the
11 individual is receiving functional or other services provided by the
12 Division of Mental Retardation. The affidavits shall set forth with
13 particularity the facts supporting the affiant's belief that the alleged
14 **[mental incompetent] incapacitated person** suffers from a significant
15 chronic functional impairment to such a degree that the person either
16 lacks the cognitive capacity to make decisions for himself or to
17 communicate, in any way, decisions to others. For the purposes of
18 this section, "significant chronic functional impairment" includes, but
19 is not limited to, a lack of comprehension of concepts related to
20 personal care, health care or medical treatment.

21 cf: (P.L.1990, c.50, s.1)

22

23 6. Section 5 of P.L.1970, c.289 (C.30:4-165.11) is amended to
24 read as follows:

25 5. As used in P.L.1970, c.289 (C.30:4-165.7 et seq.) the term
26 **["mental incompetent"] incapacitated person** has the same meaning as
27 defined in N.J.S.3B:1-2.

28 (cf: P.L.1985, c.133, s.6)

29

30 7. Section 8 of P.L.1985, c.133 (C.30:4-165.13) is amended to
31 read as follows:

32 8. The commissioner shall review the case of every person who
33 received guardianship services without prior judicial review before the
34 effective date of P.L.1985, c.133 (C.30:4-165.4 et al.). If the need for
35 a guardian appears to continue, the commissioner shall apply to the
36 Superior Court upon notice to the alleged **[mental incompetent]**
37 **incapacitated person** for the appointment of a guardian of the person
38 in the same manner as provided in section 1 of P.L.1970, c.289
39 (C.30:4-165.7), unless another application is pending. If, as a result of
40 the commissioner's review, it appears that the person is no longer in
41 need of a guardian, the provision of guardianship services shall be
42 discontinued, and this disposition shall be documented in the records
43 of the Division of Developmental Disabilities. For those persons who
44 received guardianship services without prior judicial review before the
45 effective date of P.L.1985, c.133 (C.30:4-165.4 et al.), the division
46 shall continue to provide these services until final disposition resulting

1 from the commissioner's review, either through a court determination
2 regarding the commissioner's application for appointment of a
3 guardian or an administrative termination of guardianship services; and
4 this interim provision of services shall be equivalent to exercising the
5 same responsibility and authority as a guardian of the person, in
6 accordance with the provisions of section 1 of P.L.1985, c.133
7 (C.30:4-165.4).

8 Upon the receipt of a complaint for the appointment of a guardian,
9 the court shall appoint an attorney where the alleged [mental
10 incompetent] incapacitated person is not represented by an attorney.
11 The attorney, after conducting an investigation into the matter, which
12 shall include an interview with the alleged [mental incompetent]
13 incapacitated person, an interview with the proposed guardian, and, if
14 there is cause to question the alleged [incompetent's] incapacitated
15 person's level of functioning and need for a guardian, the report of an
16 independent expert professionally qualified to render an opinion on
17 issues pertaining to [incompetency] incapacity, shall advise the court
18 by way of a report in affidavit form whether there is cause to dispute
19 either the contention of the commissioner that the appointment of a
20 guardian is necessary or the commissioner's recommendation as to
21 whom that guardian should be. If the alleged [mental incompetent]
22 incapacitated person expresses an opinion on the subject, the attorney
23 shall advise the court of that opinion. The facts contained in the
24 report of the attorney shall be sworn to or verified in a manner as
25 prescribed by the court.

26 If, after reviewing the report of the attorney, there appears to be no
27 difference between the position of the commissioner and the findings
28 of the attorney, the court may proceed in a summary fashion to
29 appoint a guardian. A plenary hearing shall be held if requested by the
30 alleged [mental incompetent] incapacitated person, his attorney, or
31 anyone acting on his behalf.

32 (cf: P.L.1995, c.324, s.1)

33

34 8. Section 2 of P.L.1976, c.120 (C.30:13-2) is amended to read as
35 follows:

36 2. For the purposes of this act:

37 a. "Administrator" means any individual who is charged with the
38 general administration or supervision of a nursing home whether or not
39 such individual has an ownership interest in such home and whether or
40 not his function and duties are shared with one or more other
41 individuals.

42 b. "Guardian" means a person, appointed by a court of competent
43 jurisdiction, who shall have the right to manage the financial affairs
44 and protect the rights of any nursing home resident who has been
45 declared [a mental incompetent] an incapacitated person. In no case
46 shall the guardian of a nursing home resident be affiliated with a

1 nursing home, its operations, its staff personnel or a nursing home
2 administrator in any manner whatsoever.

3 c. "Nursing home" means any institution, whether operated for
4 profit or not, which maintains and operates facilities for extended
5 medical and nursing treatment or care for two or more nonrelated
6 individuals who are suffering from acute or chronic illness or injury,
7 or are crippled, convalescent or infirm and are in need of such
8 treatment or care on a continuing basis. Infirm is construed to mean
9 that an individual is in need of assistance in bathing, dressing or some
10 type of supervision.

11 d. "Reasonable hour" means any time between the hours of 8 a. m.
12 and 8 p. m. daily.

13 e. "Resident" means any individual receiving extended medical or
14 nursing treatment or care at a nursing home.

15 (cf: P.L.1976, c.120, s.2)

16

17 9. Section 2 of P.L.1977, c.239 (C.52:27G-2) is amended to read
18 as follows:

19 2. As used in this act, unless the context clearly indicates
20 otherwise:

21 a. "Abuse" means the willful infliction of physical pain, injury or
22 mental anguish; unreasonable confinement; or the willful deprivation
23 of services which are necessary to maintain a person's physical and
24 mental health. However, no person shall be deemed to be abused for
25 the sole reason he is being furnished nonmedical remedial treatment by
26 spiritual means through prayer alone, in accordance with a recognized
27 religious method of healing, in lieu of medical treatment;

28 b. An "act" of any facility or government agency shall be deemed
29 to include any failure or refusal to act by such facility or government
30 agency;

31 c. "Administrator" means any person who is charged with the
32 general administration or supervision of a facility, whether or not such
33 person has an ownership interest in such facility, and whether or not
34 such person's functions and duties are shared with one or more other
35 persons;

36 d. "Caretaker" means a person employed by a facility to provide
37 care or services to an elderly person, and includes, but is not limited
38 to, the administrator of a facility;

39 e. "Exploitation" means the act or process of using a person or his
40 resources for another person's profit or advantage without legal
41 entitlement to do so;

42 f. "Facility" means any facility or institution, whether public or
43 private, offering health or health related services for the
44 institutionalized elderly, and which is subject to regulation, visitation,
45 inspection, or supervision by any government agency. Facilities
46 include, but are not limited to, nursing homes, skilled nursing homes,

1 intermediate care facilities, extended care facilities, convalescent
2 homes, rehabilitation centers, residential health care facilities, special
3 hospitals, veterans' hospitals, chronic disease hospitals, psychiatric
4 hospitals, mental hospitals, mental retardation centers or facilities, day
5 care facilities for the elderly and medical day care centers;

6 g. "Government agency" means any department, division, office,
7 bureau, board, commission, authority, or any other agency or
8 instrumentality created by the State or to which the State is a party, or
9 by any county or municipality, which is responsible for the regulation,
10 visitation, inspection or supervision of facilities, or which provides
11 services to patients, residents or clients of facilities;

12 h. "Guardian" means any person with the legal right to manage the
13 financial affairs and protect the rights of any patient, resident or client
14 of a facility, who has been declared [a mental incompetent] an
15 incapacitated person by a court of competent jurisdiction;

16 i. "Institutionalized elderly," "elderly" or "elderly person" means
17 any person 60 years of age or older, who is a patient, resident or client
18 of any facility;

19 j. "Office" means the Office of the Ombudsman for the
20 Institutionalized Elderly established herein;

21 k. "Ombudsman" means the administrator and chief executive
22 officer of the Office of the Ombudsman for the Institutionalized
23 Elderly;

24 l. "Patient, resident or client" means any elderly person who is
25 receiving treatment or care in any facility in all its aspects, including,
26 but not limited to, admission, retention, confinement, commitment,
27 period of residence, transfer, discharge and any instances directly
28 related to such status.

29 (cf: P.L.1983, c.43, s.1)

30
31 ¹10. Section 3 of P.L.1968, c.185 (C.2A:84A-22.3) is amended to
32 read as follows:

33 3. There is no privilege under this act as to any relevant
34 communication between the patient and his physician (a) upon an issue
35 of the patient's condition in an action to commit him or otherwise
36 place him under the control of another or others because of alleged
37 [mental incompetence] incapacity, or in an action in which the patient
38 seeks to establish his competence or in an action to recover damages
39 on account of conduct of the patient which constitutes a criminal
40 offense other than a misdemeanor, or (b) upon an issue as to the
41 validity of a document as a will of the patient, or (c) upon an issue
42 between parties claiming by testate or intestate succession from a
43 deceased patient.¹

44 (cf: P.L.1968, c.185, s.3)

1 ¹11. Section 28 of P.L.1966, c.282 (C.45:14B-28) is amended to
2 read as follows:

3 28. The confidential relations and communications between and
4 among a licensed practicing psychologist and individuals, couples,
5 families or groups in the course of the practice of psychology are
6 placed on the same basis as those provided between attorney and
7 client, and nothing in this act shall be construed to require any such
8 privileged communications to be disclosed by any such person.

9 There is no privilege under this section for any communication: (a)
10 upon an issue of the client's condition in an action to commit the client
11 or otherwise place the client under the control of another or others
12 because of alleged [mental incompetence] incapacity, or in an action
13 in which the client seeks to establish his competence or in an action to
14 recover damages on account of conduct of the client which constitutes
15 a crime; or (b) upon an issue as to the validity of a document as a will
16 of the client; or (c) upon an issue between parties claiming by testate
17 or intestate succession from a deceased client.¹

18 (cf: P.L.1994, c.134, s.11)

19

20 ¹12. Section 11 of P.L.1967, c.93 (C.49:3-58) is amended to read
21 as follows:

22 11. (a) The bureau chief may by order deny, suspend, or revoke
23 any registration if he finds (1) that the order is in the public interest
24 and (2) that the applicant or registrant or, in the case of a
25 broker-dealer or investment advisor, any partner, officer, or director,
26 any person occupying a similar status or performing similar functions,
27 or any person directly or indirectly controlling the broker-dealer or
28 investment advisor

29 (i) has filed an application for registration which as of its effective
30 date, or as of any date after filing in the case of an order denying
31 effectiveness, was incomplete in any material respect or contained any
32 statement which was, in the light of the circumstances under which it
33 was made, false or misleading with respect to any material fact;

34 (ii) has willfully violated or willfully failed to comply with any
35 provision of this law or a predecessor law or any rule or order
36 authorized by this law or a predecessor law;

37 (iii) has been convicted of any crime involving a security or any
38 aspect of the security business or any crime involving moral turpitude;
39 however, where the applicant can show by proof satisfactory to the
40 bureau chief that during the 10-year period preceding the application
41 he has conducted himself in such a manner as to warrant his
42 registration consistent with all other provisions of this act, the
43 conviction shall not be a bar to registration;

44 (iv) is permanently or temporarily enjoined by any court of
45 competent jurisdiction from engaging in or continuing any conduct or
46 practice involving any aspect of the securities business;

1 (v) is the subject of an effective order of the bureau chief denying,
2 suspending, or revoking registration as a broker-dealer, agent, or
3 investment advisor;

4 (vi) is the subject of an order entered within the past 5 years by the
5 securities administrator of any other State or by the Securities and
6 Exchange Commission denying or revoking registration as a
7 broker-dealer, agent, or investment advisor, or the substantial
8 equivalent of those terms as defined in this act, or is the subject of an
9 order of the Securities and Exchange Commission suspending or
10 expelling him from a national securities exchange or national securities
11 association registered under the Securities Exchange Act of 1934, or
12 is the subject of a United States Post Office fraud order; but (A) the
13 bureau chief may not institute a revocation or suspension proceeding
14 under this clause (vi) more than 1 year from the date of the order
15 relied on and (B) he may not enter an order under this clause (vi) on
16 the basis of an order under another State act unless that order was
17 based on facts which would currently constitute a ground for an order
18 under this law;

19 (vii) has engaged in dishonest or unethical practices in the
20 securities business;

21 (viii) is insolvent, either in the sense that his liabilities exceed his
22 assets or in the sense that he cannot meet his obligations as they
23 mature; but the bureau chief may not enter an order against a
24 broker-dealer or investment advisor for insolvency without a finding
25 of insolvency as to the broker-dealer investment advisor;

26 (ix) is not qualified on the basis of such factors as character,
27 training, experience and knowledge of the security business, except as
28 otherwise provided in paragraph (b);

29 (x) has failed to pass an examination under subdivision (b) of this
30 section 11 if such an examination has been by rule provided for by the
31 bureau chief;

32 (xi) has failed reasonably to supervise his agents if he is a
33 broker-dealer or his employees who give investment advice if he is an
34 investment advisor;

35 (xii) has failed to pay the proper fees, but the bureau chief shall
36 vacate any such order when the deficiency has been corrected.

37 (b) The following provisions govern the application of paragraph
38 (a)(2)(ix):

39 (1) The bureau chief may not enter an order against a broker-dealer
40 on the basis of the lack of qualification of any person other than (i) the
41 broker-dealer himself if he is an individual or (ii) an agent of the
42 broker-dealer;

43 (2) The bureau chief may not enter an order against an investment
44 advisor on the basis of the lack of qualification of any person other
45 than (i) the investment advisor himself if he is an individual or (ii) any
46 other person who represents the investment advisor in doing any of the

1 acts which make him an investment advisor;

2 (3) The bureau chief may not enter an order solely on the basis of
3 lack of experience if the applicant or registrant is qualified by training
4 or knowledge or both;

5 (4) The bureau chief shall consider that an agent who will work
6 under the supervision of a registered broker-dealer need not have the
7 same qualifications as a broker-dealer;

8 (5) The bureau chief shall consider that an investment advisor is
9 not necessarily qualified solely on the basis of experience as a
10 broker-dealer or agent. When he finds that an applicant for initial or
11 renewal registration as a broker-dealer is not qualified as an
12 investment advisor, he may by order condition the applicant's
13 registration as a broker-dealer upon his not transacting business in this
14 State as an investment advisor.

15 (c)(1) When the bureau chief finds that an application for
16 registration should be denied he may enter an order denying such
17 registration; but he shall promptly notify the applicant, as well as the
18 prospective employer if the applicant is an agent, that the order has
19 been entered and of the reasons therefor and that the matter will be set
20 down for hearing if a written request for such a hearing is filed with
21 the bureau chief within 30 days after receipt of such notice by the
22 applicant. If no hearing is requested the order shall remain in effect
23 until modified or vacated. If a hearing is held the bureau chief shall
24 affirm, vacate or modify the order in accord with the findings at the
25 hearing.

26 (2) When the bureau chief finds that a registration should be
27 suspended or revoked he may enter a proposed order to suspend or
28 revoke such registration and he shall promptly notify the registrant, as
29 well as the employer if the registrant is an agent, of the proposed
30 order, of the reasons therefor and that the matter will be set down for
31 hearing if a written request for such hearing is filed with the bureau
32 chief within 10 days after receipt of such notice by the registrant. If
33 no hearing is requested within the specified time the bureau chief shall
34 enter the proposed order as a final order, which shall be effective
35 when entered. If a hearing is held the bureau chief shall withdraw the
36 proposed order or enter a final order in accord with the findings at the
37 hearing, which order shall be effective when entered.

38 (d) If the bureau chief finds that any registrant or applicant for
39 registration is no longer in existence or has ceased to do business as
40 a broker-dealer, agent, or investment advisor, or is subject to an
41 adjudication of [mental incompetence] incapacity or to the control of
42 a committee, conservator, or guardian, or cannot be located after
43 reasonable search, the bureau chief may by order revoke or deny the
44 registration or application;

45 (e) Withdrawal from registration as a broker-dealer, agent, or
46 investment advisor becomes effective 30 days after receipt of an

1 application to withdraw or within such shorter period of time as the
2 bureau chief may determine by rule or order. The bureau chief may
3 nevertheless institute a revocation or suspension proceeding under
4 paragraph (a)(2)(ii) within 1 year after withdrawal becomes effective
5 and enter a revocation or suspension order as of the last date on which
6 registration was effective;

7 (f) No order may be entered under this section, except under
8 paragraph (c)(1), without (i) appropriate prior notice to the applicant
9 or registrant (as well as the employer or prospective employer if the
10 applicant or registrant is an agent), (ii) opportunity for hearing, and
11 (iii) written findings of fact and conclusions of law;

12 (g) Every hearing before an officer or employee of the bureau
13 which this law requires to be held before any formal action may be
14 taken by the bureau shall not be public without the written consent of
15 all the respondents.¹

16 (cf: P.L.1967, c.93, s.11)

17

18 ¹[10.] 13¹ (New section) Whenever in any law, rule, regulation or
19 document, reference is made to the term "mental incompetent," that
20 term shall mean and refer to "incapacitated person"¹, except that
21 nothing in this act shall affect the provisions of chapter 4 of Title 2C
22 of the New Jersey Statutes¹.

23

24 ¹[11.] 14¹ This act shall take effect immediately.

25

26

27

28

29 Changes designation of "mental incompetent" to "incapacitated
30 person."

[Passed Both Houses]

[First Reprint]

SENATE, No. 1336

STATE OF NEW JERSEY

INTRODUCED JUNE 20, 1996

By Senator CAFIERO, Assemblymen Asselta and Gibson

1 AN ACT concerning mental incompetents and amending N.J.S.3A:36-
2 2, N.J.S.3B:1-1, P.L.1970, c.289, P.L.1985, c.133, P.L.1976,
3 c.120, and P.L.1977, c.239, and amending and supplementing
4 N.J.S.3B:1-2.

5

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

8

9 1. N.J.S.3A:36-2 is amended to read as follows:

10 3A:36-2. A widow or widower entitled to dower or curtesy in real
11 estate whereof her or his spouse died seized, an heir, devisee, or
12 guardian of a minor or **[mental incompetent]** incapacitated person
13 entitled to an estate in the real estate, or a purchaser thereof, may
14 institute an action in the Superior Court for the assignment to the
15 widow or widower of her or his dower or curtesy therein.

16 (cf: P.L.1991, c.91, s.149)

17

18 2. N.J.S.3B:1-1 is amended to read as follows:

19 N.J.S.3B:1-1. As used in this title, unless otherwise defined:

20 "Administrator" includes general administrators of an intestate and
21 unless restricted by the subject or context, administrators with the will
22 annexed, substituted administrators, substituted administrators with
23 the will annexed, temporary administrators and administrators
24 pendente lite.

25 "Beneficiary," as it relates to trust beneficiaries, includes a person
26 who has any present or future interest, vested or contingent, and also
27 includes the owner of an interest by assignment or other transfer and
28 as it relates to a charitable trust, includes any person entitled to

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 SJU committee amendments adopted June 5, 1997.

1 enforce the trust.

2 "Child" means any individual, including a natural or adopted child,
3 entitled to take by intestate succession from the parent whose
4 relationship is involved and excludes any person who is only a
5 stepchild, a foster child, a grandchild or any more remote descendant.

6 "Claims" include liabilities whether arising in contract, or in tort or
7 otherwise, and liabilities of the estate which arise at or after the death
8 of the decedent, including funeral expenses and expenses of
9 administration, but does not include estate or inheritance taxes,
10 demands or disputes regarding title to specific assets alleged to be
11 included in the estate.

12 "Cofiduciary" means each of two or more fiduciaries jointly serving
13 in a fiduciary capacity.

14 "Devise," when used as a noun, means a testamentary disposition
15 of real or personal property and when used as a verb, means to
16 dispose of real or personal property by will.

17 "Devisee" means any person designated in a will to receive a
18 devise. In the case of a devise to an existing trust or trustee, or to a
19 trustee on trust described by will, trust or trustee is the devisee and the
20 beneficiaries are not devisees.

21 "Distributee" means any person who has received property of a
22 decedent from his personal representative other than as a creditor or
23 purchaser. A trustee is a distributee only to the extent of a distributed
24 asset or increment thereto remaining in his hands. A beneficiary of a
25 trust to whom the trustee has distributed property received from a
26 personal representative is a distributee of the personal representative.

27 "Domiciliary foreign fiduciary" means any fiduciary who has
28 received letters, or has been appointed, or is authorized to act as a
29 fiduciary, in the jurisdiction in which the decedent was domiciled at the
30 time of his death, in which the ward is domiciled or in which is located
31 the principal place of the administration of a trust.

32 "Estate" means all of the property of a decedent, minor or **[mental**
33 **incompetent]** incapacitated person, trust or other person whose affairs
34 are subject to this title as the property is originally constituted and as
35 it exists from time to time during administration.

36 "Fiduciary" includes executors, general administrators of an
37 intestate, administrators with the will annexed, substituted
38 administrators, substituted administrators with the will annexed,
39 guardians, substituted guardians, trustees, substituted trustees and,
40 unless restricted by the subject or context, temporary administrators,
41 administrators pendente lite, administrators ad prosequendum,
42 administrators ad litem and other limited fiduciaries.

43 "Guardian" means a person who has qualified as a guardian of the
44 person or estate of a minor or **[mental incompetent]** incapacitated
45 person pursuant to testamentary or court appointment, but excludes
46 one who is merely a guardian ad litem.

1 "Heirs" means those persons, including the surviving spouse, who
2 are entitled under the statutes of intestate succession to the property
3 of a decedent.

4 (cf: N.J.S.3B:1-1)

5

6 3. N.J.S.3B:1-2 is amended to read as follows:

7 N.J.S.3B:1-2. "Issue" of a person includes all of his lineal
8 descendants, natural or adopted, of all generations, with the
9 relationship of parent and child at each generation being determined by
10 the definition of child and parent.

11 "Local administration" means administration by a personal
12 representative appointed in this State.

13 "Local fiduciary" means any fiduciary who has received letters in
14 this State and excludes foreign fiduciaries who acquire the power of
15 local fiduciary pursuant to this title.

16 **["Mental incompetent"]** "Incapacitated person" means a person
17 who is impaired by reason of mental illness or mental deficiency to the
18 extent that he lacks sufficient capacity to govern himself and manage
19 his affairs.

20 The term **["mental incompetent"]** incapacitated person is also used
21 to designate a person who is impaired by reason of physical illness or
22 disability, chronic use of drugs, chronic alcoholism or other cause
23 (except minority) to the extent that he lacks sufficient capacity to
24 govern himself and manage his affairs.

25 The terms **[mental incompetency]** incapacity and **["mental**
26 **incompetent"]** incapacitated person refer to the state or condition of
27 **[a "mental incompetent"]** an incapacitated person as hereinbefore
28 defined.

29 "Minor" means a person who is under 18 years of age.

30 "Nonresident decedent" means a decedent who was domiciled in
31 another jurisdiction at the time of his death.

32 "Parent" means any person entitled to take or would be entitled to
33 take if the child, natural or adopted, died without a will, by intestate
34 succession from the child whose relationship is in question and
35 excludes any person who is a stepparent, foster parent or grandparent.

36 "Personal representative" includes executor, administrator,
37 successor personal representative, special administrator, and persons
38 who perform substantially the same function under the law governing
39 their status. "General personal representative" excludes special
40 administrator.

41 "Resident creditor" means a person domiciled in, or doing business
42 in this State, who is, or could be, a claimant against an estate.

43 "Security" includes any note, stock, treasury stock, bond,
44 mortgage, financing statement, debenture, evidence of indebtedness,
45 certificate of interest or participation in an oil, gas or mining title or
46 lease or in payments out of production under the title or lease,

1 collateral, trust certificate, transferable share, voting trust certificate
2 or, in general, any interest or instrument commonly known as a
3 security or as a security interest or any certificate of interest or
4 participation, any temporary or interim certificate, receipt or certificate
5 of deposit for, or any warrant or right to subscribe to or purchase, any
6 of the foregoing.

7 "Successor personal representative" means a personal
8 representative, other than a special administrator, who is appointed to
9 succeed a previously appointed personal representative.

10 "Successors" means those persons, other than creditors, who are
11 entitled to real and personal property of a decedent under his will or
12 the laws governing intestate succession.

13 "Testamentary trustee" means a trustee designated by will or
14 appointed to exercise a trust created by will.

15 "Trust" includes any express trust, private or charitable, with
16 additions thereto, wherever and however created. It also includes a
17 trust created by judgment under which the trust is to be administered
18 in the manner of an express trust. "Trust" excludes other
19 constructive trusts, and it excludes resulting trusts, guardianships,
20 personal representatives, trust accounts created under the
21 "Multiple-party Deposit Account Act," P.L.1979, c.491 (C.17:161-1
22 et seq.), gifts to minors under the "New Jersey Uniform Gifts to
23 Minors Act," P.L.1963, c.177 (C.46:38-13 et seq.), business trusts
24 providing for certificates to be issued to beneficiaries, common trusts,
25 security arrangements, liquidation trusts, and trusts for the primary
26 purpose of paying debts, dividends, interest, salaries, wages, profits,
27 pensions or employee benefits of any kind, and any arrangement under
28 which a person is nominee or escrowee for another.

29 "Ward" means a person for whom a guardian is appointed or a
30 person under the protection of the court.

31 "Will" means the last will and testament of a testator or testatrix
32 and includes any codicil.

33 (cf: N.J.S.3B:1-2)

34

35 4. Section 1 of P.L.1970, c.289 (C.30:4-165.7) is amended to read
36 as follows:

37 1. The commissioner or any parent, spouse, relative, or interested
38 party, on behalf of an alleged **[mental incompetent] incapacitated**
39 **person** who is receiving functional or other services and is over
40 18 years of age, may file a complaint upon notice to the alleged
41 **[mental incompetent]incapacitated person** with the Superior Court in
42 the county furnishing the services or in which such parent, spouse,
43 relative, or interested party resides, for a judgment designating a
44 guardian. The county of settlement shall be served with a copy of the
45 moving papers, however, the county may waive service of the moving
46 papers if it has no reason to oppose the action. If the county elects to

1 oppose the action it shall do so within 30 days after being served with
2 a copy of the moving papers.
3 (cf: P.L.1995, c.155, s.25)

4

5 5. Section 2 of P.L.1970, c.289 (C.30:4-165.8) is amended to read
6 as follows:

7 2. The moving papers shall include a verified complaint, an
8 affidavit from a practicing physician or a psychologist licensed
9 pursuant to P.L.1966, c.282 (C.45:14B-1 et seq.), and an affidavit
10 from the chief executive officer, medical director or other officer
11 having administrative control over the program from which the
12 individual is receiving functional or other services provided by the
13 Division of Mental Retardation. The affidavits shall set forth with
14 particularity the facts supporting the affiant's belief that the alleged
15 **【mental incompetent】** incapacitated person suffers from a significant
16 chronic functional impairment to such a degree that the person either
17 lacks the cognitive capacity to make decisions for himself or to
18 communicate, in any way, decisions to others. For the purposes of
19 this section, "significant chronic functional impairment" includes, but
20 is not limited to, a lack of comprehension of concepts related to
21 personal care, health care or medical treatment.

22 cf: (P.L.1990, c.50, s.1)

23

24 6. Section 5 of P.L.1970, c.289 (C.30:4-165.11) is amended to
25 read as follows:

26 5. As used in P.L.1970, c.289 (C.30:4-165.7 et seq.) the term
27 **【"mental incompetent"】** incapacitated person has the same meaning
28 as defined in N.J.S.3B:1-2.

29 (cf: P.L.1985, c.133, s.6)

30

31 7. Section 8 of P.L.1985, c.133 (C.30:4-165.13) is amended to
32 read as follows:

33 8. The commissioner shall review the case of every person who
34 received guardianship services without prior judicial review before the
35 effective date of P.L.1985, c.133 (C.30:4-165.4 et al.). If the need for
36 a guardian appears to continue, the commissioner shall apply to the
37 Superior Court upon notice to the alleged **【mental incompetent】**
38 incapacitated person for the appointment of a guardian of the person
39 in the same manner as provided in section 1 of P.L.1970, c.289
40 (C.30:4-165.7), unless another application is pending. If, as a result of
41 the commissioner's review, it appears that the person is no longer in
42 need of a guardian, the provision of guardianship services shall be
43 discontinued, and this disposition shall be documented in the records
44 of the Division of Developmental Disabilities. For those persons who
45 received guardianship services without prior judicial review before the
46 effective date of P.L.1985, c.133 (C.30:4-165.4 et al.), the division

1 shall continue to provide these services until final disposition resulting
2 from the commissioner's review, either through a court determination
3 regarding the commissioner's application for appointment of a
4 guardian or an administrative termination of guardianship services; and
5 this interim provision of services shall be equivalent to exercising the
6 same responsibility and authority as a guardian of the person, in
7 accordance with the provisions of section 1 of P.L.1985, c.133
8 (C.30:4-165.4).

9 Upon the receipt of a complaint for the appointment of a guardian,
10 the court shall appoint an attorney where the alleged **[mental**
11 **incompetent]** incapacitated person is not represented by an attorney.
12 The attorney, after conducting an investigation into the matter, which
13 shall include an interview with the alleged **[mental incompetent]**
14 incapacitated person, an interview with the proposed guardian, and, if
15 there is cause to question the alleged **[incompetent's]** incapacitated
16 person's level of functioning and need for a guardian, the report of an
17 independent expert professionally qualified to render an opinion on
18 issues pertaining to **[incompetency]** incapacity, shall advise the court
19 by way of a report in affidavit form whether there is cause to dispute
20 either the contention of the commissioner that the appointment of a
21 guardian is necessary or the commissioner's recommendation as to
22 whom that guardian should be. If the alleged **[mental incompetent]**
23 incapacitated person expresses an opinion on the subject, the attorney
24 shall advise the court of that opinion. The facts contained in the
25 report of the attorney shall be sworn to or verified in a manner as
26 prescribed by the court.

27 If, after reviewing the report of the attorney, there appears to be no
28 difference between the position of the commissioner and the findings
29 of the attorney, the court may proceed in a summary fashion to
30 appoint a guardian. A plenary hearing shall be held if requested by the
31 alleged **[mental incompetent]** incapacitated person, his attorney, or
32 anyone acting on his behalf.

33 (cf: P.L.1995, c.324, s.1)

34

35 8. Section 2 of P.L.1976, c.120 (C.30:13-2) is amended to read as
36 follows:

37 2. For the purposes of this act:

38 a. "Administrator" means any individual who is charged with the
39 general administration or supervision of a nursing home whether or not
40 such individual has an ownership interest in such home and whether or
41 not his function and duties are shared with one or more other
42 individuals.

43 b. "Guardian" means a person, appointed by a court of competent
44 jurisdiction, who shall have the right to manage the financial affairs
45 and protect the rights of any nursing home resident who has been
46 declared **[a mental incompetent]** an incapacitated person. In no case

1 shall the guardian of a nursing home resident be affiliated with a
2 nursing home, its operations, its staff personnel or a nursing home
3 administrator in any manner whatsoever.

4 c. "Nursing home" means any institution, whether operated for
5 profit or not, which maintains and operates facilities for extended
6 medical and nursing treatment or care for two or more nonrelated
7 individuals who are suffering from acute or chronic illness or injury,
8 or are crippled, convalescent or infirm and are in need of such
9 treatment or care on a continuing basis. Infirm is construed to mean
10 that an individual is in need of assistance in bathing, dressing or some
11 type of supervision.

12 d. "Reasonable hour" means any time between the hours of 8 a. m.
13 and 8 p. m. daily.

14 e. "Resident" means any individual receiving extended medical or
15 nursing treatment or care at a nursing home.

16 (cf: P.L.1976, c.120, s.2)

17

18 9. Section 2 of P.L.1977, c.239 (C.52:27G-2) is amended to read
19 as follows:

20 2. As used in this act, unless the context clearly indicates
21 otherwise:

22 a. "Abuse" means the willful infliction of physical pain, injury or
23 mental anguish; unreasonable confinement; or the willful deprivation
24 of services which are necessary to maintain a person's physical and
25 mental health. However, no person shall be deemed to be abused for
26 the sole reason he is being furnished nonmedical remedial treatment by
27 spiritual means through prayer alone, in accordance with a recognized
28 religious method of healing, in lieu of medical treatment;

29 b. An "act" of any facility or government agency shall be deemed
30 to include any failure or refusal to act by such facility or government
31 agency;

32 c. "Administrator" means any person who is charged with the
33 general administration or supervision of a facility, whether or not such
34 person has an ownership interest in such facility, and whether or not
35 such person's functions and duties are shared with one or more other
36 persons;

37 d. "Caretaker" means a person employed by a facility to provide
38 care or services to an elderly person, and includes, but is not limited
39 to, the administrator of a facility;

40 e. "Exploitation" means the act or process of using a person or his
41 resources for another person's profit or advantage without legal
42 entitlement to do so;

43 f. "Facility" means any facility or institution, whether public or
44 private, offering health or health related services for the
45 institutionalized elderly, and which is subject to regulation, visitation,
46 inspection, or supervision by any government agency. Facilities

1 include, but are not limited to, nursing homes, skilled nursing homes,
2 intermediate care facilities, extended care facilities, convalescent
3 homes, rehabilitation centers, residential health care facilities, special
4 hospitals, veterans' hospitals, chronic disease hospitals, psychiatric
5 hospitals, mental hospitals, mental retardation centers or facilities, day
6 care facilities for the elderly and medical day care centers;

7 g. "Government agency" means any department, division, office,
8 bureau, board, commission, authority, or any other agency or
9 instrumentality created by the State or to which the State is a party, or
10 by any county or municipality, which is responsible for the regulation,
11 visitation, inspection or supervision of facilities, or which provides
12 services to patients, residents or clients of facilities;

13 h. "Guardian" means any person with the legal right to manage the
14 financial affairs and protect the rights of any patient, resident or client
15 of a facility, who has been declared **【a mental incompetent】** an
16 incapacitated person by a court of competent jurisdiction;

17 i. "Institutionalized elderly," "elderly" or "elderly person" means
18 any person 60 years of age or older, who is a patient, resident or client
19 of any facility;

20 j. "Office" means the Office of the Ombudsman for the
21 Institutionalized Elderly established herein;

22 k. "Ombudsman" means the administrator and chief executive
23 officer of the Office of the Ombudsman for the Institutionalized
24 Elderly;

25 l. "Patient, resident or client" means any elderly person who is
26 receiving treatment or care in any facility in all its aspects, including,
27 but not limited to, admission, retention, confinement, commitment,
28 period of residence, transfer, discharge and any instances directly
29 related to such status.

30 (cf: P.L.1983, c.43, s.1)

31

32 ¹10. Section 3 of P.L.1968, c.185 (C.2A:84A-22.3) is amended to
33 read as follows:

34 3. There is no privilege under this act as to any relevant
35 communication between the patient and his physician (a) upon an issue
36 of the patient's condition in an action to commit him or otherwise
37 place him under the control of another or others because of alleged
38 **【mental incompetence】** incapacity, or in an action in which the patient
39 seeks to establish his competence or in an action to recover damages
40 on account of conduct of the patient which constitutes a criminal
41 offense other than a misdemeanor, or (b) upon an issue as to the
42 validity of a document as a will of the patient, or (c) upon an issue
43 between parties claiming by testate or intestate succession from a
44 deceased patient.¹

45 (cf: P.L.1968, c.185, s.3)

1 ¹11. Section 28 of P.L.1966, c.282 (C.45:14B-28) is amended to
2 read as follows:

3 28. The confidential relations and communications between and
4 among a licensed practicing psychologist and individuals, couples,
5 families or groups in the course of the practice of psychology are
6 placed on the same basis as those provided between attorney and
7 client, and nothing in this act shall be construed to require any such
8 privileged communications to be disclosed by any such person.

9 There is no privilege under this section for any communication: (a)
10 upon an issue of the client's condition in an action to commit the client
11 or otherwise place the client under the control of another or others
12 because of alleged **【mental incompetence】 incapacity** , or in an action
13 in which the client seeks to establish his competence or in an action to
14 recover damages on account of conduct of the client which constitutes
15 a crime; or (b) upon an issue as to the validity of a document as a will
16 of the client; or (c) upon an issue between parties claiming by testate
17 or intestate succession from a deceased client.¹

18 (cf: P.L.1994, c.134, s.11)

19

20 ¹12. Section 11 of P.L.1967, c.93 (C.49:3-58) is amended to read
21 as follows:

22 11. (a) The bureau chief may by order deny, suspend, or revoke
23 any registration if he finds (1) that the order is in the public interest
24 and (2) that the applicant or registrant or, in the case of a
25 broker-dealer or investment advisor, any partner, officer, or director,
26 any person occupying a similar status or performing similar functions,
27 or any person directly or indirectly controlling the broker-dealer or
28 investment advisor

29 (i) has filed an application for registration which as of its effective
30 date, or as of any date after filing in the case of an order denying
31 effectiveness, was incomplete in any material respect or contained any
32 statement which was, in the light of the circumstances under which it
33 was made, false or misleading with respect to any material fact;

34 (ii) has willfully violated or willfully failed to comply with any
35 provision of this law or a predecessor law or any rule or order
36 authorized by this law or a predecessor law;

37 (iii) has been convicted of any crime involving a security or any
38 aspect of the security business or any crime involving moral turpitude;
39 however, where the applicant can show by proof satisfactory to the
40 bureau chief that during the 10-year period preceding the application
41 he has conducted himself in such a manner as to warrant his
42 registration consistent with all other provisions of this act, the
43 conviction shall not be a bar to registration;

44 (iv) is permanently or temporarily enjoined by any court of
45 competent jurisdiction from engaging in or continuing any conduct or
46 practice involving any aspect of the securities business;

1 (v) is the subject of an effective order of the bureau chief denying,
2 suspending, or revoking registration as a broker-dealer, agent, or
3 investment advisor;

4 (vi) is the subject of an order entered within the past 5 years by the
5 securities administrator of any other State or by the Securities and
6 Exchange Commission denying or revoking registration as a
7 broker-dealer, agent, or investment advisor, or the substantial
8 equivalent of those terms as defined in this act, or is the subject of an
9 order of the Securities and Exchange Commission suspending or
10 expelling him from a national securities exchange or national securities
11 association registered under the Securities Exchange Act of 1934, or
12 is the subject of a United States Post Office fraud order; but (A) the
13 bureau chief may not institute a revocation or suspension proceeding
14 under this clause (vi) more than 1 year from the date of the order
15 relied on and (B) he may not enter an order under this clause (vi) on
16 the basis of an order under another State act unless that order was
17 based on facts which would currently constitute a ground for an order
18 under this law;

19 (vii) has engaged in dishonest or unethical practices in the
20 securities business;

21 (viii) is insolvent, either in the sense that his liabilities exceed his
22 assets or in the sense that he cannot meet his obligations as they
23 mature; but the bureau chief may not enter an order against a
24 broker-dealer or investment advisor for insolvency without a finding
25 of insolvency as to the broker-dealer investment advisor;

26 (ix) is not qualified on the basis of such factors as character,
27 training, experience and knowledge of the security business, except as
28 otherwise provided in paragraph (b);

29 (x) has failed to pass an examination under subdivision (b) of this
30 section 11 if such an examination has been by rule provided for by the
31 bureau chief;

32 (xi) has failed reasonably to supervise his agents if he is a
33 broker-dealer or his employees who give investment advice if he is an
34 investment advisor;

35 (xii) has failed to pay the proper fees, but the bureau chief shall
36 vacate any such order when the deficiency has been corrected.

37 (b) The following provisions govern the application of paragraph
38 (a)(2)(ix):

39 (1) The bureau chief may not enter an order against a broker-dealer
40 on the basis of the lack of qualification of any person other than (i) the
41 broker-dealer himself if he is an individual or (ii) an agent of the
42 broker-dealer;

43 (2) The bureau chief may not enter an order against an investment
44 advisor on the basis of the lack of qualification of any person other
45 than (i) the investment advisor himself if he is an individual or (ii) any
46 other person who represents the investment advisor in doing any of the

1 acts which make him an investment advisor;

2 (3) The bureau chief may not enter an order solely on the basis of
3 lack of experience if the applicant or registrant is qualified by training
4 or knowledge or both;

5 (4) The bureau chief shall consider that an agent who will work
6 under the supervision of a registered broker-dealer need not have the
7 same qualifications as a broker-dealer;

8 (5) The bureau chief shall consider that an investment advisor is
9 not necessarily qualified solely on the basis of experience as a
10 broker-dealer or agent. When he finds that an applicant for initial or
11 renewal registration as a broker-dealer is not qualified as an
12 investment advisor, he may by order condition the applicant's
13 registration as a broker-dealer upon his not transacting business in this
14 State as an investment advisor.

15 (c)(1) When the bureau chief finds that an application for
16 registration should be denied he may enter an order denying such
17 registration; but he shall promptly notify the applicant, as well as the
18 prospective employer if the applicant is an agent, that the order has
19 been entered and of the reasons therefor and that the matter will be set
20 down for hearing if a written request for such a hearing is filed with
21 the bureau chief within 30 days after receipt of such notice by the
22 applicant. If no hearing is requested the order shall remain in effect
23 until modified or vacated. If a hearing is held the bureau chief shall
24 affirm, vacate or modify the order in accord with the findings at the
25 hearing.

26 (2) When the bureau chief finds that a registration should be
27 suspended or revoked he may enter a proposed order to suspend or
28 revoke such registration and he shall promptly notify the registrant, as
29 well as the employer if the registrant is an agent, of the proposed
30 order, of the reasons therefor and that the matter will be set down for
31 hearing if a written request for such hearing is filed with the bureau
32 chief within 10 days after receipt of such notice by the registrant. If
33 no hearing is requested within the specified time the bureau chief shall
34 enter the proposed order as a final order, which shall be effective
35 when entered. If a hearing is held the bureau chief shall withdraw the
36 proposed order or enter a final order in accord with the findings at the
37 hearing, which order shall be effective when entered.

38 (d) If the bureau chief finds that any registrant or applicant for
39 registration is no longer in existence or has ceased to do business as
40 a broker-dealer, agent, or investment advisor, or is subject to an
41 adjudication of ~~mental incompetence~~ incapacity or to the control of
42 a committee, conservator, or guardian, or cannot be located after
43 reasonable search, the bureau chief may by order revoke or deny the
44 registration or application;

45 (e) Withdrawal from registration as a broker-dealer, agent, or
46 investment advisor becomes effective 30 days after receipt of an

1 application to withdraw or within such shorter period of time as the
2 bureau chief may determine by rule or order. The bureau chief may
3 nevertheless institute a revocation or suspension proceeding under
4 paragraph (a)(2)(ii) within 1 year after withdrawal becomes effective
5 and enter a revocation or suspension order as of the last date on which
6 registration was effective;

7 (f) No order may be entered under this section, except under
8 paragraph (c)(1), without (i) appropriate prior notice to the applicant
9 or registrant (as well as the employer or prospective employer if the
10 applicant or registrant is an agent), (ii) opportunity for hearing, and
11 (iii) written findings of fact and conclusions of law;

12 (g) Every hearing before an officer or employee of the bureau
13 which this law requires to be held before any formal action may be
14 taken by the bureau shall not be public without the written consent of
15 all the respondents.¹

16 (cf: P.L.1967, c.93, s.11)

17

18 ¹**[10.] 13¹** (New section) Whenever in any law, rule, regulation
19 or document, reference is made to the term "mental incompetent," that
20 term shall mean and refer to "incapacitated person"¹, except that
21 nothing in this act shall affect the provisions of chapter 4 of Title 2C
22 of the New Jersey Statutes¹.

23

24 ¹**[11.] 14.¹** This act shall take effect immediately.

25

26

27

28

29 Changes designation of "mental incompetent" to "incapacitated
30 person."

SENATE, No. 1336

STATE OF NEW JERSEY

INTRODUCED JUNE 20, 1996

By Senator CAFIERO

1 AN ACT concerning mental incompetents and amending
2 N.J.S.3A:36-2, N.J.S.3B:1-1, P.L.1970, c.289, P.L.1985, c.133,
3 P.L.1976, c.120, and P.L.1977, c.239, and amending and
4 supplementing N.J.S.3B:1-2.

5

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

8

9 1. N.J.S.3A:36-2 is amended to read as follows:

10 3A:36-2. A widow or widower entitled to dower or curtesy in real
11 estate whereof her or his spouse died seized, an heir, devisee, or
12 guardian of a minor or [mental incompetent] incapacitated person
13 entitled to an estate in the real estate, or a purchaser thereof, may
14 institute an action in the Superior Court for the assignment to the
15 widow or widower of her or his dower or curtesy therein.
16 (cf: P.L.1991, c.91, s.149)

17

18 2. N.J.S.3B:1-1 is amended to read as follows:

19 N.J.S.3B:1-1. As used in this title, unless otherwise defined:

20 "Administrator" includes general administrators of an intestate and
21 unless restricted by the subject or context, administrators with the will
22 annexed, substituted administrators, substituted administrators with
23 the will annexed, temporary administrators and administrators
24 pendente lite.

25 "Beneficiary," as it relates to trust beneficiaries, includes a person
26 who has any present or future interest, vested or contingent, and also
27 includes the owner of an interest by assignment or other transfer and
28 as it relates to a charitable trust, includes any person entitled to
29 enforce the trust.

30 "Child" means any individual, including a natural or adopted child,
31 entitled to take by intestate succession from the parent whose
32 relationship is involved and excludes any person who is only a
33 stepchild, a foster child, a grandchild or any more remote descendant.

34 "Claims" include liabilities whether arising in contract, or in tort or

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

Matter underlined thus is new matter.

1 otherwise, and liabilities of the estate which arise at or after the death
2 of the decedent, including funeral expenses and expenses of
3 administration, but does not include estate or inheritance taxes,
4 demands or disputes regarding title to specific assets alleged to be
5 included in the estate.

6 "Cofiduciary" means each of two or more fiduciaries jointly serving
7 in a fiduciary capacity.

8 "Devise," when used as a noun, means a testamentary disposition
9 of real or personal property and when used as a verb, means to
10 dispose of real or personal property by will.

11 "Devisee" means any person designated in a will to receive a
12 devise. In the case of a devise to an existing trust or trustee, or to a
13 trustee on trust described by will, trust or trustee is the devisee and the
14 beneficiaries are not devisees.

15 "Distributee" means any person who has received property of a
16 decedent from his personal representative other than as a creditor or
17 purchaser. A trustee is a distributee only to the extent of a distributed
18 asset or increment thereto remaining in his hands. A beneficiary of a
19 trust to whom the trustee has distributed property received from a
20 personal representative is a distributee of the personal representative.

21 "Domiciliary foreign fiduciary" means any fiduciary who has
22 received letters, or has been appointed, or is authorized to act as a
23 fiduciary, in the jurisdiction in which the decedent was domiciled at the
24 time of his death, in which the ward is domiciled or in which is located
25 the principal place of the administration of a trust.

26 "Estate" means all of the property of a decedent, minor or [mental
27 incompetent] incapacitated person, trust or other person whose affairs
28 are subject to this title as the property is originally constituted and as
29 it exists from time to time during administration.

30 "Fiduciary" includes executors, general administrators of an
31 intestate, administrators with the will annexed, substituted
32 administrators, substituted administrators with the will annexed,
33 guardians, substituted guardians, trustees, substituted trustees and,
34 unless restricted by the subject or context, temporary administrators,
35 administrators pendente lite, administrators ad prosequendum,
36 administrators ad litem and other limited fiduciaries.

37 "Guardian" means a person who has qualified as a guardian of the
38 person or estate of a minor or [mental incompetent] incapacitated
39 person pursuant to testamentary or court appointment, but excludes
40 one who is merely a guardian ad litem.

41 "Heirs" means those persons, including the surviving spouse, who
42 are entitled under the statutes of intestate succession to the property
43 of a decedent.

44 (cf: N.J.S.3B:1-1)

45

46 3. N.J.S.3B:1-2 is amended to read as follows:

1 N.J.S.3B:1-2. "Issue" of a person includes all of his lineal
2 descendants, natural or adopted, of all generations, with the
3 relationship of parent and child at each generation being determined by
4 the definition of child and parent.

5 "Local administration" means administration by a personal
6 representative appointed in this State.

7 "Local fiduciary" means any fiduciary who has received letters in
8 this State and excludes foreign fiduciaries who acquire the power of
9 local fiduciary pursuant to this title.

10 ["Mental incompetent"] "Incapacitated person" means a person
11 who is impaired by reason of mental illness or mental deficiency to the
12 extent that he lacks sufficient capacity to govern himself and manage
13 his affairs.

14 The term ["mental incompetent"] incapacitated person is also used
15 to designate a person who is impaired by reason of physical illness or
16 disability, chronic use of drugs, chronic alcoholism or other cause
17 (except minority) to the extent that he lacks sufficient capacity to
18 govern himself and manage his affairs.

19 The terms [mental incompetency] incapacity and ["mental
20 incompetent"] incapacitated person refer to the state or condition of
21 [a "mental incompetent"] an incapacitated person as hereinbefore
22 defined.

23 "Minor" means a person who is under 18 years of age.

24 "Nonresident decedent" means a decedent who was domiciled in
25 another jurisdiction at the time of his death.

26 "Parent" means any person entitled to take or would be entitled to
27 take if the child, natural or adopted, died without a will, by intestate
28 succession from the child whose relationship is in question and
29 excludes any person who is a stepparent, foster parent or grandparent.

30 "Personal representative" includes executor, administrator,
31 successor personal representative, special administrator, and persons
32 who perform substantially the same function under the law governing
33 their status. "General personal representative" excludes special
34 administrator.

35 "Resident creditor" means a person domiciled in, or doing business
36 in this State, who is, or could be, a claimant against an estate.

37 "Security" includes any note, stock, treasury stock, bond,
38 mortgage, financing statement, debenture, evidence of indebtedness,
39 certificate of interest or participation in an oil, gas or mining title or
40 lease or in payments out of production under the title or lease,
41 collateral, trust certificate, transferable share, voting trust certificate
42 or, in general, any interest or instrument commonly known as a
43 security or as a security interest or any certificate of interest or
44 participation, any temporary or interim certificate, receipt or certificate
45 of deposit for, or any warrant or right to subscribe to or purchase, any
46 of the foregoing.

1 "Successor personal representative" means a personal
2 representative, other than a special administrator, who is appointed to
3 succeed a previously appointed personal representative.

4 "Successors" means those persons, other than creditors, who are
5 entitled to real and personal property of a decedent under his will or
6 the laws governing intestate succession.

7 "Testamentary trustee" means a trustee designated by will or
8 appointed to exercise a trust created by will.

9 "Trust" includes any express trust, private or charitable, with
10 additions thereto, wherever and however created. It also includes a
11 trust created by judgment under which the trust is to be administered
12 in the manner of an express trust. "Trust" excludes other
13 constructive trusts, and it excludes resulting trusts, guardianships,
14 personal representatives, trust accounts created under the
15 "Multiple-party Deposit Account Act," P.L.1979, c.491 (C.17:161-1
16 et seq.), gifts to minors under the "New Jersey Uniform Gifts to
17 Minors Act," P.L.1963, c.177 (C.46:38-13 et seq.), business trusts
18 providing for certificates to be issued to beneficiaries, common trusts,
19 security arrangements, liquidation trusts, and trusts for the primary
20 purpose of paying debts, dividends, interest, salaries, wages, profits,
21 pensions or employee benefits of any kind, and any arrangement under
22 which a person is nominee or escrowee for another.

23 "Ward" means a person for whom a guardian is appointed or a
24 person under the protection of the court.

25 "Will" means the last will and testament of a testator or testatrix
26 and includes any codicil.

27 (cf: N.J.S.3B:1-2)

28

29 4. Section 1 of P.L.1970, c.289 (C.30:4-165.7) is amended to read
30 as follows:

31 1. The commissioner or any parent, spouse, relative, or interested
32 party, on behalf of an alleged [mental incompetent] incapacitated
33 person who is receiving functional or other services and is over 18
34 years of age, may file a complaint upon notice to the alleged [mental
35 incompetent]incapacitated person with the Superior Court in the
36 county furnishing the services or in which such parent, spouse,
37 relative, or interested party resides, for a judgment designating a
38 guardian. The county of settlement shall be served with a copy of the
39 moving papers, however, the county may waive service of the moving
40 papers if it has no reason to oppose the action. If the county elects to
41 oppose the action it shall do so within 30 days after being served with
42 a copy of the moving papers.

43 (cf: P.L.1995, c.155, s.25)

44

45 5. Section 2 of P.L.1970, c.289 (C.30:4-165.8) is amended to
46 read as follows:

1 2. The moving papers shall include a verified complaint, an
2 affidavit from a practicing physician or a psychologist licensed
3 pursuant to P.L.1966, c.282 (C.45:14B-1 et seq.), and an affidavit
4 from the chief executive officer, medical director or other officer
5 having administrative control over the program from which the
6 individual is receiving functional or other services provided by the
7 Division of Mental Retardation. The affidavits shall set forth with
8 particularity the facts supporting the affiant's belief that the alleged
9 **[mental incompetent]** incapacitated person suffers from a significant
10 chronic functional impairment to such a degree that the person either
11 lacks the cognitive capacity to make decisions for himself or to
12 communicate, in any way, decisions to others. For the purposes of
13 this section, "significant chronic functional impairment" includes, but
14 is not limited to, a lack of comprehension of concepts related to
15 personal care, health care or medical treatment.

16 cf: (P.L.1990, c.50, s.1)

17

18 6. Section 5 of P.L.1970, c.289 (C.30:4-165.11) is amended to
19 read as follows:

20 5. As used in P.L.1970, c.289 (C.30:4-165.7 et seq.) the term
21 **["mental incompetent"]** incapacitated person has the same meaning as
22 defined in N.J.S.3B:1-2.

23 (cf: P.L.1985, c.133, s.6)

24

25 7. Section 8 of P.L.1985, c.133 (C.30:4-165.13) is amended to
26 read as follows:

27 8. The commissioner shall review the case of every person who
28 received guardianship services without prior judicial review before the
29 effective date of P.L.1985, c.133 (C.30:4-165.4 et al.). If the need for
30 a guardian appears to continue, the commissioner shall apply to the
31 Superior Court upon notice to the alleged **[mental incompetent]**
32 incapacitated person for the appointment of a guardian of the person
33 in the same manner as provided in section 1 of P.L.1970, c.289
34 (C.30:4-165.7), unless another application is pending. If, as a result of
35 the commissioner's review, it appears that the person is no longer in
36 need of a guardian, the provision of guardianship services shall be
37 discontinued, and this disposition shall be documented in the records
38 of the Division of Developmental Disabilities. For those persons who
39 received guardianship services without prior judicial review before the
40 effective date of P.L.1985, c.133 (C.30:4-165.4 et al.), the division
41 shall continue to provide these services until final disposition resulting
42 from the commissioner's review, either through a court determination
43 regarding the commissioner's application for appointment of a
44 guardian or an administrative termination of guardianship services; and
45 this interim provision of services shall be equivalent to exercising the
46 same responsibility and authority as a guardian of the person, in

1 accordance with the provisions of section 1 of P.L.1985, c.133
2 (C.30:4-165.4).

3 Upon the receipt of a complaint for the appointment of a guardian,
4 the court shall appoint an attorney where the alleged [mental
5 incompetent] incapacitated person is not represented by an attorney.
6 The attorney, after conducting an investigation into the matter, which
7 shall include an interview with the alleged [mental incompetent]
8 incapacitated person, an interview with the proposed guardian, and, if
9 there is cause to question the alleged [incompetent's] incapacitated
10 person's level of functioning and need for a guardian, the report of an
11 independent expert professionally qualified to render an opinion on
12 issues pertaining to [incompetency] incapacity, shall advise the court
13 by way of a report in affidavit form whether there is cause to dispute
14 either the contention of the commissioner that the appointment of a
15 guardian is necessary or the commissioner's recommendation as to
16 whom that guardian should be. If the alleged [mental incompetent]
17 incapacitated person expresses an opinion on the subject, the attorney
18 shall advise the court of that opinion. The facts contained in the
19 report of the attorney shall be sworn to or verified in a manner as
20 prescribed by the court.

21 If, after reviewing the report of the attorney, there appears to be no
22 difference between the position of the commissioner and the findings
23 of the attorney, the court may proceed in a summary fashion to
24 appoint a guardian. A plenary hearing shall be held if requested by the
25 alleged [mental incompetent] incapacitated person, his attorney, or
26 anyone acting on his behalf.

27 (cf: P.L.1995, c.324, s.1)

28

29 8. Section 2 of P.L.1976, c.120 (C.30:13-2) is amended to read as
30 follows:

31 2. For the purposes of this act:

32 a. "Administrator" means any individual who is charged with the
33 general administration or supervision of a nursing home whether or not
34 such individual has an ownership interest in such home and whether or
35 not his function and duties are shared with one or more other
36 individuals.

37 b. "Guardian" means a person, appointed by a court of competent
38 jurisdiction, who shall have the right to manage the financial affairs
39 and protect the rights of any nursing home resident who has been
40 declared [a mental incompetent] an incapacitated person. In no case
41 shall the guardian of a nursing home resident be affiliated with a
42 nursing home, its operations, its staff personnel or a nursing home
43 administrator in any manner whatsoever.

44 c. "Nursing home" means any institution, whether operated for
45 profit or not, which maintains and operates facilities for extended
46 medical and nursing treatment or care for two or more nonrelated

1 individuals who are suffering from acute or chronic illness or injury,
2 or are crippled, convalescent or infirm and are in need of such
3 treatment or care on a continuing basis. Infirm is construed to mean
4 that an individual is in need of assistance in bathing, dressing or some
5 type of supervision.

6 d. "Reasonable hour" means any time between the hours of 8 a.
7 m. and 8 p. m. daily.

8 e. "Resident" means any individual receiving extended medical or
9 nursing treatment or care at a nursing home.

10 (cf: P.L.1976, c.120, s.2)

11

12 9. Section 2 of P.L.1977, c.239 (C.52:27G-2) is amended to read
13 as follows:

14 2. As used in this act, unless the context clearly indicates
15 otherwise:

16 a. "Abuse" means the willful infliction of physical pain, injury or
17 mental anguish; unreasonable confinement; or the willful deprivation
18 of services which are necessary to maintain a person's physical and
19 mental health. However, no person shall be deemed to be abused for
20 the sole reason he is being furnished nonmedical remedial treatment
21 by spiritual means through prayer alone, in accordance with a
22 recognized religious method of healing, in lieu of medical treatment;

23 b. An "act" of any facility or government agency shall be deemed
24 to include any failure or refusal to act by such facility or government
25 agency;

26 c. "Administrator" means any person who is charged with the
27 general administration or supervision of a facility, whether or not such
28 person has an ownership interest in such facility, and whether or not
29 such person's functions and duties are shared with one or more other
30 persons;

31 d. "Caretaker" means a person employed by a facility to provide
32 care or services to an elderly person, and includes, but is not limited
33 to, the administrator of a facility;

34 e. "Exploitation" means the act or process of using a person or his
35 resources for another person's profit or advantage without legal
36 entitlement to do so;

37 f. "Facility" means any facility or institution, whether public or
38 private, offering health or health related services for the
39 institutionalized elderly, and which is subject to regulation, visitation,
40 inspection, or supervision by any government agency. Facilities
41 include, but are not limited to, nursing homes, skilled nursing homes,
42 intermediate care facilities, extended care facilities, convalescent
43 homes, rehabilitation centers, residential health care facilities, special
44 hospitals, veterans' hospitals, chronic disease hospitals, psychiatric
45 hospitals, mental hospitals, mental retardation centers or facilities, day
46 care facilities for the elderly and medical day care centers;

1 g. "Government agency" means any department, division, office,
2 bureau, board, commission, authority, or any other agency or
3 instrumentality created by the State or to which the State is a party,
4 or by any county or municipality, which is responsible for the
5 regulation, visitation, inspection or supervision of facilities, or which
6 provides services to patients, residents or clients of facilities;

7 h. "Guardian" means any person with the legal right to manage
8 the financial affairs and protect the rights of any patient, resident or
9 client of a facility, who has been declared [a mental incompetent] an
10 incapacitated person by a court of competent jurisdiction;

11 i. "Institutionalized elderly," "elderly" or "elderly person" means
12 any person 60 years of age or older, who is a patient, resident or client
13 of any facility;

14 j. "Office" means the Office of the Ombudsman for the
15 Institutionalized Elderly established herein;

16 k. "Ombudsman" means the administrator and chief executive
17 officer of the Office of the Ombudsman for the Institutionalized
18 Elderly;

19 l. "Patient, resident or client" means any elderly person who is
20 receiving treatment or care in any facility in all its aspects, including,
21 but not limited to, admission, retention, confinement, commitment,
22 period of residence, transfer, discharge and any instances directly
23 related to such status.

24 (cf: P.L.1983, c.43, s.1)

25
26 10. (New section) Whenever in any law, rule, regulation or
27 document, reference is made to the term "mental incompetent," that
28 term shall mean and refer to "incapacitated person."

29
30 11. This act shall take effect immediately.

31 32 33 STATEMENT

34
35 This bill changes the designation of "mental incompetent" to the
36 designation "incapacitated person," in the definition sections of Title
37 3B, P.L.1976, c.120, and P.L.1977, c.239, and in the texts of Title 3A
38 and P.L.1970, c.289. In addition, the bill includes a provision that
39 whenever in any law, rule, regulation or document, reference is made
40 to the term "mental incompetent," that term shall mean and refer to
41 "incapacitated person."

42 The term "mental incompetent" has a demeaning connotation,
43 whereas the designation "incapacitated person" is a more respectful
44 term which would be more descriptive of persons, usually elderly, who
45 suffer from senile dementia, Alzheimer's disease and other mental
46 illnesses.

1

2

3 Changes designation of "mental incompetent" to "incapacitated
4 person."

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 1336

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 5, 1997

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 1336.

This bill changes the designation of "mental incompetent" to the designation "incapacitated person," in the definition sections of Title 3B, P.L.1976, c.120, and P.L.1977, c.239, and in the texts of Title 3A and P.L.1970, c.289. In addition, the bill includes a provision that whenever in any law, rule, regulation or document, reference is made to the term "mental incompetent," that term shall mean and refer to "incapacitated person."

According to the sponsor's statement, the term "mental incompetent" has a demeaning connotation, whereas the designation "incapacitated person" is a more respectful term which would be more descriptive of persons, usually elderly, who suffer from senile dementia, Alzheimer's disease and other mental illnesses.

The committee amendments change the phrase "mental incompetency" to "mental incapacitated" in three additional statutes. The amendments also clarify that nothing in the bill would effect the provisions of New Jersey's criminal code dealing with mental competence.