

LEGISLATIVE HISTORY CHECKLIST
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(Intestate)

NJSA: 3B:5-5

LAWS OF: 1995 **CHAPTER:** 152

BILL NO: S2138

SPONSOR(S): Gormley

DATE INTRODUCED: June 12, 1995

COMMITTEE: **ASSEMBLY:** ---
SENATE: Budget

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

DATE OF PASSAGE: **ASSEMBLY:** June 26, 1995
SENATE: June 22, 1995

DATE OF APPROVAL: June 30, 1995

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: **ASSEMBLY:** No
SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

KBG:pp

[FIRST REPRINT]

SENATE, No. 2138

STATE OF NEW JERSEY

INTRODUCED JUNE 12, 1995

By Senator GORMLEY

1 AN ACT concerning the disposition of the property of intestate
2 decedents and amending various parts of the statutory laws.

3

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

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

7 3B:5-5. Escheat to State. If there are [none] no known heirs
8 who may inherit an intestate estate that estate shall [escheat to
9 the State] be treated as provided in this section.

10 Within a reasonable time after qualifying as a fiduciary of an
11 intestate estate (or, in the case of fiduciaries so qualifying prior
12 to the adoption of this act, within a reasonable time after said
13 adoption), the fiduciary shall publish a notice inviting all heirs of
14 the decedent as determined pursuant to N.J.S.3B:5-3 and
15 N.J.S.3B:5-4 to claim their shares of the intestate estate, in a
16 newspaper of general circulation in Mercer County and in the
17 county where the intestate resided at death, if other than Mercer
18 County, once a week for two successive weeks. The notice shall
19 set forth, to the extent known by the fiduciary after inspection of
20 the decedent's personal effects, the name and last address of the
21 decedent; the decedent's date of death; the name, mailing
22 address and telephone number of the fiduciary; the names and
23 last known addresses of all family members who, if they survived
24 the decedent, would qualify as the decedent's heirs, and any
25 other information the fiduciary reasonably believes to be useful
26 to establish the identity of the heirs of the decedent. If within 90
27 days after the last publication of the notice no person has
28 established entitlement as an heir of the decedent by providing
29 the fiduciary with substantial credible evidence of heirship, the
30 fiduciary shall treat the intestate estate as abandoned property
31 and comply with the provisions of the "Uniform Unclaimed
32 Property Act, (1981)," R.S.46:30B-1 et. seq..

33 If at least one person provides the fiduciary with substantial
34 credible evidence of heirship before the intestate estate is paid
35 or delivered to the administrator of unclaimed property, the
36 fiduciary shall conduct a diligent investigation to locate all heirs
37 of the decedent and, upon the conclusion of the investigation,
38 shall distribute the intestate estate in shares determined pursuant
39 to this chapter.

40 Nothing in this section affects the power and duty of the
41 fiduciary to allow and settle the debts of the decedent or other
42 claims against the intestate estate other than claims by heirs in
43 accordance with the terms of applicable law.

44 (cf: N.J.S.3B:5-5)

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SBA committee amendments adopted June 19, 1995.

1 2. R.S.46:30B-37.1 is amended to read as follows:

2 46:30B-37.1 Presumption of abandonment: unclaimed estate
3 assests. [Property] Except as otherwise provided in this section,
4 property held by a fiduciary as defined in N.J.S.3B:1-1 or an
5 assignee under N.J.S.2A:19-1 et seq. and remaining unclaimed for
6 [three months] 90 days after the account of that fiduciary or
7 assignee is allowed or settled informally is presumed abandoned.
8 Unclaimed property held by a fiduciary of an intestate estate
9 payable to the unknown heirs of an intestate decedent shall be
10 presumed abandoned 90 days after publication by the fiduciary of
11 the notice required in N.J.S.3B:5-5.

12 (cf: R.S.46:30B-37.1)

13 3. R.S.46:30B-58 is amended to read as follows:

14 46:30B-58. Establishment by owner of right to property
15 before payment or delivery; erroneous presumption of
16 abandonment. If the owner establishes the right to receive the
17 abandoned property to the satisfaction of the holder before the
18 property has been delivered or it appears that for some other
19 reason the presumption of abandonment is erroneous, the holder
20 need not pay or deliver the property to the administrator, and the
21 property will no longer be presumed abandoned. In that case, the
22 holder shall file with the administrator a verified written
23 explanation of the proof of claim or of the error in the
24 presumption of abandonment, except that a fiduciary holding
25 property initially thought to be payable to unknown heirs of an
26 intestate decedent and presumed abandoned under
27 R.S.46:30B-37.1 shall not be required to file such verified written
28 explanation.

29 (cf: R.S.46:30B-58)

30 4. R.S.46:30B-77 is amended to read as follows:

31 46:30B-77. Filing claim; another state excluded. a. A person,
32 excluding another state, claiming an interest in any property paid
33 or delivered to the administrator may file with him a claim on a
34 form prescribed by him and verified by the claimant.

35 b. The administrator shall allow the claim of persons asserting
36 entitlement as heirs to the property of an intestate decedent paid
37 or delivered to the administrator pursuant to N.J.S.3B:5-5 only
38 upon receipt of (1) substantial credible evidence of heirship, (2)
39 satisfactory evidence that a diligent investigation to locate all
40 heirs of the decedent has been concluded, (3) the names, last
41 known addresses, and a description of the relationships of all of
42 the heirs of the decedent discovered as a result of that
43 investigation, or otherwise, and (4) a release and refunding bond
44 or other instrument satisfactory to the administrator, providing
45 the administrator and the State with full indemnity for claims by
46 other heirs of the decedent. The administrator shall make
47 payment or delivery as otherwise provided in this article to the
48 heirs in shares as prescribed in N.J.S.3B:5-3 through
49 N.J.S.3B:5-14.

50 (cf: R.S.46:30B-77)

51 5. R.S.46:30B-78 is amended to read as follows:

52 46:30B-78. Time to consider claim; notice of denial. The
53 administrator shall consider each claim within 90 days after it is
54 filed or, in the case of a claim of a person asserting an

1 entitlement as an heir to the property of an intestate decedent,
2 within 90 days of the claimant's submission of the matters (1)
3 through (4) required in subsection b. R.S.46:30B-77, and give
4 written notice to the claimant if the claim is denied in whole or
5 in part. The notice may be given by mailing it to the last
6 address, if any, stated in the claim as the address to which
7 notices are to be sent. If an address for notices is not stated in
8 the claim, the notice may be mailed to the last address, if any, of
9 the claimant as stated in the claim. A notice of denial need not
10 be given if the claim fails to state either the last address to
11 which notices are to be sent or the address of the claimant.
12 (cf: R.S.46:30B-78)

13 ¹[6. R.S.46:30B-106 is amended to read as follows:

14 46:30B-106. Unenforceable agreements. a. All agreements to
15 pay compensation to locate, deliver, recover, or assist in the
16 recovery of property reported under this chapter, except as
17 described in subsection (b) below, entered into during the period
18 commencing one year before the property was presumed
19 abandoned and extending to a time that is 24 months after the
20 date that the property is paid or delivered to the administrator,
21 are void and unenforceable. Otherwise, these agreements are
22 valid only if the fee or compensation agreed upon is not more
23 than 20% of the value of the property recovered, the agreement
24 is in writing, signed by the apparent owner, and clearly sets forth
25 the nature and value of the property and the value of the
26 apparent owner's share after the fee or compensation has been
27 deducted. However, nothing in this section shall be construed to
28 prevent an owner from asserting at any time that an agreement
29 to locate property is based upon an excessive or unjust
30 consideration or is otherwise invalid under the laws of this State.

31 b. No agreement to pay compensation to locate, deliver,
32 recover, or assist in the recovery of property payable to the heirs
33 of an intestate decedent shall be valid and enforceable unless the
34 fee or compensation agreed upon is not more than 20% of the
35 value of the property recovered, the agreement is in writing and
36 the agreement is signed by the apparent owner. However,
37 nothing in this section shall be construed to prevent an owner
38 from asserting at any time that an agreement to locate property
39 is based upon an excessive or unjust consideration or is otherwise
40 invalid under the laws of this State.

41 (cf: R.S.46:30B-106)]¹

42 ¹[7.] 6.¹ This act shall take effect immediately and shall be
43 applicable to all estates where a fiduciary has been appointed and
44 has not been discharged.

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49 Clarifies procedures for disposition of property of intestate
50 decedents.

1 entitlement as an heir to the property of an intestate decedent,
2 within 90 days of the claimant's submission of the matters (1)
3 through (4) required in subsection b. R.S.46:30B-77, and give
4 written notice to the claimant if the claim is denied in whole or
5 in part. The notice may be given by mailing it to the last
6 address, if any, stated in the claim as the address to which
7 notices are to be sent. If an address for notices is not stated in
8 the claim, the notice may be mailed to the last address, if any, of
9 the claimant as stated in the claim. A notice of denial need not
10 be given if the claim fails to state either the last address to
11 which notices are to be sent or the address of the claimant.
12 (cf: R.S.46:30B-78)

13 6. R.S.46:30B-106 is amended to read as follows:
14 46:30B-106. Unenforceable agreements. a. All agreements to
15 pay compensation to locate, deliver, recover, or assist in the
16 recovery of property reported under this chapter, except as
17 described in subsection (b) below, entered into during the period
18 commencing one year before the property was presumed
19 abandoned and extending to a time that is 24 months after the
20 date that the property is paid or delivered to the administrator,
21 are void and unenforceable. Otherwise, these agreements are
22 valid only if the fee or compensation agreed upon is not more
23 than 20% of the value of the property recovered, the agreement
24 is in writing, signed by the apparent owner, and clearly sets forth
25 the nature and value of the property and the value of the
26 apparent owner's share after the fee or compensation has been
27 deducted. However, nothing in this section shall be construed to
28 prevent an owner from asserting at any time that an agreement
29 to locate property is based upon an excessive or unjust
30 consideration or is otherwise invalid under the laws of this State.

31 b. No agreement to pay compensation to locate, deliver,
32 recover, or assist in the recovery of property payable to the heirs
33 of an intestate decedent shall be valid and enforceable unless the
34 fee or compensation agreed upon is not more than 20% of the
35 value of the property recovered, the agreement is in writing and
36 the agreement is signed by the apparent owner. However,
37 nothing in this section shall be construed to prevent an owner
38 from asserting at any time that an agreement to locate property
39 is based upon an excessive or unjust consideration or is otherwise
40 invalid under the laws of this State.

41 (cf: R.S.46:30B-106)

42 7. This act shall take effect immediately and shall be
43 applicable to all estates where a fiduciary has been appointed and
44 has not been discharged.

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STATEMENT

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49 Under present law, when a person dies intestate and without
50 readily-identifiable heirs or next-of-kin, an investigation must be
51 undertaken by the fiduciary of the estate to determine whether,
52 in fact, there are none who may inherit the intestate estate. The
53 State takes clear title if a diligent investigation reveals no one
54 who is entitled to inherit the decedent's property. This bill

1 would change current law by eliminating, in most instances, the
2 absolute escheat of estates of intestate decedents without
3 apparent heirs, allowing the estates of intestate decedents
4 without apparent heirs to be treated as unclaimed property. The
5 change would bring the law of escheat estates into conformity
6 with the public policy underlying the Uniform Unclaimed
7 Property Act.

8 Section 1 of the bill requires that where the estate of an
9 intestate decedent is sufficient to satisfy all the debts of the
10 estate but the heirs are unknown, the decedent's fiduciary shall
11 publish a notice summarizing relevant known family information
12 and inviting heirs to present their claims.

13 Section 2 of the bill provides that in the event no person
14 provides substantial credible evidence of heirship within 90 days
15 after the last publication of the notice, the estate must be
16 treated as unclaimed property under the Uniform Unclaimed
17 Property Act and turned over to the administrator of unclaimed
18 property. However, pursuant to Section 1 of the bill, if the
19 fiduciary discovers any heirs before turning over the estate to the
20 administrator of unclaimed property, the fiduciary must complete
21 a diligent investigation to locate all heirs.

22 Section 2 of the bill also changes the existing dormancy period,
23 applicable to known heirs who fail to claim their inheritance,
24 from three months to 90 days, so as to harmonize it with the
25 other changes effected by the bill.

26 After an estate has been paid to the administrator of
27 unclaimed property, the administrator is prohibited from allowing
28 the claim of an heir unless a diligent search has been made for all
29 heirs. The interests of undiscovered heirs are preserved through
30 the administrator of unclaimed property, who acts as trustee of
31 the estate with a perpetual duty to honor the claims of rightful
32 heirs. The person making a claim as a rightful heir would be
33 required to submit to the administrator of unclaimed property
34 substantial credible evidence that a diligent investigation was
35 concluded and the results of that investigation. The
36 administrator could only then allow the claim and make payment
37 or delivery of the estate to the discovered heir or heirs. The heir
38 or heirs must release the administrator from claims by other
39 heirs of the decedent and provide full indemnity to the State.

40 Section 6 of the bill liberalizes the proscriptions against
41 heir-hunting agreements in the context of intestate estates.
42 When an heir makes a claim upon the administrator of unclaimed
43 property the heir will have to demonstrate that a diligent
44 investigation for heirs was completed and the results of that
45 investigation. Thus, the public interest in having the rightful
46 heirs receive the inheritance requires that the proscriptions
47 against private heir-hunting agreements be liberalized. This bill
48 eliminates the three year statutory ban on heir hunting
49 agreements and eliminates the requirement that such agreements
50 disclose the nature and value of the property being claimed to the
51 property owner discovered by the heir-hunter. In all other
52 respects, those agreements would remain subject to the common
53 law proscription against abusive practices.

54 Section 7 of the bill provides that the procedural changes it

1 effects shall apply to new estates and also to existing estates in
2 the process of being administered.

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7 Clarifies procedures for disposition of property of intestate
8 decedents.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 2138

with Senate committee amendments

STATE OF NEW JERSEY

DATED: JUNE 19, 1995

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2138, with committee amendments.

Senate Bill No. 2138, as amended, brings the law of estate escheats into conformity with the public policy underlying the Uniform Unclaimed Property Act. Under present law, when a person dies intestate and without readily-identifiable heirs, an investigation must be undertaken by the fiduciary of the estate to determine whether anyone may inherit the estate and if not the State takes title. This bill eliminates, in most instances, the State taking absolute title. Instead, the State will take custody of the property until the heir or the heir's successors assert a claim. The State has the use of the property until a successful claim is made.

The bill requires a decedent's fiduciary to publish a notice summarizing relevant known family information and inviting heirs to present their claims. If no person provides substantial credible evidence of heirship within 90 days after the last publication of the notice, the estate must be treated as unclaimed property under the "Uniform Unclaimed Property Act (1981)," P.L.1981, c.58 (C.46:30B-1 et seq.) and turned over to the administrator of unclaimed property. If the fiduciary discovers any heirs before turning over the estate to the administrator of unclaimed property, the fiduciary must complete a diligent investigation to locate all heirs.

The administrator of unclaimed property preserves the interests of undiscovered heirs by acting as trustee of the estate property. The administrator may not allow the claim of an heir unless a diligent search has been made for all heirs. A claimant must submit substantial credible evidence that a diligent investigation was concluded and the results of that investigation before the administrator may allow the claim. The heir or heirs must release the administrator from claims by other heirs of the decedent and provide full indemnity to the State.

To allow a claimant to make a diligent search for other heirs, the bill eliminates the three year statutory ban on heir hunting agreements and eliminates the requirement that such agreements disclose the nature and value of the property being claimed to the property owner discovered by the heir-hunter.

The bill applies to new estates and estates in the process of being administered.

As reported, this bill is identical to Assembly Bill No. 2926 of 1995 (Stuhltrager).

COMMITTEE AMENDMENTS

These amendments would delete section 6, which amends N.J.S. 46:30B-106. The amendments would eliminate the potential for conflict with Assembly Bill No. 1609 (1R), which amends N.J.S. 46:30B-106 to liberalize the proscriptions against agreements to locate owners of unclaimed property held by the State.

FISCAL IMPACT

The Department of the Treasury has estimated that this bill will save the State \$4 million annually.