

3B:5-10

LEGISLATIVE HISTORY CHECKLIST  
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NJSA: 3B:5-10

(Interstate  
succession--determination)

LAWS OF: 1991

CHAPTER: 22

Bill No: S1346

Sponsor(s): O'Connor

Date Introduced: Pre-filed

Committee: Assembly: Judiciary, Law, Public Safety & Defense

Senate: Judiciary

Amended during passage: No

Date of Passage: Assembly: January 8, 1991

Senate: April 5, 1990

Date of Approval: February 19, 1991

Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: Yes

Senate: Yes

Fiscal Note: No

Veto Message: No

Message on signing: No

Following were printed:

Reports: Yes

Hearings: No

(over)

975.901  
L446

New Jersey. Law Revision Commission.  
Report (First annual). 1987.

**KBG/SLJ**

1 AN ACT concerning the determination of parentage for purposes  
2 of intestate succession and amending N.J.S. 3B:5-10.

3  
4 BE IT ENACTED by the Senate and General Assembly of the  
5 State of New Jersey:

6 1. N.J.S. 3B:5-10 is amended to read as follows:  
7 3B:5-10. [Child born out of wedlock.] Establishment of  
8 Parent-Child Relationship.

9 If, for the purposes of intestate succession, a relationship of  
10 parent and child must be established to determine succession by,  
11 through, or from a person, [a child born out of wedlock is a child  
12 of the mother. That child is also a child of the father, if:

13 a. The natural parents, before or after the birth of that child,  
14 participated in a ceremonial marriage or shall have consummated  
15 a common-law marriage where the marriage is recognized as  
16 valid in the manner authorized by the law of the place where the  
17 marriage took place, even though the attempted marriage is void;  
18 or

19 b. The paternity is established by an adjudication before the  
20 death of the father or is established there-after by clear and  
21 convincing proof, except that the paternity established under this  
22 subsection is ineffective to qualify the father or his kindred to  
23 inherit from or through the child unless the father has openly  
24 treated the child as his, and has not refused to support the child]  
25 in cases not covered by N.J.S. 3B:5-9, a person is the child of the  
26 person's parents regardless of the marital state of the person's  
27 parents, and the parent and child relationship may be established  
28 as provided by the "New Jersey Parentage Act," P.L. 1983, c. 17  
29 (C. 9:17-38 et seq.).

30 (cf: N.J.S. 3B:5-10)

31 2. This act shall take effect immediately.

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33  
34  
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#### STATEMENT

36 This bill reflects the recommendation of the New Jersey Law  
37 Revision Commission.

38 This bill amends the law concerning intestate succession. At  
39 present, there is an inconsistency between N.J.S.A. 3B:5-10 and

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

Matter underlined thus is new matter.

1 the "New Jersey Parentage Act," P.L. 1983, c. 17 (C. 9:17-38 et  
2 seq.), in regard to the standard for the determination of the  
3 parentage of children born out of wedlock. N.J.S.A. 3B:5-10  
4 establishes standards for the determination of whether a child  
5 born out of wedlock is a child of the father for the purposes of  
6 intestate succession, including inheritance by the child from or  
7 through the father and inheritance by the father from or through  
8 the child. The "New Jersey Parentage Act" establishes standards  
9 and procedures for the determination of parentage of a child for  
10 every purpose. As a result, under the literal terms of the  
11 conflicting laws, the determination of a child's parentage might  
12 differ depending upon whether the issue is being adjudicated  
13 before or after the death of the putative parent. The problem  
14 was caused by the inadvertent failure to correct the probate code  
15 provision at the time the "New Jersey Parentage Act" was  
16 enacted. This bill removes this inconsistency by amending  
17 N.J.S.A. 3B:5-10, thus carrying out the intent of the Legislature  
18 at the time of the enactment of the "New Jersey Parentage  
19 Act." The bill removes the existing exception that paternity  
20 established by N.J.S.A. 3B:5-10 does not qualify the father to  
21 inherit from or through the child. Thus, parentage established in  
22 accordance with the "New Jersey Parentage Act" under the  
23 provisions of this bill qualifies the father in the absence of a will  
24 with terms to the contrary.

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#### DOMESTIC RELATIONS

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29

30

Provides that "New Jersey Parentage Act" shall govern  
determination of parentage for purposes of intestate succession.

SENATE, No. 1346

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1990 SESSION

By Senator O'CONNOR

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ASSEMBLY JUDICIARY, LAW AND PUBLIC SAFETY  
COMMITTEE

STATEMENT TO

SENATE, No. 1346

STATE OF NEW JERSEY

DATED: OCTOBER 29, 1990

The Assembly Judiciary, Law and Public Safety Committee reports favorably Senate Bill No. 1346.

This bill is intended to resolve a potential conflict between N.J.S.A. 3B:5-10 part of New Jersey's Probate Code and the "New Jersey Parentage Act," P.L.1983, c.17 (C.9:17-38 et seq.) with regard to the standard for the determination of the parentage of children born out of wedlock.

N.J.S.A. 3B:5-10, which was enacted prior to the Parentage Act, establishes standards for the determination of whether a child born out of wedlock is the child of a father for the purposes of intestate succession. These standards govern both inheritance by the child from or through the father and inheritance by the father from or through the child.

The "New Jersey Parentage Act," N.J.S.A. 9:17-38 et seq., which was enacted in 1983 sets procedures and standards for determining parentage of children born out of wedlock. These procedures were intended to be applicable in all actions. In order to insure that a determination of parentage under the "New Jersey Parentage Act" would also be applicable in probate matters, this bill would amend N.J.S.A. 3B:5-10 to provide that for purposes of intestate succession the parent-child relationship may be established as provided in the "New Jersey Parentage Act."

This bill is based on a recommendation of the New Jersey Law Revision Commission.

1 the "New Jersey Parentage Act," P.L. 1983, c. 17 (C. 9:17-38 et  
2 seq.), in regard to the standard for the determination of the  
3 parentage of children born out of wedlock. N.J.S.A. 3B:5-10  
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23 provisions of this bill qualifies the father in the absence of a will  
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#### DOMESTIC RELATIONS

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30 determination of parentage for purposes of intestate succession.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 1346

STATE OF NEW JERSEY

DATED: FEBRUARY 8, 1990

The Senate Judiciary Committee reports favorably Senate Bill No. 1346.

This bill is intended to resolve a potential conflict between N.J.S.A. 3B:5-10 part of New Jersey's Probate Code and the "New Jersey Parentage Act," P.L. 1983, c. 17 (C. 9:17-38 et seq.) with regard to the standard for the determination of the parentage of children born out of wedlock.

N.J.S.A. 3B:5-10, which was enacted prior to the Parentage Act, establishes standards for the determination of whether a child born out of wedlock is the child of a father for the purposes of intestate succession. These standards govern both inheritance by the child from or through the father and inheritance by the father from or through the child.

The Parentage Act which was enacted in 1983 sets procedures and standards for determining parentage of children born out of wedlock. These procedures were intended to be applicable in all actions. In order to insure that a determination of parentage under the Parentage Act would also be applicable in probate matters, this bill would amend 3B:5-10 to provide that for purposes of intestate succession the parent-child relationship may be established as provided in the Parentage Act.

The bill is based on a recommendation of the New Jersey Law Revision Commission.



Code chosen for N.J.S. 3B:5-10 was never intended to be enacted in jurisdictions which accepted the Parentage Act. The Comment to the Uniform Probate Code, sec. 2-109, makes this intent clear:

The approval in 1973 by the National Conference of Commissioners on Uniform State Laws of the Uniform Parentage Act reflects a change of policy by the Conference regarding the status of children born out of wedlock to one which is inconsistent with Section 2-109(2) of the Code as approved in 1969. The new language of 2-109(2) conforms the Uniform Probate Code to the Uniform Parentage Act.

The inconsistency between these two sections appears to have arisen from an oversight. The Uniform Probate Code provides two alternative sections. One is to be used where the Parentage Act is in effect, and the other where it is not. At the time the Probate Code was enacted in New Jersey, the Parentage Act had not yet been proposed. As a result, the Legislature chose the version of the Uniform Probate Code which reflected the lack of a Parentage Act. When the Parentage Act was enacted later in 1983, the Probate Code should have been amended to replace what is N.J.S. 3B:5-10 with the version of the Uniform Code which made reference to the Parentage Act. That was not done. Correction of this section is necessary to carry out the intent of the Legislature embodied in the Parentage Act.

The best solution to this statutory inconsistency is to amend the Probate Code to reflect the form of the Uniform Probate Code intended to be used with the Parentage Act. This decision involves accepting the Parentage Act as the preferable statutory scheme for establishing parent-child relationships. That decision would be in accord with the modern principle that the parent-child relationship extends equally, irrespective of the marital state of the parents. See, N.J.S. 9:17-40. It would accept the more clear and specific rules for the determination of parent-child relationships of the Parentage Act and its reflection of the modern principle that scientific tests can be used to make an accurate

## II. PROJECTS AND RECOMMENDATIONS

### A. Inconsistency Between Probate Code and Parentage Act

At present, there is an inconsistency between the New Jersey Probate Code and the New Jersey Parentage Act. The Probate Code, N.J.S. 3B:5-10, establishes standards for the determination of whether a child born out of wedlock is a child of the father for the purposes of intestate succession. The Parentage Act, N.J.S. 9:17-38 et seq., establishes standards and procedures for the determination of parentage of a child for every purpose. The two are inconsistent in a number of ways.

The most significant difference is in terms of burden of proof. The Parentage Act includes a whole series of presumptions relating to various fact situations and, in the absence of these situations, provides for determination of parentage by preponderance of the evidence. N.J.S. 9:17-43c. The Probate Code, in contrast, requires the establishment of the parent-child relationship by clear and convincing proof. N.J.S. 3B:5-10. The Parentage Act also includes specific rules for the determination of whether the husband of a child's mother is the father of that child. These rules differ from and are superior to the unclear, and perhaps circular, provision of N.J.S. 3B:5-10a which provides that a child is the child of the husband where "natural parents" marry before or after the birth of a child.

Cases where the inconsistencies between these two statutory provisions are significant in the determination of the case cannot be expected to be frequent; however, even prior to the effective date of the Parentage Act, one such case arose. In Matter of Estate of Calloway, 206 N.J. Super. 377 (App. Div. 1986), the court attempted to harmonize the two provisions using the presumptions of the Parentage Act to meet the proof standard of the Probate Code. Id. at 381-82. While that approach led to a satisfactory result in Calloway, it cannot be expected to do so in general. The two statutes are inconsistent; the version of the Probate

determination of parentage in the majority of cases.\* There appears no reason to prefer the Probate Code form now in place as N.J.S. 3B:5-10, which is no longer recommended by the Uniform Law Commissioners. See Comment to Uniform Probate Code, sec. 2-109, quoted above.

For these reasons, the Commission recommends amendment of N.J.S. 3B:5-10 and has prepared legislation to that purpose.

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\* The most significant difference between the New Jersey Parentage Act and the Uniform Parentage Act from which it is derived is the increased reliance of the former on scientific tests to determine parentage. See, e.g., N.J.S. 9:17-51 providing for human leucocyte antigen, electrophoresis and isoelectric tests rather than blood group tests referred to in Section 11 of the Uniform Act. The New Jersey Act assumes the reliability of this sort of testing; see, N.J.S. 9:17-48d. This difference appears to reflect not a difference in policy but a change in technology. See Commissioners' Comment to Section 12 of the Uniform Act.