

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext. 103 or <mailto:refdesk@njstatelib.org>

REPORTS:

No

HEARINGS:

No

NEWSPAPER ARTICLES:

No

IS 2/14/08

P.L. 2005, CHAPTER 331, *approved January 12, 2006*
Senate, No. 2083 (*First Reprint*)

1 AN ACT concerning ¹[funerals and the disposition of human remains
2 and amending P.L.2003, c.261] rights of surviving domestic
3 partners and amending various sections of the statutory law¹.

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

7
8 ¹1. N.J.S.3B:1-1 is amended to read as follows:

9 3B:1-1. As used in this title, unless otherwise defined:

10 "Administrator" includes general administrators of an intestate and
11 unless restricted by the subject or context, administrators with the will
12 annexed, substituted administrators, substituted administrators with
13 the will annexed, temporary administrators and administrators
14 pendente lite.

15 "Beneficiary," as it relates to trust beneficiaries, includes a person
16 who has any present or future interest, vested or contingent, and also
17 includes the owner of an interest by assignment or other transfer and
18 as it relates to a charitable trust, and includes any person entitled to
19 enforce the trust.

20 "Child" means any individual, including a natural or adopted child,
21 entitled to take by intestate succession from the parent whose
22 relationship is involved and excludes any individual who is only a
23 stepchild, a resource family child, a grandchild or any more remote
24 descendant.

25 "Claims" include liabilities whether arising in contract, or in tort or
26 otherwise, and liabilities of the estate which arise at or after the death
27 of the decedent, including funeral expenses and expenses of
28 administration, but does not include estate or inheritance taxes,
29 demands or disputes regarding title to specific assets alleged to be
30 included in the estate.

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

33 "Descendant" of an individual means all of his progeny of all
34 generations, with the relationship of parent and child at each
35 generation being determined by the definition of child contained in this
36 section and parent contained in N.J.S.3B:1-2.

37 "Devise," when used as a noun, means a testamentary disposition
38 of real or personal property and when used as a verb, means to dispose
39 of real or personal property by will.

40 "Devisee" means any person designated in a will to receive a devise.

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 December 1, 2005.

1 In the case of a devise to an existing trust or trustee, or to a trustee of
2 a trust described by will, the trust or trustee is the devisee and the
3 beneficiaries are not devisees.

4 "Distributee" means any person who has received property of a
5 decedent from his personal representative other than as a creditor or
6 purchaser. A trustee is a distributee only to the extent of a distributed
7 asset or increment thereto remaining in his hands. A beneficiary of a
8 trust to whom the trustee has distributed property received from a
9 personal representative is a distributee of the personal representative.

10 "Domestic partner" means a domestic partner as defined in section
11 3 of P.L.2003, c.246 (C.26:8A-3).

12 "Domiciliary foreign fiduciary" means any fiduciary who has
13 received letters, or has been appointed, or is authorized to act as a
14 fiduciary, in the jurisdiction in which the decedent was domiciled at the
15 time of his death, in which the ward is domiciled or in which is located
16 the principal place of the administration of a trust.

17 "Estate" means all of the property of a decedent, minor or
18 incapacitated individual, trust or other person whose affairs are subject
19 to this title as the property is originally constituted and as it exists
20 from time to time during administration.

21 "Fiduciary" includes executors, general administrators of an
22 intestate estate, administrators with the will annexed, substituted
23 administrators, substituted administrators with the will annexed,
24 guardians, substituted guardians, trustees, substituted trustees and,
25 unless restricted by the subject or context, temporary administrators,
26 administrators pendente lite, administrators ad prosequendum,
27 administrators ad litem and other limited fiduciaries.

28 "Governing instrument" means a deed, will, trust, insurance or
29 annuity policy, account with the designation "pay on death" (POD) or
30 "transfer on death" (TOD), security registered in beneficiary form with
31 the designation "pay on death" (POD) or "transfer on death" (TOD),
32 pension, profit-sharing, retirement or similar benefit plan, instrument
33 creating or exercising a power of appointment or a power of attorney,
34 or a dispositive, appointive, or nominative instrument of any similar
35 type.

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

40 "Heirs" means those persons, including, but not limited to, the
41 surviving spouse, the domestic partner and the descendants of the
42 decedent, who are entitled under the statutes of intestate succession
43 to the property of a decedent.¹

44 (cf: P.L.2004, c.132, s.1)

45

46 ¹2. N.J.S.3B:5-3 is amended to read as follows:

1 3B:5-3. Intestate share of decedent's surviving spouse or domestic
2 partner.

3 The intestate share of the surviving spouse or domestic partner is:

4 a. The entire intestate estate if:

5 (1) No descendant or parent of the decedent survives the decedent;

6 or

7 (2) All of the decedent's surviving descendants are also
8 descendants of the surviving spouse or domestic partner and there is
9 no other descendant of the surviving spouse or domestic partner who
10 survives the decedent;

11 b. The first 25% of the intestate estate, but not less than
12 \$50,000.00 nor more than \$200,000.00, plus three-fourths of any
13 balance of the intestate estate, if no descendant of the decedent
14 survives the decedent, but a parent of the decedent survives the
15 decedent;

16 c. The first 25% of the intestate estate, but not less than
17 \$50,000.00 nor more than \$200,000.00, plus one-half of the balance
18 of the intestate estate:

19 (1) If all of the decedent's surviving descendants are also
20 descendants of the surviving spouse or domestic partner and the
21 surviving spouse or domestic partner has one or more surviving
22 descendants who are not descendants of the decedent; or

23 (2) If one or more of the decedent's surviving descendants is not
24 a descendant of the surviving spouse or domestic partner.¹

25 (cf: P.L.2004, c.132, s.46)

26

27 ¹3. N.J.S.3B:5-4 is amended to read as follows:

28 3B:5-4. Intestate shares of heirs other than surviving spouse or
29 domestic partner.

30 Any part of the intestate estate not passing to the decedent's
31 surviving spouse or domestic partner under N.J.S.3B:5-3, or the entire
32 intestate estate if there is no surviving spouse or domestic partner,
33 passes in the following order to the individuals designated below who
34 survive the decedent:

35 a. To the decedent's descendants by representation;

36 b. If there are no surviving descendants, to the decedent's parents
37 equally if both survive, or to the surviving parent;

38 c. If there are no surviving descendants or parent, to the
39 descendants of the decedent's parents or either of them by
40 representation;

41 d. If there is no surviving descendant, parent or descendant of a
42 parent, but the decedent is survived by one or more grandparents, half
43 of the estate passes to the decedent's paternal grandparents equally if
44 both survive, or to the surviving paternal grandparent, or to the
45 descendants of the decedent's paternal grandparents or either of them
46 if both are deceased, the descendants taking by representation; and the

1 other half passes to the decedent's maternal relatives in the same
2 manner; but if there is no surviving grandparent, or descendant of a
3 grandparent on either the paternal or the maternal side, the entire
4 estate passes to the decedent's relatives on the other side in the same
5 manner as the half.

6 e. If there is no surviving descendant, parent, descendant of a
7 parent, or grandparent, but the decedent is survived by one or more
8 descendants of grandparents, the descendants take equally if they are
9 all of the same degree of kinship to the decedent, but if of unequal
10 degree those of more remote degree take by representation.

11 f. If there are no surviving descendants of grandparents, then the
12 decedent's step-children or their descendants by representation.¹
13 (cf: P.L.2004, c.132, s.47)

14

15 ^{14.} N.J.S.3B:5-14 is amended to read as follows:

16 3B:5-14. Tenancy in common; marriage and domestic partnership
17 settlements.

18 Property descending and distributable under this article to two or
19 more persons shall devolve upon them as tenants in common. Nothing
20 in this article shall be construed or taken to make void or in any way
21 to affect any marriage settlement or settlement concerning a domestic
22 partnership.¹

23 (cf: N.J.S. 3B:5-14)

24

25 ^{15.} N.J.S.3B:5-15 is amended to read as follows:

26 3B:5-15. Entitlement of spouse or domestic partner; premarital
27 will.

28 a. If a testator's surviving spouse married the testator after the
29 testator executed the testator's will, ¹or if a testator's domestic partner
30 formed a domestic partnership with the testator after the testator
31 executed the testator's will,¹ the surviving spouse or domestic partner
32 is entitled to receive, as an intestate share, no less than the value of the
33 share of the estate the surviving spouse or domestic partner would
34 have received if the testator had died intestate, unless:

35 (1) it appears from the will or other evidence that the will was
36 made in contemplation of the testator's marriage to the surviving
37 spouse or in contemplation of the testator's formation of a domestic
38 partnership with the domestic partner;

39 (2) the will expresses the intention that it is to be effective
40 notwithstanding any subsequent marriage or domestic partnership; or

41 (3) the testator provided for the spouse or domestic partner by
42 transfer outside the will and the intent that the transfer be in lieu of a
43 testamentary provision is shown by the testator's statements or is
44 reasonably inferred from the amount of the transfer or other evidence.

45 b. In satisfying the share provided by this section, devises made
46 by the will to the testator's surviving spouse or domestic partner, if

1 any, are applied first, and other devises shall abate ratably and in
2 proportion to their respective interests therein.

3 c. Notwithstanding any other provision of law to the contrary,
4 this section shall apply only to wills executed on or after September 1,
5 1978.¹

6 (cf: P.L.2004, c.132, s.56)

7

8 ^{16.} Section 58 of P.L.2004, c.132 (C.3B:7-1.1) is amended to read
9 as follows:

10 58. Effect of intentional killing on intestate succession, wills, trusts,
11 joint assets, life insurance and beneficiary designations.

12 a. An individual who is responsible for the intentional killing of
13 the decedent forfeits all benefits under this title with respect to the
14 decedent's estate, including an intestate share, an elective share, an
15 omitted spouse's, domestic partner's or child's share, exempt property
16 and a family allowance. If the decedent died intestate, the decedent's
17 intestate estate passes as if the killer disclaimed his share.

18 b. The intentional killing of the decedent:

19 (1) revokes any revocable (a) disposition or appointment of
20 property made by decedent to the killer in a governing instrument and
21 any disposition or appointment created by law or in a governing
22 instrument to a relative of the killer, (b) provision in a governing
23 instrument conferring a general or special power of appointment on
24 the killer or a relative of the killer, and (c) nomination in a governing
25 instrument of the killer or a relative of the killer, nominating or
26 appointing the killer or a relative of the killer to serve in any fiduciary
27 or representative capacity; and

28 (2) severs the interests of the decedent and the killer in property
29 held by them at the time of the killing as joint tenants with the right of
30 survivorship or as tenants by the entireties, transforming the interests
31 of the decedent and killer into tenancies in common.

32 c. For purposes of this chapter: (1) "governing instrument" means
33 a governing instrument executed by the decedent; and (2) "relative of
34 the killer" means an individual who is related to the killer by blood,
35 adoption or affinity and who is not related to the decedent by blood or
36 adoption or affinity.¹

37 (cf: P.L.2005, c.160, s.8)

38

39 ^{17.} N.J.S.3B:8-1 is amended to read as follows:

40 3B:8-1. Elective share of surviving spouse or domestic partner of
41 person dying domiciled in this State; conditions.

42 If a married person or person in a domestic partnership dies
43 domiciled in this State, on or after May 28, 1980, the surviving spouse
44 or domestic partner has a right of election to take an elective share of
45 one-third of the augmented estate under the limitations and conditions
46 hereinafter stated, provided that at the time of death the decedent and

1 the surviving spouse or domestic partner had not been living separate
2 and apart in different habitations or had not ceased to cohabit as man
3 and wife, either as the result of judgment of divorce from bed and
4 board or under circumstances which would have given rise to a cause
5 of action for divorce or nullity of marriage to a decedent prior to his
6 death under the laws of this State.¹

7 (cf: N.J.S. 3B:8-1)

8

9 ^{18.} N.J.S.3B:8-2 is amended to read as follows:

10 3B:8-2. Elective share of surviving spouse or domestic partner of
11 person dying not domiciled in this State.

12 If a married person or person in a domestic partnership not
13 domiciled in this State dies, the right, if any, of the surviving spouse
14 or domestic partner to take an elective share in property in this State
15 is governed by the law of the decedent's domicile at death.¹

16 (cf: N.J.S. 3B:8-2)

17

18 ^{19.} N.J.S.3B:8-3 is amended to read as follows:

19 3B:8-3. Meaning of "augmented estate."

20 The "augmented estate" means the estate reduced by funeral and
21 administration expenses, and enforceable claims, to which is added the
22 value of property transferred by the decedent at any time during
23 marriage, or during a domestic partnership, to or for the benefit of
24 any person other than the surviving spouse or domestic partner, to the
25 extent that the decedent did not receive adequate and full
26 consideration in money or money's worth for the transfer, if the
27 transfer is of any of the following types:

28 a. Any transfer made after May 28, 1980, under which the
29 decedent retained at the time of his death the possession or enjoyment
30 of, or right to income from, the property;

31 b. Any transfer made after May 28, 1980, to the extent that the
32 decedent retained at the time of his death a power, either alone or in
33 conjunction with any other person, to revoke or to consume, invade
34 or dispose of the principal for his own benefit;

35 c. Any transfer made after May 28, 1980, whereby property is held
36 at the time of decedent's death by decedent and another with right of
37 survivorship;

38 d. Any transfer made, after May 28, 1980, if made within 2 years
39 of death of the decedent, to the extent that the aggregate transfers to
40 any one donee in either of the years exceed \$3,000.00.¹

41 (cf: N.J.S. 3B:8-3)

42

43 ^{110.} N.J.S.3B:8-5 is amended to read as follows:

44 3B:8-5. Transfers excluded.

45 Any transfer of property shall be excluded from the augmented
46 estate under N.J.S. 3B:8-3, if made with the written consent or joinder

1 of the surviving spouse or domestic partner. There shall also be
2 excluded from the augmented estate any life insurance, accident
3 insurance, joint annuity or pension payable to a person other than the
4 surviving spouse or domestic partner.¹

5 (cf: N.J.S. 3B:8-5)

6
7 ¹11. N.J.S.3B:8-6 is amended to read as follows:

8 3B:8-6. Other property to be included in augmented estate.

9 There shall also be included in the augmented estate:

10 a. The value of property owned by the surviving spouse or
11 domestic partner at the time of, or as a result of, the decedent's death
12 to the extent that the property is derived from the decedent by means
13 other than by testate or intestate succession without a full
14 consideration in money or money's worth; and

15 b. The value of the property described in subsection a. hereof
16 which has been transferred by the surviving spouse or domestic partner
17 at any time during marriage or domestic partnership without a full
18 consideration in money or money's worth to any person other than the
19 decedent which would have been includable in the spouse's or
20 domestic partner's augmented estate if the surviving spouse or
21 domestic partner had predeceased the decedent.

22 Income earned by included property prior to the decedent's death
23 is not treated as property derived from the decedent.¹

24 (cf: N.J.S. 3B:8-6)

25
26 ¹12. N.J.S.3B:8-7 is amended to read as follows:

27 3B:8-7. Property derived from decedent.

28 For the purposes of N.J.S. 3B:8-6, property derived from the
29 decedent includes, but is not limited to, any beneficial interest of the
30 surviving spouse or domestic partner in a trust created by the decedent
31 during his lifetime, any property appointed to the spouse or domestic
32 partner by the decedent's exercise of a general or special power of
33 appointment also exercisable in favor of others than the spouse or
34 domestic partner, any proceeds of insurance, including accidental
35 death benefits on the life of the decedent attributable to premiums paid
36 by him, any lump sum immediately payable and the commuted value
37 of the proceeds of annuity contracts under which the decedent was
38 the primary annuitant attributable to premiums paid by him, the
39 commuted value of amounts payable after the decedent's death under
40 any public or private pension, disability compensation, death benefit
41 or retirement plan, exclusive of the Federal Social Security system, by
42 reason of service performed or disabilities incurred by the decedent,
43 the value of the share of the surviving spouse or domestic partner
44 resulting from rights in community property acquired in any other state
45 formerly owned with the decedent and the value of any rights of dower
46 and curtesy. Premiums paid by the decedent's employer, his partner,

1 a partnership of which he was a member, or his creditors, are deemed
2 to have been paid by the decedent.¹

3 (cf: N.J.S. 3B:8-7)

4

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

6 3B:8-8. Valuation of property derived from decedent.

7 For the purposes of valuing property derived from the decedent as
8 provided in N.J.S. 3B:8-6:

9 a. Property owned by the spouse or domestic partner at the
10 decedent's death is valued as of the date of decedent's death; and

11 b. Property transferred by the spouse or domestic partner is valued
12 at the time the transfer became irrevocable, or at the decedent's death,
13 whichever occurs first.¹

14 (cf: N.J.S. 3B:8-8)

15

16 ¹14. N.J.S.3B:8-9 is amended to read as follows:

17 3B:8-9. Presumption as to property owned or previously
18 transferred by spouse or domestic partner at decedent's death.

19 Property owned by the surviving spouse or domestic partner as of
20 the decedent's death, or previously transferred by the surviving spouse
21 or domestic partner, is presumed to have been derived from the
22 decedent except to the extent that any party in interest establishes that
23 it was derived from another source.¹

24 (cf: N.J.S. 3B:8-9)

25

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

27 3B:8-10. Waiving right to an elective share.

28 The right of election of a surviving spouse or domestic partner and
29 the rights of the surviving spouse or domestic partner may be waived,
30 wholly or partially, before or after marriage before, on or after May
31 28, 1980, by a written contract, agreement or waiver, signed by the
32 party waiving after fair disclosure. Unless it provides to the contrary,
33 a waiver of "all rights" (or equivalent language) in the property or
34 estate of a present or prospective spouse or domestic partner or a
35 complete property settlement entered into after or in anticipation of
36 separation [or], divorce or termination of a domestic partnership is
37 a waiver of all rights to an elective share by each spouse or domestic
38 partner in the property of the other and a renunciation by each of all
39 benefits which would otherwise pass to him from the other by intestate
40 succession or by virtue of the provisions of any will executed before
41 the waiver or property settlement.¹

42 (cf: N.J.S. 3B:8-10)

43

44 ¹16. N.J.S.3B:8-11 is amended to read as follows:

45 3B:8-11. Who may exercise the right to take an elective share.

46 The right of election to take an elective share by a surviving spouse

1 or domestic partner may be exercised only during his lifetime. In the
2 case of a surviving spouse or domestic partner for whom the court has
3 appointed a guardian to manage his estate, the right of election may
4 be exercised only by order of the court making the appointment after
5 finding that the election is necessary to provide adequate support of
6 the surviving spouse or domestic partner during his probable life
7 expectancy.¹

8 (cf: N.J.S. 3B:8-11)

9
10 ¹17. N.J.S.3B:8-12 is amended to read as follows:

11 3B:8-12. Filing complaint for elective share; extension of time.

12 The surviving spouse or domestic partner may elect to take his
13 elective share in the augmented estate by filing a complaint in the
14 Superior Court within 6 months after the appointment of a personal
15 representative of the decedent's estate. The court may, before the time
16 for election has expired and upon good cause shown by the surviving
17 spouse or domestic partner, extend the time for election upon notice
18 to persons interested in the estate and to distributees and recipients of
19 portions of the augmented estate whose interests will be adversely
20 affected by the taking of the elective share.¹

21 (cf: N.J.S. 3B:8-12)

22

23 ¹18. N.J.S.3B:8-13 is amended to read as follows:

24 3B:8-13. Notice of hearing.

25 The surviving spouse or domestic partner shall give notice of the
26 time and place set for hearing to persons interested in the estate and
27 to the distributees and recipients of portions of the augmented estate
28 whose interests will be adversely affected by the taking of the elective
29 share.¹

30 (cf: N.J.S. 3B:8-13)

31

32 ¹19. N.J.S.3B:8-14 is amended to read as follows:

33 3B:8-14. Withdrawal of demand for an elective share.

34 The surviving spouse or domestic partner may withdraw his demand
35 for an elective share at any time before entry of a final judgment by the
36 court.¹

37 (cf: N.J.S. 3B:8-14)

38

39 ¹20. N.J.S.3B:8-17 is amended to read as follows:

40 3B:8-17. Value of surviving spouse's or domestic partner's interest
41 in any life estate.

42 In an action for an elective share, the electing spouse's or domestic
43 partner's total or proportional beneficial interest in any life estate in
44 real or personal property or in any trust shall be valued at one-half of
45 the total value of the property or trust or of the portion of the property

1 or trust subject to the life estate.¹

2 (cf: N.J.S. 3B:8-17)

3

4 ¹21. N.J.S.3B:8-18 is amended to read as follows:

5 3B:8-18. Satisfaction of elective share.

6 The amount of the surviving spouse's or domestic partner's elective
7 share shall be satisfied by applying:

8 a. The value of all property, estate or interest therein, owned by
9 the surviving spouse or domestic partner in his own right at the time
10 of the decedent's death from whatever source acquired, or succeeded
11 to by the surviving spouse or domestic partner as a result of decedent's
12 death notwithstanding that the property, estate or interest or part
13 thereof, succeeded to by the surviving spouse or domestic partner as
14 the result of decedent's death has been renounced by the surviving
15 spouse or domestic partner;

16 b. The value of the property described in subsection b. of N.J.S.
17 3B:8-6, and

18 c. The remaining property of the augmented estate is so applied
19 that liability for the balance of the elective share of the surviving
20 spouse or domestic partner is equitably apportioned among the
21 recipients of the augmented estate in proportion to the value of their
22 interests therein.¹

23 (cf: N.J.S. 3B:8-18)

24

25 ¹22. N.J.S.3B:8-19 is amended to read as follows:

26 3B:8-19. Persons subject to contribution.

27 Only original transferees from, or appointees of, the decedent and
28 their donees, to the extent the donees have the property or its
29 proceeds, are subject to the contribution to make up the elective share
30 of the surviving spouse or domestic partner. A person liable to
31 contribution may choose to give up the property transferred to him or
32 to pay its value as fixed in the manner provided in N.J.S. 3B:8-4.¹

33 (cf: N.J.S. 3B:8-19)

34

35 ¹23. N.J.S.3B:10-2 is amended to read as follows:

36 3B:10-2. To whom letters of administration granted.

37 If any person dies intestate, administration of the intestate's estate
38 shall be granted to the surviving spouse or domestic partner of the
39 intestate, if he or she will accept the administration, and, if not, or if
40 there be no surviving spouse or domestic partner, then to the
41 remaining heirs of the intestate, or some of them, if they or any of
42 them will accept the administration, and, if none of them will accept
43 the administration, then to any other person as will accept the
44 administration.

45 If the intestate leaves no heirs justly entitled to the administration
46 of his estate, or if his heirs shall not claim the administration within 40
47 days after the death of the intestate, the Superior Court or surrogate's

1 court may grant letters of administration to any fit person applying
2 therefor.¹

3 (cf: N.J.S. 3B:10-2)

4

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

6 3B:10-3. When spouse or domestic partner entitled to assets
7 without administration.

8 Where the total value of the real and personal assets of the estate
9 of an intestate will not exceed \$20,000.00, the surviving spouse or
10 domestic partner upon the execution of an affidavit before the
11 **[surrogate] Surrogate** of the county where the intestate resided at his
12 death, or, if then nonresident in this State, where any of the assets are
13 located, or before the Superior Court, shall be entitled absolutely to all
14 the real and personal assets without administration, and the assets of
15 the estate up to \$5,000.00 shall be free from all debts of the intestate.
16 Upon the execution and filing of the affidavit as provided in this
17 section, the surviving spouse or domestic partner shall have all of the
18 rights, powers and duties of an administrator duly appointed for the
19 estate. The surviving spouse or domestic partner may be sued and
20 required to account as if he had been appointed administrator by the
21 **[surrogate] Surrogate** or the Superior Court. The affidavit shall state
22 that the affiant is the surviving spouse or domestic partner of the
23 intestate and that the value of the intestate's real and personal assets
24 will not exceed \$20,000.00, and shall set forth the residence of the
25 intestate at his death, and specifically the nature, location and value of
26 the intestate's real and personal assets. The affidavit shall be filed and
27 recorded in the office of such **[surrogate] Surrogate** or, if the
28 proceeding is before the Superior Court, then in the office of the clerk
29 of that court. Where the affiant is domiciled outside this State, the
30 **[surrogate] Surrogate** may authorize in writing that the affidavit be
31 executed in the affiant's domicile before any of the officers authorized
32 by R.S.46:14-7 and R.S.46:14-8 to take acknowledgments or proofs.¹
33 (cf: P.L.2004, c.132, s.77)

34

35 ¹25. N.J.S.3B:10-4 is amended to read as follows:

36 3B:10-4. When heirs entitled to assets without administration.

37 Where the total value of the real and personal assets of the estate
38 of an intestate will not exceed \$10,000.00 and the intestate leaves no
39 surviving spouse or domestic partner, and one of his heirs shall have
40 obtained the consent in writing of the remaining heirs, if any, and shall
41 have executed before the **[surrogate] Surrogate** of the county where
42 the intestate resided at his death, or, if then nonresident in this State,
43 where any of the intestate's assets are located, or before the Superior
44 Court, the affidavit herein provided for, shall be entitled to receive the
45 assets of the intestate of the benefit of all the heirs and creditors
46 without administration or entering into a bond. Upon executing the
47 affidavit, and upon filing it and the consent, he shall have all the rights,

1 powers and duties of an administrator duly appointed for the estate
2 and may be sued and required to account as if he had been appointed
3 administrator by the [surrogate] Surrogate or the Superior Court.

4 The affidavit shall set forth the residence of the intestate at his
5 death, the names, residences and relationships of all of the heirs and
6 specifically the nature, location and value of the real and personal
7 assets and also a statement that the value of the intestate's real and
8 personal assets will not exceed \$10,000.00.

9 The consent and the affidavit shall be filed and recorded, in the
10 office of the [surrogate] Surrogate or, if the proceeding is before the
11 Superior Court, then in the office of the clerk of that court. Where the
12 affiant is domiciled outside this State, the [surrogate] Surrogate may
13 authorize in writing that the affidavit be executed in the affiant's
14 domicile before any of the officers authorized by R.S.46:14-7 and
15 R.S.46:14-8 to take acknowledgments or proofs.¹

16 (cf: P.L.2004, c.132, s.78)

17
18 ¹26. Section 2 of P.L.1995, c.130 (C.3B:30-2) is amended to read
19 as follows:

20 2. As used in the act:

21 "Beneficiary form" means a registration of a security which
22 indicates the present owner of the security and the intention of the
23 owner regarding the person who will become the owner of the security
24 upon the death of the owner.

25 "Devisee" means any person designated in a will to receive a
26 disposition of real or personal property.

27 "Heirs" means those persons, including the surviving spouse or
28 domestic partner, who are entitled under the statutes of intestate
29 succession to the property of a decedent.

30 "Person" means an individual, a corporation, an organization or
31 other legal entity.

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

36 "Property" includes both real and personal property or any interest
37 therein and means anything that may be the subject of ownership.

38 "Register" including its derivatives, means to issue a certificate
39 showing the ownership of a certificated security or, in the case of an
40 uncertificated security, to initiate or transfer an account showing
41 ownership of securities.

42 "Registering entity" means a person who originates or transfers a
43 security title by registration, and includes a broker maintaining security
44 accounts for customers and a transfer agent or other person acting for
45 or as an issuer of securities.

46 "Security" means a share, participation, or other interest in

1 property, in a business, or in an obligation of an enterprise or other
2 issuer, and includes a certificated security, an uncertificated security,
3 and a security account.

4 "Security account" means: a reinvestment account associated with
5 a security, a securities account with a broker, a cash balance in a
6 brokerage account, cash, interest, earnings, or dividends earned or
7 declared on a security in an account, a reinvestment account, or a
8 brokerage account, whether or not credited to the account before the
9 owner's death; or a cash balance or other property held for or due to
10 the owner of a security as a replacement for or product of an account
11 security, whether or not credited to the account before the owner's
12 death.

13 "State" includes any state of the United States, the District of
14 Columbia, the Commonwealth of Puerto Rico, and any territory or
15 possession subject to the legislative authority of the United States.¹
16 (cf: P.L.1995,c.130,s.2)

17

18 ¹27. N.J.S.3A:25-12 is amended to read as follows:

19 3A:25-12. When a portion of the proceeds of real estate sold by
20 judgment of the Superior Court to satisfy debts of a decedent is
21 invested for the benefit of the surviving spouse or domestic partner
22 during his or her lifetime, the court directing the sale, shall, upon the
23 death of the life beneficiary, order the portion so invested to be
24 distributed to the heirs or devisees of the person whose real estate was
25 so sold in accordance with the law of descent or the will of the
26 testator, as the case may be, unless the amount realized from the sale
27 of said real estate remaining after the investment of said portion for
28 the benefit of the surviving spouse was insufficient to pay the debts of
29 the decedent as proved and allowed in the proceedings in which said
30 judgment to sell was made and, in such case, the court shall direct the
31 payment of the balance of such debts out of said principal sum so
32 invested, so far as it shall be adequate for that purpose, in pro rata
33 shares according to the amount of such debts so proved and allowed
34 and shall direct distribution of any balance of said principal sum,
35 remaining after the payment of said debts and interest, among the said
36 heirs and devisees as aforesaid. However, that if any creditor, his
37 personal representative or successor in interest, neglects for six years
38 after the death of such surviving spouse to claim any balance upon his
39 claim so proved and allowed as aforesaid, the share of said principal
40 sum which would have been paid to such creditor hereunder, shall be
41 distributed, by order of the court, among the said heirs and devisees
42 as aforesaid.¹

43 (cf: P.L.1991, c.91, s.148)

44

45 ¹28. Section 1 of P.L.1979, c.484 (C.3A:25-39) is amended to read
46 as follows:

1 1. As used in this act:

2 a. A "present interest" is one to take effect in immediate
3 possession, use or enjoyment without the intervention of a preceding
4 estate or interest or without being dependent upon the happening of
5 any event or thing.

6 b. A "future interest" is one to take effect in possession, use or
7 enjoyment dependent upon the termination of an intervening estate or
8 interest or the happening of any event or thing.

9 c. An "heir" means a person, including the surviving spouse or
10 domestic partner, entitled under the statutes of intestate succession to
11 the property of a decedent.

12 d. A "devisee" means any person designated in a will to receive
13 a devise, but does not mean a trustee or trust designated in a will to
14 receive a devise.

15 e. A "devise," when used as a noun, means a testamentary
16 disposition of real or personal property and when used as a verb,
17 means to dispose of real or personal property by will.¹

18 (cf: P.L.1979, c. 484, s. 1)

19

20 ¹[1.]29.¹ Section 22 of P.L.2003, c.261 (C.45:27-22) is amended
21 to read as follows:

22 22. a. If a decedent, in a will as defined in N.J.S.3B:1-2, appoints
23 a person to control the funeral and disposition of the human remains,
24 the funeral and disposition shall be in accordance with the instructions
25 of the person so appointed. A person so appointed shall not have to
26 be executor of the will. The funeral and disposition may occur prior
27 to probate of the will, in accordance with [N.J.S.3B:10-21]
28 ¹N.J.S.3B:10-21 and¹ section 40 of P.L.2003, c.261 (C.3B:10-21.1).
29 If the decedent has not left a will appointing a person to control the
30 funeral and disposition of the remains, the right to control the funeral
31 and disposition of the human remains shall be in the following order,
32 unless other directions have been given by a court of competent
33 jurisdiction:

34 (1) The surviving spouse of the decedent or the surviving domestic
35 partner.

36 (2) A majority of the surviving adult children of the decedent.

37 (3) The surviving parent or parents of the decedent.

38 (4) A majority of the brothers and sisters of the decedent.

39 (5) Other next of kin of the decedent according to the degree of
40 consanguinity.

41 (6) If there are no known living relatives, a cemetery may rely on
42 the written authorization of any other person acting on behalf of the
43 decedent.

44 For purposes of this subsection "domestic partner" means ¹[a
45 person who is in a relationship that satisfies the definition of]¹ a
46 domestic ¹[partnership as set forth in] partner as defined in section 3

1 of¹ P.L.2003, c.246 ¹[(C.26:8A-1 et seq.)] (C.26:8A-3)¹ .

2 b. A cemetery may permit the disposition of human remains on the
3 authorization of a funeral director handling arrangements for the
4 decedent, or on the written authorization of a person who claims to be,
5 and is believed to be, a person who has the right to control the
6 disposition. The cemetery shall not be liable for disposition pursuant
7 to this authorization unless it had reasonable notice that the person did
8 not have the right to control the disposition.

9 c. A cemetery shall not bury human remains of more than one
10 person in a grave unless:

11 (1) directions have been given for the burials in accordance with
12 this section on behalf of all persons so buried; or

13 (2) the rights to be buried in the grave were sold by the cemetery
14 with explicit provision allowing separate sales of rights to burial at
15 different depths in the grave.

16 d. A person who signs an authorization for the funeral and
17 disposition of human remains warrants the truth of the facts stated, the
18 identity of the person whose remains are disposed and the authority to
19 order the disposition. The person shall be liable for damages caused
20 by a false statement or breach of warranty. A cemetery or funeral
21 director shall not be liable for disposition in accordance with the
22 authorization unless it had reasonable notice that the representations
23 were untrue or that the person lacked the right to control the
24 disposition.

25 e. An action against a cemetery company relating to the disposition
26 of human remains left in its temporary custody may not be brought
27 more than one year from the date of delivery of the remains to the
28 cemetery company unless otherwise provided by a written contract.
29 (cf: P.L.2003, c.261, s.22)

30

31 ¹[2.] 30.¹ This act shall take effect immediately.

32

33

34

35

36 Provides that surviving domestic partner would have the same
37 intestacy rights as a surviving spouse and would have authority to
38 make funeral arrangements.

SENATE, No. 2083

STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED NOVEMBER 15, 2004

Sponsored by:

Senator JOHN H. ADLER

District 6 (Camden)

Senator NIA H. GILL

District 34 (Essex and Passaic)

Co-Sponsored by:

Senator Gormley

SYNOPSIS

Provides that surviving domestic partner shall have same rights as surviving spouse with respect to decedent's funeral.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/2/2005)

1 AN ACT concerning funerals and the disposition of human remains and
2 amending P.L.2003, c.261.

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

6
7 1. Section 22 of P.L.2003, c.261 (C.45:27-22) is amended to read
8 as follows:

9 22. a. If a decedent, in a will as defined in N.J.S.3B:1-2, appoints
10 a person to control the funeral and disposition of the human remains,
11 the funeral and disposition shall be in accordance with the instructions
12 of the person so appointed. A person so appointed shall not have to
13 be executor of the will. The funeral and disposition may occur prior
14 to probate of the will, in accordance with **[N.J.S.3B:10-21]** section 40
15 of P.L.2003, c.261 (C.3B:10-21.1). If the decedent has not left a will
16 appointing a person to control the funeral and disposition of the
17 remains, the right to control the funeral and disposition of the human
18 remains shall be in the following order, unless other directions have
19 been given by a court of competent jurisdiction:

20 (1) The surviving spouse of the decedent or the surviving domestic
21 partner.

22 (2) A majority of the surviving adult children of the decedent.

23 (3) The surviving parent or parents of the decedent.

24 (4) A majority of the brothers and sisters of the decedent.

25 (5) Other next of kin of the decedent according to the degree of
26 consanguinity.

27 (6) If there are no known living relatives, a cemetery may rely on
28 the written authorization of any other person acting on behalf of the
29 decedent.

30 For purposes of this subsection "domestic partner" means a person
31 who is in a relationship that satisfies the definition of a domestic
32 partnership as set forth in P.L.2003, c.246 (C.26:8A-1 et seq.).

33 b. A cemetery may permit the disposition of human remains on the
34 authorization of a funeral director handling arrangements for the
35 decedent, or on the written authorization of a person who claims to be,
36 and is believed to be, a person who has the right to control the
37 disposition. The cemetery shall not be liable for disposition pursuant
38 to this authorization unless it had reasonable notice that the person did
39 not have the right to control the disposition.

40 c. A cemetery shall not bury human remains of more than one
41 person in a grave unless:

42 (1) directions have been given for the burials in accordance with
43 this section on behalf of all persons so buried; 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 (2) the rights to be buried in the grave were sold by the cemetery
2 with explicit provision allowing separate sales of rights to burial at
3 different depths in the grave.

4 d. A person who signs an authorization for the funeral and
5 disposition of human remains warrants the truth of the facts stated, the
6 identity of the person whose remains are disposed and the authority to
7 order the disposition. The person shall be liable for damages caused
8 by a false statement or breach of warranty. A cemetery or funeral
9 director shall not be liable for disposition in accordance with the
10 authorization unless it had reasonable notice that the representations
11 were untrue or that the person lacked the right to control the
12 disposition.

13 e. An action against a cemetery company relating to the disposition
14 of human remains left in its temporary custody may not be brought
15 more than one year from the date of delivery of the remains to the
16 cemetery company unless otherwise provided by a written contract.
17 (cf: P.L.2003, c.261, s.22)

18

19 2. This act shall take effect immediately.

20

21

22 STATEMENT

23

24 This bill amends the "New Jersey Cemetery Act, 2003" to provide
25 that a surviving domestic partner, as defined in the "Domestic
26 Partnership Act," shall have the same rights as a surviving spouse with
27 respect to the decedent's funeral and the disposition of the decedent's
28 remains if the decedent has not left a will.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 2083

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 1, 2005

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 2083.

This bill as introduced amended the "New Jersey Cemetery Act, 2003" to provide that a surviving domestic partner, as defined in the "Domestic Partnership Act," shall have the same rights as a surviving spouse with respect to the decedent's funeral and the disposition of the decedent's remains if the decedent has not left a will.

The committee amendments include changes to various sections of Title 3B, the Probate Code, to provide that a surviving domestic partner would have the same rights concerning inheritance as a surviving spouse if the decedent has not left a will. The committee amendments include a definition generally of "domestic partner" for Title 3B and include "domestic partner" in the definition of "heir." Various references to "surviving spouse" would be amended to include "or domestic partner" in such sections as those concerning intestate shares of heirs; elective share; the definition of "augmented estate;" granting of letters of administration; and entitlement to assets without administration.

The committee also amended the original section of the bill, N.J.S.A. 45:27-22, to include a reference to N.J.S.A. 3B:10-21 which provides generally that prior to appointment, a person named executor in a will may carry out written instructions of the decedent relating to his body, funeral and burial arrangements. This would be in addition to N.J.S.A. 3B:10-21.1 which provides that prior to probate, a decedent's appointment of a person in a will to control the funeral and disposition of human remains may be carried out in accordance with section 22 of P.L.2003, c.261 (C.45:27-22).

ASSEMBLY, No. 3429

STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED OCTOBER 21, 2004

Sponsored by:

Assemblywoman LORETTA WEINBERG

District 37 (Bergen)

Assemblyman REED GUSCIORA

District 15 (Mercer)

Assemblyman NEIL M. COHEN

District 20 (Union)

SYNOPSIS

Provides that surviving domestic partner shall have same rights as surviving spouse with respect to decedent's funeral.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/25/2005)

1 AN ACT concerning funerals and the disposition of human remains and
2 amending P.L.2003, c.261.

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

6
7 1. Section 22 of P.L.2003, c.261 (C.45:27-22) is amended to read
8 as follows:

9 22. a. If a decedent, in a will as defined in N.J.S.3B:1-2, appoints
10 a person to control the funeral and disposition of the human remains,
11 the funeral and disposition shall be in accordance with the instructions
12 of the person so appointed. A person so appointed shall not have to
13 be executor of the will. The funeral and disposition may occur prior
14 to probate of the will, in accordance with **[N.J.S.3B:10-21]** section 40
15 of P.L.2003, c.261 (C.3B:10-21.1). If the decedent has not left a will
16 appointing a person to control the funeral and disposition of the
17 remains, the right to control the funeral and disposition of the human
18 remains shall be in the following order, unless other directions have
19 been given by a court of competent jurisdiction:

20 (1) The surviving spouse of the decedent or the surviving domestic
21 partner.

22 (2) A majority of the surviving adult children of the decedent.

23 (3) The surviving parent or parents of the decedent.

24 (4) A majority of the brothers and sisters of the decedent.

25 (5) Other next of kin of the decedent according to the degree of
26 consanguinity.

27 (6) If there are no known living relatives, a cemetery may rely on
28 the written authorization of any other person acting on behalf of the
29 decedent.

30 For purposes of this subsection "domestic partner" means a person
31 who is in a relationship that satisfies the definition of a domestic
32 partnership as set forth in P.L.2003, c.246 (C.26:8A-1 et seq.).

33 b. A cemetery may permit the disposition of human remains on the
34 authorization of a funeral director handling arrangements for the
35 decedent, or on the written authorization of a person who claims to be,
36 and is believed to be, a person who has the right to control the
37 disposition. The cemetery shall not be liable for disposition pursuant
38 to this authorization unless it had reasonable notice that the person did
39 not have the right to control the disposition.

40 c. A cemetery shall not bury human remains of more than one
41 person in a grave unless:

42 (1) directions have been given for the burials in accordance with
43 this section on behalf of all persons so buried; or

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 (2) the rights to be buried in the grave were sold by the cemetery
2 with explicit provision allowing separate sales of rights to burial at
3 different depths in the grave.

4 d. A person who signs an authorization for the funeral and
5 disposition of human remains warrants the truth of the facts stated, the
6 identity of the person whose remains are disposed and the authority to
7 order the disposition. The person shall be liable for damages caused
8 by a false statement or breach of warranty. A cemetery or funeral
9 director shall not be liable for disposition in accordance with the
10 authorization unless it had reasonable notice that the representations
11 were untrue or that the person lacked the right to control the
12 disposition.

13 e. An action against a cemetery company relating to the disposition
14 of human remains left in its temporary custody may not be brought
15 more than one year from the date of delivery of the remains to the
16 cemetery company unless otherwise provided by a written contract.
17 (cf: P.L.2003, c.261, s.22)

18

19 2. This act shall take effect immediately.

20

21

22

STATEMENT

23

24 This bill amends the "New Jersey Cemetery Act, 2003" to provide
25 that a surviving domestic partner, as defined in the "Domestic
26 Partnership Act," shall have the same rights as a surviving spouse with
27 respect to the decedent's funeral and the disposition of the decedent's
28 remains if the decedent has not left a will.

ASSEMBLY REGULATED PROFESSIONS AND
INDEPENDENT AUTHORITIES COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3429

STATE OF NEW JERSEY

DATED: FEBRUARY 28, 2005

The Assembly Regulated Professions and Independent Authorities Committee reports favorably Assembly Bill No. 3429.

This bill amends the "New Jersey Cemetery Act, 2003" to provide that a surviving domestic partner, as defined in the "Domestic Partnership Act," shall have the same rights as a surviving spouse with respect to the decedent's funeral and the disposition of the decedent's remains if the decedent has not left a will.

STATEMENT TO
ASSEMBLY, No. 3429

with Assembly Floor Amendments
(Proposed By Assemblyman GUSCIORA)

ADOPTED: DECEMBER 12, 2005

This bill as introduced amended the "New Jersey Cemetery Act, 2003" to provide that a surviving domestic partner, as defined in the "Domestic Partnership Act," shall have the same rights as a surviving spouse with respect to the decedent's funeral and the disposition of the decedent's remains if the decedent has not left a will.

These floor amendments include changes to various sections of Title 3B, the Probate Code, to provide that a surviving domestic partner would have the same rights concerning inheritance as a surviving spouse if the decedent has not left a will. The amendments include a definition generally of "domestic partner" for Title 3B and include "domestic partner" in the definition of "heir." Various references to "surviving spouse" would be amended to include "or domestic partner" in such sections as those concerning intestate shares of heirs; elective share; the definition of "augmented estate"; granting of letters of administration; and entitlement to assets without administration.

These floor amendments also amend the original section of the bill, N.J.S.A. 45:27-22, to include a reference to N.J.S.A. 3B:10-21 which provides generally that prior to appointment, a person named executor in a will may carry out written instructions of the decedent relating to his body, funeral and burial arrangements. This would be in addition to N.J.S.A. 3B:10-21.1 which provides that prior to probate, a decedent's appointment of a person in a will to control the funeral and disposition of human remains may be carried out in accordance with section 22 of P.L.2003, c.261 (C.45:27-22).