

PUBLIC HEARING
before
ASSEMBLY JUDICIARY, LAW, PUBLIC SAFETY & DEFENSE
COMMITTEE

on

Assembly Bills 1185 and 1186

Held:

May 23, 1974

Counsel Chambers - City Hall
Newark, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblyman Eldridge Hawkins, Chairman
Assemblyman William J. Bate, Vice-Chairman
Assemblywoman Gertrude Berman
Assemblyman Richard James Codey
Assemblyman William O. Perkins
Assemblyman John A. Spizziri

Also:

Patricia L. Donath, Committee Aide

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ASSEMBLY, No. 1185

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 11, 1974

By Assemblymen BURSTEIN, BATE, BARBOUR, HAMILTON,
HYNES and BAER

Referred to Committee on Judiciary

AN ACT granting the surviving spouse of a decedent the right to an elective share of that decedent's estate and supplementing Title 3A of the New Jersey Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. a. If a married person dies domiciled in this State, the surviv-
2 ing spouse has a right of election to take an elective share of
3 one-third of the augmented estate under the limitations and condi-
4 tions hereinafter stated, provided that at the time of death the
5 decedent and the surviving spouse had not been living separate and
6 apart in different habitations and had not ceased to cohabit as man
7 and wife as the result of judgment of divorce from bed and board
8 or for a period of at least 18 consecutive months immediately pre-
9 ceding decedent's death under circumstances which would have
10 given rise to a cause of action for divorce to decedent prior to his
11 death.

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

1 2. The "augmented estate" means the estate reduced by funeral
2 and administration expenses, and enforceable claims, to which is
3 added the sum of the following amounts:

4 a. The value of property transferred by the decedent at any time
5 during marriage, to or for the benefit of any person other than the
6 surviving spouse, to the extent that the decedent did not receive
7 adequate and full consideration in money or money's worth for the
8 transfer, if the transfer is of any of the following types:

9 (1) any transfer heretofore or hereafter made under which the

10 decedent retained at the time of his death the possession or enjoy-
11 ment of, or right to income from, the property;

12 (2) any transfer heretofore or hereafter made to the extent that
13 the decedent retained at the time of his death a power, either alone
14 or in conjunction with any other person, to revoke or to consume,
15 invade or dispose of the principal for his own benefit;

16 (3) any transfer heretofore or hereafter made whereby property
17 is held at the time of decedent's death by decedent and another with
18 right of survivorship;

19 (4) any transfer made within 2 years of death of the decedent to
20 the extent that the aggregate transfers to any one donee in either
21 of the years exceed \$3,000.00.

22 Any transfer is excluded if made with the written consent or
23 joinder of the surviving spouse. Property is valued as of the
24 decedent's death except that property given irrevocably to a donee
25 during lifetime of the decedent is valued as of the date the donee
26 came into possession or enjoyment if that occurs first. Nothing
27 herein shall cause to be included in the augmented estate any life
28 insurance, accident insurance, joint annuity, or pension payable to
29 a person other than the surviving spouse.

30 b. The value of property owned by the surviving spouse at the
31 decedent's death, plus the value of property transferred by the
32 spouse at any time during marriage to any person other than the
33 decedent which would have been includible in the spouse's aug-
34 mented estate if the surviving spouse had predeceased the decedent,
35 to the extent the owned or transferred property is driven from the
36 decedent by any means other than testate or intestate succession
37 without a full consideration in money or money's worth. For pur-
38 poses of this subsection:

39 (1) Property derived from the decedent includes, but is not
40 limited to, any beneficial interest of the surviving spouse in a trust
41 created by the decedent during his lifetime, any property appointed
42 to the spouse by the decedent's exercise of a general or special
43 power of appointment also exercisable in favor of others than the
44 spouse, any proceeds of insurance (including accidental death bene-
45 fits) on the life of the decedent attributable to premiums paid by
46 him, any lump sum immediately payable and the commuted value
47 of the proceeds of annuity contracts under which the decedent was
48 the primary annuitant attributable to premiums paid by him, the
49 commuted value of amounts payable after the decedent's death
50 under any public or private pension, disability compensation, death

52 system, by reason of service performed or disabilities incurred by
53 the decedent, the value of the share of the surviving spouse result-
54 ing from rights in community property acquired in any other state
55 formerly owned with the decedent and the value of any rights of
56 dower and curtesy. Premiums paid by the decedent's employer, his
57 partner, a partnership of which he was a member, or his creditors,
58 are deemed to have been paid by the decedent.

59 (2) Property owned by the spouse at the decedent's death is
60 valued as of the date of death. Property transferred by the spouse
61 is valued at the time the transfer became irrevocable, or at the
62 decedent's death, whichever occurred first. Income earned by in-
63 cluded property prior to the decedent's death is not treated as prop-
64 erty derived from the decedent.

65 (3) Property owned by the surviving spouse as of the decedent's
66 death, or previously transferred by the surviving spouse, is pre-
67 sumed to have been derived from the decedent except to the extent
68 that the surviving spouse establishes that it was derived from
69 another source.

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

1 4. The right of election of a surviving spouse and the rights of
2 the surviving spouse may be waived, wholly or partially, before or
3 after marriage, by a written contract, agreement or waiver signed
4 by the party waiving after fair disclosure. Unless it provides to the
5 contrary, a waiver of "all rights" (or equivalent language) in the
6 property or estate of a present or prospective spouse or a complete
7 property settlement entered into after or in anticipation of separa-
8 tion or divorce is a waiver of all rights to an elective share by each
9 spouse in the property of the other and a renunciation by each of
10 all benefits which would otherwise pass to him from the other by
11 intestate succession or by virtue of the provisions of any will
12 executed before the waiver or property settlement.

1 5. a. The surviving spouse may elect to take his elective share in
2 the augmented net estate by filing in the Superior Court or in the
3 County Court of the county in which the personal representative
4 was appointed a complaint in an action applying for the elective

6 sentative. The court may extend the time for election as it sees fit
7 for cause shown by the surviving spouse before the time for election
8 has expired.

9 b. The surviving spouse shall give notice of the time and place
10 set for hearing to persons interested in the estate and to the dis-
11 tributees and recipients of portions of the augmented net estate
12 whose interests will be adversely affected by the taking of the elec-
13 tive share.

14 c. The surviving spouse may withdraw his demand for an elective
15 share at any time before entry of a final determination by the court.

16 d. After notice and hearing, the court shall determine the amount
17 of the elective share and shall order its payment from the assets
18 of the augmented net estate or by contribution as appears ap-
19 propriate under section 7 of this act. If it appears that a fund or
20 property included in the augmented net estate has not come into
21 the possession of the personal representative, or has been dis-
22 tributed by the personal representative, the court nevertheless
23 shall fix the liability of any person who has any interest in the
24 fund or property or who has possession thereof, whether as trustee
25 or otherwise. The proceeding may be maintained against fewer
26 than all persons against whom relief could be sought, but no person
27 is subject to contribution in any greater amount than he would
28 have been if relief had been secured against all persons subject to
29 contribution.

30 e. The order or judgment of the court may be enforced as neces-
31 sary in an action for contribution or payment in other courts of
32 this State or other jurisdictions.

1 6. The amount of the surviving spouse's elective share shall be
2 reduced by the value of any property, or interest therein, devised to
3 the surviving spouse by the decedent's will, notwithstanding that
4 the same or any part thereof is renounced by the surviving spouse,
5 or passing to the surviving spouse by succession on decedent's death
6 other than by decedent's will.

1 7. a. In the action for an elective share, property which is part
2 of the augmented estate is applied first to satisfy the elective share
3 and to reduce the amount due from other recipients of portions of
4 the augmented estate if the property:

5 (1) is devised to the surviving spouse by decedent's will,
6 whether or not it has been renounced by the surviving spouse;

7 (2) passes or has passed to the surviving spouse by succession
8 on decedent's death other than by decedent's will; or

10 b. Remaining property of the augmented estate is so applied that
 11 liability for the balance of the elective share of the surviving spouse
 12 is equitably apportioned among the recipients of the augmented
 13 estate in proportion to the value of their interests therein.

14 c. Only original transferees from, or appointees of, the decedent
 15 and their donees, to the extent the donees have the property or its
 16 proceeds, are subject to the contribution to make up the elective
 17 share of the surviving spouse. A person liable to contribution
 18 may choose to give up the property transferred to him or to pay its
 19 value as of the time it is considered in computing the augmented
 20 estate.

1 8. A surviving spouse who intentionally kills the decedent is not
 2 entitled to any benefits under this act.

1 9. This act shall take effect 1 year after its enactment.

STATEMENT

This is one of a series of bills adopted from the Proposed Uniform Probate Code which has been approved by the National Conference of Commissioners on Uniform State Laws and by the American Bar Association. The text of this bill was previously introduced during the 1972-73 session of the Legislature, and incorporates some changes which have been found to be desirable as a result of a public hearing held by the Senate Judiciary Committee and further study given by the Division of Law Revision of the Legislative Services Agency.

This bill, if adopted, will introduce a new concept into New Jersey law. It provides for an "elective share" to a decedent's surviving spouse so that a surviving spouse cannot be disinherited without his or her consent. Under existing New Jersey law, a decedent may deplete his entire estate during lifetime by gift or otherwise, so that at the time of death his assets or estate have been either completely or considerably depreciated. The effect is to disinherit the surviving spouse to the extent of such depreciation and can result in complete disinheritance. The object of this bill is to overcome these deficiencies in the existing law.

The right of the surviving spouse to an elective share is governed by the law of the decedent's domicile at the time of his death. If the decedent dies domiciled in this State, the surviving spouse will not be entitled to take an elective share if the parties have been living separate and apart in different habitations and ceased to cohabit as man and wife as the result of a judgment of divorce from

immediately preceding the decedent's death under circumstances which would have given rise to a cause of action for a divorce to the decedent prior to his death. This is similar to a provision in the Pennsylvania law which provides for a forfeiture of the right of election where the parties have been living separate and apart as therein provided.

As provided in the bill, the elective share given to the surviving spouse is one-third of the decedent's "augmented estate." The "augmented estate" is defined as the decedent's estate reduced by expenses and increased by: (1) property transferred by the decedent during marriage in which he retained any interest, unless the spouse consented or joined in the transfer; (2) property transferred by the decedent to one donee in excess of \$3,000.00 in either of the 2 years before death unless the spouse consented or joined in the transfer; and (3) property owned by the surviving spouse which was derived from the decedent by means other than testate or intestate succession and the value of any such property transferred by the surviving spouse at any time during marriage to any person other than the decedent. Such property includes life insurance proceeds, any inter vivos trust created by the decedent, any property appointed to the surviving spouse by the decedent's execution of a power of appointment, pension or retirement payments exclusive of those under the Federal social security system, and the value of any rights of dower and curtesy.

The bill further provides for the manner in which property shall be valued.

The purpose of the "augmented estate" is twofold: to prevent the decedent from transferring property to others so as to defeat the right of the surviving spouse, and, to prevent the surviving spouse from electing a share of the decedent's estate when the spouse has already received a fair share of the decedent's wealth during his lifetime or at death from other assets.

The right of a surviving spouse to take an elective share must be exercised during his lifetime, and the right to an election must be made within 6 months after the appointment of a personal representative. The court may extend the time for election before the time for election has expired.

The right of election of a surviving spouse may be waived, wholly or partially, before or after marriage. Unless it appears to the contrary, a waiver of "all rights" or a complete property settlement entered into or in anticipation of a separation or divorce is a waiver

which would otherwise pass by intestate succession or a will executed before the waiver or property settlement.

The bill also provides the manner for electing and determining the spouse's share. If necessary, the court may require apportionment among the recipients of property required to be included in the augmented estate to make up the elective share to the extent that they still have the property given to them or its proceeds.

The bill further provides that a surviving spouse who intentionally kills the decedent is not entitled to any benefits under this act.

which would otherwise pass by intestate succession or a will created before the date of property settlement.

The bill also provides the manner for showing and determining the gross estate. It requires the court may require appraisement among the recipients of property to be included in the augmented estate to make up the estate share to the extent that they still have the property owned to them or its proceeds.

The bill further provides that a surviving spouse who inherits any part of the decedent is not entitled to any fee under this act.

ASSEMBLY, No. 1186

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 11, 1974

By Assemblymen BURSTEIN, BATE, BARBOUR, PERSKIE,
HYNES and BAER

Referred to Committee on Judiciary

AN ACT concerning decedents' estates, supplementing Title 3A of the New Jersey Statutes, amending N. J. S. 3A:3-18, 3A:3-27, 3A:3-28, 3A:5-1, 3A:26-1 and 3A:40-1, and repealing 3A:1-1, 3A:3-1 through 3A:3-3, 3A:3-6 through 3A:3-11, 3A:3-13, 3A:3-14, 3A:3-22, 3A:4-1 through 3A:4-7, 3A:4-9 through 3A:4-11, 3A:12-7 through 3A:12-9, 3A:13-1, 3A:24-2, 3A:25-1 and 3A:25-8 and revising parts of the statutory law.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

A. DEFINITIONS

1 1. As used in this act, unless restricted by the subject or con-
2 text:

3 a. "Administrator" includes general administrators of an in-
4 testate and unless restricted by the subject or context, administra-
5 tors with the will annexed, substituted administrators, substituted
6 administrators with the will annexed, temporary administrators
7 and administrators pendente lite.

8 b. "Child" means any individual, including a natural or adopted
9 child, entitled to take by intestate succession from the parent whose
10 relationship is involved and excludes any person who is only a
11 stepchild, a foster child, a grandchild or any more remote de-
12 scendant.

13 c. "Claims" include liabilities whether arising in contract, or
14 in tort or otherwise, and liabilities of the estate which arise at or
15 after the death of the decedent, including funeral expenses and
16 expenses of administration, but does not include estate or inherit-

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

17 ance taxes, demands or disputes regarding title to specific assets
18 alleged to be included in the estate.

19 d. "Cofiduciary" means each of two or more fiduciaries jointly
20 serving in a fiduciary capacity.

21 e. "Devise," when used as a noun, means a testamentary dispo-
22 sition of real or personal property and when used as a verb, means
23 to dispose of real or personal property by will.

24 f. "Devisee" means any person designated in a will to receive
25 a devise. In the case of a devise to an existing trust or trustee, or
26 to a trustee on trust described by will, the trust or trustee is the
27 devisee and the beneficiaries are not devisees.

28 g. "Distributee" means any person who has received property
29 of a decedent from his personal representative other than as a
30 creditor or purchaser. A trustee is a distributee only to the extent
31 of a distributed asset or increment thereto remaining in his hands.
32 A beneficiary of a trust to whom the trustee has distributed prop-
33 erty received from a personal representative is a distributee of the
34 personal representative.

35 h. "Domiciliary foreign fiduciary" means any fiduciary who
36 has received letters, or has been appointed, or is authorized to act,
37 as a fiduciary, in the jurisdiction in which the decedent was
38 domiciled at the time of his death, in which the ward is domiciled
39 or in which is located the principal place of the administration
40 of a trust.

41 i. "Estate" means all of the property of the decedent, trust or
42 other person whose affairs are subject to this act as the property
43 is originally constituted and as it exists from time to time during
44 administration.

45 j. "Fiduciary" includes executors, general administrators of
46 an intestate, administrators with the will annexed, substituted ad-
47 ministrators, substituted administrators with the will annexed,
48 guardians, substituted guardians, trustees, substituted trustees
49 and, unless restricted by the subject or context, temporary admin-
50 istrators, administrators pendente lite, administrators ad prose-
50A quendum, administrators ad litem and other limited fiduciaries.

51 k. "Heirs" means those persons, including the surviving spouse,
52 who are entitled under the statutes of intestate succession to the
53 property of a decedent.

54 l. "Issue" of a person includes all of his lineal descendants,
55 natural or adopted, of all generations, with the relationship of
56 parent and child at each generation being determined by the defi-
57 nition of child and parent.

58 m. "Local administration" means administration by a personal
59 representative appointed in this State.

60 n. "Local fiduciary" means any fiduciary who has received let-
61 ters in this State and excludes foreign fiduciaries who acquire the
62 power of local fiduciary pursuant to this act.

63 o. "Nonresident decedent" means a decedent who was domiciled
64 in another jurisdiction at the time of his death.

65 p. "Parent" means any person entitled to take or would be
66 entitled to take if the child, natural or adopted, died without a
67 will, by intestate succession from the child whose relationship is
68 in question and excludes any person who is a stepparent, foster
69 parent or grandparent.

70 q. "Personal representative" includes executor, administrator,
71 successor personal representative, special administrator, and per-
72 sons who perform substantially the same function under the law
73 governing their status. "General personal representative" ex-
74 cludes special administrator.

75 r. "Resident creditor" means a person domiciled in, or doing
76 business in this State, who is, or could be, a claimant against an
77 estate.

78 s. "Security" includes any note, stock, treasury stock, bond,
79 mortgage, financing statement, debenture, evidence of indebtedness,
80 certificate of interest or participation in an oil, gas or mining title
81 or lease or in payments out of production under such a title or
82 lease, collateral trust certificate, transferable share, voting trust
83 certificate or, in general, any interest or instrument commonly
84 known as a security or as a security interest or any certificate of
85 interest or participation, any temporary or interim certificate,
86 receipt or certificate of deposit for, or any warrant or right to
87 subscribe to or purchase, any of the foregoing.

88 t. "Successor personal representative" means a personal repre-
89 sentative, other than a special administrator, who is appointed to
90 succeed a previously appointed personal representative.

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

94 v. "Testamentary trustee" means a trustee designated by will
95 or appointed to exercise a trust created by will.

96 w. "Will" means the last will and testament of the testator and
97 includes any codicil.

B. DEVOLUTION OF ESTATE AT DEATH

1 2. Upon the death of a person, his real and personal property
2 devolves to the persons to whom it is devised by his last will or to
3 those indicated as substitutes for them in cases involving lapse,
4 renunciation, or other circumstances affecting the devolution of
5 testate estate, or in the absence of testamentary disposition, to his
6 heirs, or to those indicated as substitutes for them in cases in-
7 volving renunciation or other circumstances affecting devolution of
8 intestate estates, subject to rights of creditors and to adminis-
9 tration.

C. WILLS

1. REQUISITES, EXECUTION AND CONTENT

1 3. Any person 18 or more years of age who is of sound mind may
2 make a will and may appoint a testamentary guardian.

1 4. Except as provided in section 5, every will shall be in writing,
2 signed by the testator or in his name by some other person in his
3 presence and at his direction, and shall be signed by at least two
4 persons each of whom witnessed either the signing or the testa-
5 tor's acknowledgment of the signature or of the will.

1 5. A will which does not comply with section 4 is valid as a
2 holographic will, whether or not witnessed, if the signature and
3 material provisions are in the handwriting of the testator.

1 6. An attested will may at the time of its execution or at any
2 subsequeunt date be made self-proved, by the acknowledgment
3 thereof by the testator and the affidavits of the witnesses, each
4 made before any officer authorized pursuant to R. S. 46:14-6,
5 46:14-7 or 46:14-8 to take acknowledgments and proofs of instru-
6 ments entitled to be recorded under the laws of this State, and
7 evidenced by the officer's certificate, under official seal, attached or
8 annexed to the will in form and content substantially as follows:

9 STATE OF
10 COUNTY OF

11 We,, and
12 the testator and the witnesses, respectively, whose names are
13 signed to the attached (or foregoing) instrument, being first duly
14 sworn, do hereby declare to the undersigned authority that the
15 testator signed and executed the instrument as his last will and that
16 he had signed willingly (or directed another to sign for him), and
17 that he executed it as his free and voluntary act for the purposes
18 therein expressed; and that each of the witnesses, in the presence
19 and hearing of the testator, signed the will as witness and that to

21 years of age, of sound mind and under no constraint or undue
22 influence.

23
Testator

24
Witness

25
Witness

26 Subscribed, sworn to and acknowledged before me by
27, the testator, and subscribed and sworn to
28 before me by and,
29 witnesses, this day of,
30 (SEAL) (Signed)

31
(Official capacity of officer)

(If a notary public or other officer whose commission has an
expiration date, state the date commission expires.)

1 7. a. Any person generally competent to be a witness may act as
2 a witness to a will and to testify concerning the execution thereof.

3 b. A will or any provision thereof is not invalid because the will
4 is signed by an interested witness.

1 8. A written will is validly executed if executed in compliance
2 with sections 4 or 5 or its execution was in compliance with the
3 law of the place where it was executed, or with the law of the
4 place where at the time of execution or at the time of death the
5 testator was domiciled, had a place of abode or was a national.

1 9. Any writing in existence when a will is executed may be incor-
2 porated by reference if the language of the will manifests this intent
3 and describes the writing sufficiently to permit its identification.

1 10. A will may refer to a written statement or list to dispose of
2 items of tangible personal property not otherwise specifically dis-
3 posed of by the will, other than money, evidences of indebtedness,
4 documents of title, and securities and property used in trade or
5 business. To be admissible under this section as evidence of the
6 intended disposition, the writing must be either in the handwriting
7 of the testator or be signed by him and must describe the items
8 and the devisees with reasonable certainty. The writing referred
9 to may be one in existence at the time of the testator's death, may
10 be prepared before or after the execution of the will, may be altered
11 by the testator after its preparation and may be a writing which
12 has no significance apart from its effect upon the dispositions made
13 by the will.

1 11. A will may dispose of property by reference to acts and
 2 events which have significance apart from their effect upon the
 3 dispositions made by the will, whether they occur before or after the
 4 execution of the will or before or after the testator's death. The
 5 execution or revocation of a will of another person is such an event.

2. REVOCATION

1 12. A will or any part thereof is revoked:

2 a. By a subsequent will which revokes the former will or part
 3 expressly or by inconsistency; or

4 b. By being burned, torn, canceled, obliterated, or destroyed
 5 with the intent and for the purpose of revoking by the testator or
 6 by another person in his presence and by his direction.

1 13. If after having executed a will the testator is divorced or his
 2 marriage annulled, the divorce or annulment revokes any disposi-
 3 tion or appointment of property made by the will to the former
 4 spouse, any provision conferring a general or special power of
 5 appointment on the former spouse, and any nomination of the
 6 former spouse as executor, trustee, or guardian, unless the will
 7 expressly provides otherwise. Property prevented from passing
 8 to a former spouse because of revocation by divorce or annulment
 9 passes as if the former spouse failed to survive the decedent, and
 10 other provisions conferring some power or office on the former
 11 spouse are interpreted as if the spouse failed to survive the
 12 decedent. If provisions are revoked solely by this section, they are
 13 revived by testator's remarriage to the former spouse. A decree
 14 of separation which does not terminate the status of husband and
 15 wife is not a divorce for purposes of this section. No change of
 16 circumstances other than as described in this section revokes a will.

1 14. A revoked will or codicil shall not be revived except by re-
 2 execution or by a duly executed codicil expressing an intention to
 3 revive it.

3. PROBATE AND RECORD

1 15. a. A will executed as provided in section 4 may be admitted
 2 to probate in common form upon the proof of one of the attesting
 3 witnesses or by some other person having knowledge of the facts
 4 relating to the proper execution of the will by the testator and its
 5 attestation by one of the witnesses.

6 b. A will executed and acknowledged in the manner provided
 7 in section 6 may be admitted to probate in common form without
 8 further affidavit, deposition or proof.

9 c. A holographic will may be admitted to probate only in solemn

10 form in the manner provided by the Rules Governing the Courts
11 of the State of New Jersey.

1 16. To be effective to prove the transfer of any property or to
2 nominate an executor, a will must be admitted to probate.

1 17. N. J. S. 3A:3-18 is amended to read as follows:

2 3A:3-18. The will of any person resident within any county of
3 this State at his death may be admitted to probate in the surro-
4 gate's court of the county or in the superior court. If the will of
5 any person resident within the State at his death is probated with-
6 out the State, it shall be without effect unless or until probate is
7 granted within the State. **【The failure to probate a will shall not**
8 **prevent the passage of title to real estate under the will.】**

1 18. N. J. S. 3A:3-27 is amended to read as follows:

2 3A:3-27. When the will of any person not resident in this State
3 at his death shall have been admitted to probate in any state of
4 the United States or other jurisdiction or country, the surrogate's
5 court of any county may admit it to probate for any purpose and
6 issue letters thereon, provided the will **【is executed in accordance**
7 **with the laws of this State】** *is valid under the laws of this State.*

1 19. N. J. S. 3A:3-28 is amended to read as follows:

2 3A:3-28. A copy of any will or of the record of any will of a de-
3 cedent not resident in this State at his death, admitted to probate
4 in any state of the United States or other jurisdiction or country,
5 and of the certificate or judgment for probate, and if title to real
6 estate of the decedent depends on the conveyance by an executor,
7 administrator with the will annexed, substituted administrator with
8 the will annexed, trustee or substituted trustee, of the record of
9 the grant of letters testamentary thereon, or of administration, or
10 substitutionary administration, with the will annexed, or of a copy
11 of such letters, attested and certified pursuant to the rules of the
12 Supreme Court or, if it be a record of any state of the United
13 States, exemplified and authenticated according to the Act of Con-
14 gress, heretofore or hereafter filed and recorded in the office of
15 the surrogate of any county in this State, shall have the same force
16 and effect in respect to all real estate whereof the testator died
17 seized, as if the will had been admitted to probate and the letters
18 aforesaid had been issued in this State, provided it appears either
19 from the deposition in the record or the attestation clause, or by
20 a deposition taken under a commission or otherwise, that the will
21 **【was executed in accordance with the laws of this State】** *is valid*
22 *under the laws of this State.*

24 by any executor, administrator with the will annexed, substituted
 25 administrator with the will annexed, trustee, substituted trustee,
 26 or the survivor or survivors of them, or by any devisee or persons
 27 claiming under such devisee shall be as valid as if such will had
 28 been admitted to probate and letters aforesaid had been issued in
 29 this State.

30 Certified copies of such will, deposition, judgment for probate
 31 and letters, or of the record thereof, shall be received in evidence
 32 in all the courts of this State.

1 20. If an issue as to the execution of a will arises in a contested
 2 probate action, the testimony of at least one of the attesting wit-
 3 nesses, if within the State, competent and able to testify, is re-
 4 quired. Other evidence is admissible as to the due execution of a
 5 will.

1 21. A final order of a court of another state admitting a will to
 2 probate or determining the validity or construction of a will made
 3 in a proceeding involving notice to and an opportunity for contest
 4 by all interested persons must be accepted as determinative by the
 5 courts of this State if it includes, or is based upon, a finding that
 6 the decedent was domiciled at his death in the state where the
 7 order was made.

4. CONTRACTUAL ARRANGEMENTS RELATING TO DEATH

1 22. A contract to make a will or devise, or not to revoke a will or
 2 devise, or to die intestate, if executed after the effective date of
 3 this act, can be established only by (1) provisions of a will stating
 4 material provisions of the contract; (2) an express reference in
 5 a will to a contract and extrinsic evidence proving the terms of the
 6 contract; or (3) a writing signed by the decedent evidencing the
 7 contract. The execution of a joint will or mutual wills does not
 8 create a presumption of a contract not to revoke the will or wills.

5. CONSTRUCTION

1 23. A devisee who does not survive the testator by 120 hours is
 2 treated as if he predeceased the testator, unless the will of decedent
 3 contains some language dealing explicitly with simultaneous deaths
 4 or deaths in a common disaster, or requiring that the devisee
 5 survive the testator or survive the testator for a stated period in
 6 order to take under the will. To the extent this section is incon-
 7 sistent with the Uniform Simultaneous Death Law, N. J. S.
 8 3A:5-1 et seq., the provision of this section shall apply.

1 24. The meaning and legal effect of a disposition in a will shall be
 2 determined by the local law of a particular state selected by the

4 contrary to the public policy of this State otherwise applicable to
 5 the disposition. The intention of a testator as expressed in his will
 6 controls the legal effect of his dispositions, and the rules of con-
 7 struction expressed in sections 25 through 35 of this act apply,
 8 unless the probable intention of the testator, as indicated by the
 9 will and relevant circumstances, is contrary.

1 25. A will is construed to pass all property which the testator
 2 owns at his death including property acquired after the execution
 3 of the will.

1 26. If a devisee who is a grandparent or a lineal descendant of a
 2 grandparent of the testator is dead at the time of the execution of
 3 the will, or fails to survive the testator, or is treated as if he
 4 predeceased the testator, the issue of the deceased devisee who
 5 survive the testator by 120 hours take in place of the deceased
 6 devisee and if they are all of the same degree of kinship to the
 7 devisee they take equally, but if of unequal degree then those of
 8 more remote degree take by representation. One who would have
 9 been a devisee under a class gift if he had survived the testator is
 10 treated as a devisee for purposes of this section whether his death
 11 occurred before or after the execution of the will.

1 27. Except as provided in section 26 of this act if a devise other
 2 than a residuary devise fails for any reason, it becomes a part of
 3 the residue.

1 28. When a residuary devise shall be made to two or more per-
 2 sons by the will of any testator, unless a contrary intention shall
 3 appear by the will, the share of any such residuary devisees dying
 4 before the testator and not saved from the lapse by section 26 of
 5 this act, or not capable of taking effect because of any other cir-
 6 cumstance or cause, shall go to and be vested in the remaining
 7 residuary devisees, if any there be, and if more than one, then to
 8 the remaining residuary devisees in proportion to their respective
 9 shares in said residue.

1 29. a. If the testator intended a specific devise of certain secu-
 2 rities rather than the equivalent value thereof, the specific devisee
 3 is entitled only to:

4 (1) as much of the devised securities as is a part of the estate at
 5 the time of the testator's death;

6 (2) any additional or other securities of the same entity owned
 7 by the testator by reason of action initiated by the entity and
 8 attributable to the securities devised excluding any acquired by
 9 exercise of purchase options;

10 (3) securities of another entity owned by the testator as a result

11 of a merger, consolidation, reorganization or other similar action
12 initiated by either entity and attributable to the specific devise; and
13 (4) any additional securities of the entity owned by the testator
14 as a result of a plan of reinvestment if it is a regulated investment
15 company and attributable to the specific devise.

16 b. Distributions prior to death with respect to a specifically
17 devised security not provided for in subsection a. are not part of the
18 specific devise.

1 30. If specifically devised property is sold by a guardian for a
2 testator, or if a condemnation award or insurance proceeds are paid
3 to a guardian for a testator as a result of condemnation, fire or
4 casualty, the specific devisee has the right to a general pecuniary
5 devise equal to the net sale price, the condemnation award, or the
6 insurance proceeds. This subsection does not apply if subsequent
7 to the sale, condemnation or casualty, the guardianship is ter-
8 minated and the testator survives by 1 year the judgment ter-
9 minating the guardianship. The right of the specific devisee under
10 this section is reduced by any right he has under section 31.

1 31. A specific devisee has the right to the remaining specifically
2 devised property and:

3 a. any balance of the purchase price (together with any security
4 interest) owing from a purchaser to the testator at death by reason
5 of sale of the property;

6 b. any amount of a condemnation award for the taking of the
7 property unpaid at death;

8 c. any proceeds unpaid at death on fire or casualty insurance on
9 the property; and

10 d. property owned by testator at his death as a result of fore-
11 closure, or obtained in lieu of foreclosure, of the security for a
12 specifically devised obligation.

1 32. A general residuary clause in a will, or a will making general
2 disposition of all of the testator's property, does not exercise a
3 power of appointment held by the testator unless specific reference
4 is made to the power or there is some other indication of intention
5 to include the property subject to the power.

1 33. Halfbloods, adopted persons and persons born out of wedlock
2 are included in class gift terminology and terms of relationship in
3 accordance with rules for determining relationships for purposes
4 of intestate succession.

1 34. Property which a testator gave in his lifetime to a person is
2 treated as a satisfaction of a devise to that person in whole or in
3 part, only if the will provides for deduction of the lifetime gift, or

4 the testator declares in a contemporaneous writing that the gift is
 5 to be deducted from the devise or is in satisfaction of the devise,
 6 or the devisee acknowledges in writing that the gift is in satisfac-
 7 tion. For purpose of partial satisfaction, property given during
 8 lifetime is valued as of the time the devisee came into possession or
 9 enjoyment of the property or as of the time of death of the testator,
 10 whichever occurs first.

1 35. A provision in a will purporting to penalize any interested
 2 person for contesting the will or instituting other proceedings
 3 relating to the estate is unenforceable if probable cause exists for
 4 instituting proceedings.

D. INTESTACY

1. SUCCESSION

1 36. Any part of the estate of a decedent not effectively disposed
 2 of by his will passes to his heirs as prescribed in sections 37 through
 3 46 of this act.

1 37. The intestate share of the surviving spouse is:

- 2 a. if there is no surviving issue, the entire intestate estate;
- 3 b. if there are surviving issue all of whom are issue of the
 4 surviving spouse also, the first \$50,000.00, plus one-half of the
 5 balance of the intestate estate;
- 6 c. if there are surviving issue, one or more of whom are not
 7 issue of the surviving spouse, one-half of the intestate estate.

1 38. The part of the intestate estate not passing to the surviving
 2 spouse under section 37 of this act, or the entire intestate estate if
 3 there is no surviving spouse, passes as follows:

- 4 a. to the issue of the decedent; if they are all of the same degree
 5 of kinship to the decedent they take equally, but if of unequal
 6 degree, then those of more remote degree take by representation;
- 7 b. if there is no surviving issue, to his parent or parents equally;
- 8 c. If there is no surviving issue or parent, to the issue of the
 9 parents or either of them by representation;
- 10 d. If there is no surviving issue, parent or issue of a parent,
 11 but the decedent is survived by one or more grandparents;
- 12 (1) half of the estate passes to the paternal grandparents equally
 13 if both survive, or to the surviving paternal grandparent; or if
 14 both are deceased and the decedent is survived by maternal grand-
 15 parents or grandparent, then to the issue of the paternal grand-
 16 parents, the issue taking equally if they are all of the same degree
 17 of kinship to the decedent, but if of unequal degree those of more

19 (2) the other half passes to the maternal grandparents equally
 20 if both survive, or to the surviving maternal grandparent; or if
 21 both are deceased and the decedent is survived by paternal grand-
 22 parents or grandparent, then to the issue of the maternal grand-
 23 parents, the issue taking equally if they are all of the same degree
 24 of kinship to the decedent, but if of unequal degree, those more
 25 remote take by representation;

26 (3) if the decedent is survived by a grandparent or grandparents
 27 only on the paternal side or only on the maternal side and by no
 28 issue of the grandparents on the other side, the entire estate passes
 29 to the surviving grandparent or grandparents equally;

30 e. if there is no surviving issue, parent, issue of a parent or no
 31 surviving grandparent, but the decedent is survived by issue of
 32 grandparents, the issue take equally if they are all of the same
 33 degree of kinship to the decedent, but if of unequal degree those
 34 of more remote degree take by representation.

1 39. Any person who fails to survive the decedent by 120 hours
 2 is deemed to have predeceased the decedent for purposes of in-
 3 testate succession, and the decedent's heirs are determined accord-
 4 ingly. If the time of death of the decedent or of the person who
 5 would otherwise be an heir, or the times of death of both, cannot
 6 be determined, and it cannot be established that the person who
 7 would otherwise be an heir has survived the decedent by 120 hours,
 8 it is deemed that the person failed to survive for the required
 9 period. This section is not to be applied where its application would
 10 result in a taking of intestate estate by the State under section 40
 11 of this act.

1 40. If there are none who may inherit an intestate estate that
 2 estate shall escheat to the State.

1 41. When representation is required to effect disposition of an
 2 estate, the estate is divided into as many shares as there are sur-
 3 viving heirs in the nearest degree of kinship and deceased persons
 4 in the same degree who left issue who survive the decedent, each
 5 surviving heir in the nearest degree receiving one share and the
 6 share of each deceased person in the same degree being divided
 7 among his issue in the same manner.

1 42. Relatives of the half blood inherit the same share they would
 2 inherit if they were of the whole blood.

1 43. Relatives of the decedent conceived before his death but born
 2 thereafter inherit as if they had been born in the lifetime of the
 3 decedent.

1 44. If for purposes of intestate succession, a relationship of

2 parent and child must be established to determine succession by,
3 through, or from a person;

4 a. an adopted person is the child of an adopting parent and not
5 of the natural parents except that adoption of a person by the
6 spouse of a natural parent shall have no effect on the relationship
7 between the person and that natural parent; provided, however,
8 that all rights of inheritance between an adopted person and his
9 natural parents existing by virtue of any law concerning the
10 adoption of persons in effect at the time any judgment of adoption
11 has been or shall be entered shall not be changed by virtue of this
12 section.

13 b. In cases not covered by a., a person born out of wedlock is a
14 child of the mother. That person is also a child of the father, if:

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

20 (2) the paternity is established by an adjudication before the
21 death of the father or is established thereafter by clear and con-
22 vincing proof, except that the paternity established under this
23 subparagraph is ineffective to qualify the father or his kindred to
24 inherit from or through the child unless the father has openly
25 treated the child as his, and has not refused to support the child.

1 45. A debt owed to the decedent by an heir is not charged against
2 the intestate share of any person except that heir. If the debtor
3 fails to survive the decedent, the debt is not taken into account in
4 computing the intestate share of the debtor's issue.

1 46. No person is disqualified to take as an heir because he or a
2 person through whom he claims is or has been an alien.

2. INHERITANCE BY SPOUSE OR CHILDREN

NOT PROVIDED FOR IN WILL

1 47. a. If a testator fails to provide by will for his surviving
2 spouse who married the testator after the execution of the will, the
3 omitted spouse shall receive the same share of the estate he would
4 have received if the decedent left no will unless it appears from the
5 will that the omission was intentional or the testator provided for
6 the spouse by transfer outside the will and the intent that the trans-
7 fer be in lieu of a testamentary provision is shown by statements
8 of the testator or from the amount of the transfer or other evidence.

9 b. The share of any such spouse shall be taken from devisees and

10 legatees under the will ratably in proportion to their respective
11 interests therein.

1 48. a. If a testator fails to provide in his will for any of his
2 children born or adopted after the execution of his will, the omitted
3 child receives a share in the estate equal in value to that which he
4 would have received if the testator had died intestate unless:

5 (1) it appears from the will that the omission was intentional;

6 (2) when the will was executed the testator had one or more
7 children and devised or bequeathed substantially all his estate to
8 the other parent of the omitted child; or

9 (3) the testator provided for the child by transfer outside the
10 will and the intent that the transfer be in lieu of a testamentary
11 provision is shown by statements of the testator or from the amount
12 of the transfer or other evidence.

13 b. If at the time of execution of the will the testator fails to
14 provide in his will for a living child solely because he believes the
15 child to be dead, the child receives a share in the estate equal in
16 value to that which he would have received if the testator had died
17 intestate.

18 c. The share of any such child shall be taken from devisees and
19 legatees under the will ratably and in proportion to their respective
20 interests therein.

E. PAYMENT OF CLAIMS

1 49. Unless an estate is insolvent the personal representative may,
2 but only with the consent of all successors, waive any defense of
3 limitations available to the estate. If the defense is not waived, no
4 claim which was barred by any statute of limitations at the time
5 of the decedent's death shall be allowed or paid.

1 50. a. If the applicable assets of the estate are insufficient to pay
2 all claims in full, the personal representative shall make payment
3 in the following order:

4 (1) reasonable funeral expenses;

5 (2) costs and expenses of administration;

6 (3) debts and taxes with preference under Federal law or the
7 laws of this State;

8 (4) reasonable medical and hospital expenses of the last illness
9 of the decedent, including compensation of persons attending him;

10 (5) all other claims.

11 b. No preference shall be given in the payment of any claim over
12 any other claim of the same class, and a claim due and payable
13 shall not be entitled to a preference over claims not due.

1 51. a. All assets of estates being administered in this State are
 2 subject to all claims and charges existing or established against the
 3 personal representative wherever appointed.

4 b. If the estate either in this State or as a whole is insufficient to
 5 cover all claims and prior charges, each claimant whose claim has
 6 been allowed either in this State or elsewhere in administrations
 7 of which the personal representative is aware, is entitled to receive
 8 payment of an equal proportion of his claim. If a preference or
 9 security in regard to a claim is allowed in another jurisdiction but
 10 not in this State, the creditor so benefited is to receive dividends
 11 from local assets only upon the balance of his claim after deducting
 12 the amount of the benefit.

13 c. In case the claims and prior charges of the entire estate exceed
 14 the total value of the portions of the estate being administered
 15 separately and this State is not the state of the decedent's last
 16 domicile, the claims allowed in this State shall be paid their pro-
 17 portion if local assets are adequate for the purpose, and the balance
 18 of local assets shall be transferred to the domiciliary personal
 19 representative. If local assets are not sufficient to pay all claims
 20 allowed in this State the amount to which they are entitled, local
 21 assets shall be marshaled so that each claim allowed in this State
 22 is paid its proportion as far as possible, after taking into account
 23 all dividends on claims allowed in this State from assets in other
 24 jurisdictions.

F. FIDUCIARIES.

1. DUTIES AND POWERS OF PERSONAL REPRESENTATIVES

1 52. The duties and powers of a personal representative commence
 2 upon his appointment. The powers of a personal representative
 3 relate back in time to give acts by the person appointed which are
 4 beneficial to the estate occurring prior to appointment the same
 5 effect as those occurring thereafter. Prior to appointment, a per-
 6 son named executor in a will may carry out written instructions of
 7 the decedent relating to his body, funeral and burial arrangements.
 8 A personal representative may ratify and accept acts on behalf of
 9 the estate done by others where the acts would have been proper
 10 for a personal representative.

1 53. A person to whom general letters of appointment are issued
 2 first has exclusive authority under the letters until his appointment
 3 is terminated or modified. If, through error, general letters of
 4 appointment are afterwards issued to another, the first appointed
 5 personal representative may recover any property of the estate in

6 the hands of the personal representative subsequently appointed,
7 but the acts of the latter done in good faith before notice of the first
8 letters are not void for want of validity of appointment.

1 54. a. A personal representative is under a duty to settle and
2 distribute the estate of the decedent in accordance with the terms
3 of any probated and effective will and applicable law, and as
4 expeditiously and efficiently as is consistent with the best interests
5 of the estate. He shall use the authority conferred upon him by
6 law, the terms of the will, if any, and any order in proceedings to
7 which he is party for the best interests of successors to the estate.

8 b. A personal representative shall not be surcharged for acts of
9 administration or distribution because of lack of authority if the
10 conduct in question was authorized at the time. Subject to other
11 obligations of administration, a probated will is authority to ad-
12 minister and distribute the estate according to its terms. An order
13 of appointment of a personal representative is authority to dis-
14 tribute apparently intestate assets to the heirs of the decedent if,
15 at the time of distribution, the personal representative is not aware
16 of a pending proceeding to probate a will or to determine heirs, a
17 proceeding to vacate an order entered in an earlier proceeding to
18 probate a will, a formal proceeding questioning his appointment or
19 fitness to continue. Nothing in this section affects the duty of the
20 personal representative to administer and distribute the estate in
21 accordance with the rights of claimants and others interested in
22 this estate.

23 c. Except as to proceedings which do not survive the death of
24 the decedent, a personal representative of a decedent domiciled in
25 this State at his death has the same standing to sue and be sued in
26 the courts of this State and the courts of any other jurisdiction as
27 his decedent had immediately prior to death.

28 d. Except as otherwise provided by the terms of the will, the
29 personal representative shall observe the standards in dealing with
30 the estate assets that would be observed by a prudent man dealing
31 with the property of another, and if the personal representative
32 has special skills or is named personal representative on the basis
33 of representations of special skills or expertise, he is under a duty
34 to use those skills.

1 55. The right to possession of property transferred in fraud of
2 creditors recovered for the benefit of creditors is exclusively in the
3 personal representative.

1 56. A personal representative shall proceed expeditiously with
2 the settlement and distribution of a decedent's estate and do so

3 without adjudication, order, or direction of a court, but he may
 4 invoke the jurisdiction of a court, in proceedings authorized by law
 5 to resolve questions concerning the estate or its administration.

1 57. Except as otherwise provided by a decedent's will, every per-
 2 sonal representative has a right to, and shall take possession or
 3 control of, the decedent's personal property, except that any
 4 tangible personal property may be left with or surrendered to the
 5 person presumptively entitled thereto unless or until, in the judg-
 6 ment of the personal representative, possession of the property by
 7 him will be necessary for purposes of administration. The request
 8 by a personal representative for delivery of any personal property
 9 possessed by an heir or devisee is conclusive evidence, in any action
 10 against the heir or devisee for possession thereof, that the
 11 possession of the property by the personal representative is
 12 necessary for purposes of administration. The personal repre-
 13 sentative shall take all steps reasonably necessary for the manage-
 14 ment, protection and preservation of, the estate in his possession.
 15 He may maintain an action to recover possession of property or to
 16 determine the title thereto.

1 58. Until termination of his appointment a personal representa-
 2 tive has the same power over the title to personal property of the
 3 estate that an absolute owner would have, in trust however, for the
 4 benefit of the creditors and others interested in the estate. This
 5 power may be exercised without notice, hearing, or order of court.

1 59. A successor personal representative has the same power and
 2 duty as the original personal representative to complete the admin-
 3 istration and distribution of the estate, as expeditiously as possible,
 4 but he shall not exercise any power expressly made personal to the
 5 executor named in the will.

1 60. Unless the terms of the will otherwise provide, every power
 2 exercisable by copersonal representatives may be exercised by the
 3 one or more remaining after the appointment of one or more is
 4 terminated, and if one of two or more nominated as copersonal
 5 representatives is not appointed, those appointed may exercise all
 6 the powers incident to the office.

2. POWERS AND JURISDICTION OVER FOREIGN FIDUCIARIES

1 61. At any time after the expiration of 60 days from the appoint-
 2 ment of a domiciliary foreign fiduciary, any person indebted to
 3 the estate or having possession or control of personal property,
 4 or of an instrument evidencing a debt, obligation, stock or chose
 5 in action belonging to the estate may pay the debt, deliver the

6 personal property, or the instrument evidencing the debt, obliga-
 7 tion, stock or chose in action to the domiciliary foreign fiduciary
 8 upon being presented with a certificate of his letters or other proof
 9 of his authority and an affidavit made by or on his behalf stating:

10 a. The date of the letters of the domiciliary foreign fiduciary, or
 11 the date when he first received authority to act as such;

12 b. That no letters have issued in this State and no action therefor
 13 is pending in this State;

14 c. That the domiciliary foreign fiduciary is entitled to payment
 15 or delivery.

1 62. Payment or delivery made in good faith on the basis of the
 2 proof of authority and affidavit releases the debtor or person
 3 having possession of the personal property to the same extent as
 4 if payment or delivery had been made to a local fiduciary.

1 63. Payment or delivery under section 61 of this act may not be
 2 made if a resident creditor of the estate has notified the debtor or
 3 the person having possession of the personal property that the
 4 debt should not be paid nor the property delivered to the domiciliary
 5 foreign fiduciary.

1 64. If no letters have issued in this State or no action therefor
 2 is pending in this State, a domiciliary foreign fiduciary or any
 3 other person may file in the office of the Clerk of the Superior
 4 Court, or if the decedent, ward, or trust has an interest in real
 5 estate in any county of this State, then either in that office or in the
 6 office of the surrogate of that county, authenticated copies of the
 7 letters or appointment of the fiduciary and of any official bond he
 8 has given.

1 65. Upon compliance with section 64, a domiciliary foreign fiduci-
 2 ary may exercise as to assets in this State all powers he would have
 3 had if he had received letters or been appointed in this State, in-
 4 cluding the power to release and discharge real or personal estate
 5 from a mortgage, judgment or other lien or encumbrance held by
 6 his decedent, ward or trust. Whether section 64 is complied with
 7 prior to, pending, or subsequent to the action, a domiciliary foreign
 8 fiduciary may maintain, or be made a party defendant or otherwise,
 9 to any action in any court of this State as if letters had been granted
 10 to him in this State, subject to any conditions generally imposed
 11 upon nonresident parties. Security for costs may be required of
 12 him.

1 66. The power of a domiciliary foreign fiduciary under section
 2 64 or 65 shall be exercised only if no letters have issued or action

4 an action therefor terminates the power of the foreign fiduciary to
5 act under section 65, but a court in this State may allow the foreign
6 fiduciary to exercise limited powers to preserve the estate. No
7 person who, before receiving actual notice of local letters or an
8 action therefor, has changed his position in reliance upon the
9 powers of a foreign fiduciary, shall be prejudiced by reason of the
10 action for, or issuance of, local letters. The local fiduciary is subject
11 to all duties and obligations which have accrued by virtue of the
12 exercise of the powers by the foreign fiduciary and may be sub-
13 stituted for him in any action in this State.

1 67. A foreign fiduciary submits himself personally to the jurisdic-
2 tion of the courts of this State in any proceeding relating to the
3 estate by (1) filing authenticated copies of his letters or appoint-
4 ment as provided in section 64 (2) receiving payment of money or
5 taking delivery of personal property under section 61 or (3) doing
6 any act as a fiduciary in this State which would have given the State
7 jurisdiction over him as an individual. Jurisdiction under (2) is
8 limited to the money or value of personal property collected.

1 68. In addition to jurisdiction conferred by section 67, a foreign
2 fiduciary for a decedent is subject to the jurisdiction of the courts
3 of this State to the same extent that his decedent was subject to
4 their jurisdiction immediately prior to death.

1 69. If a foreign fiduciary has submitted himself to the jurisdic-
2 tion of the courts of this State, service of process shall be made
3 upon him as provided by the Rules of the Supreme Court of New
4 Jersey.

1 70. An adjudication rendered in any jurisdiction in favor of or
2 against any fiduciary of the estate is as binding on the local fiduciary
3 as if he were a party to the adjudication.

3. LIABILITY

1 71. a. Unless otherwise provided in the contract, a fiduciary is not
2 individually liable on a contract properly entered into in his
3 fiduciary capacity in the course of administration of the estate
4 unless he fails to reveal his fiduciary capacity and identify the
5 estate in the contract.

6 b. A fiduciary is individually liable for obligations arising from
7 ownership or control of the estate or for torts committed in the
8 course of administration of the estate only if he is personally at
9 fault.

10 c. Claims based on contracts entered into by a fiduciary in his
11 fiduciary capacity, on obligations arising from ownership or control

12 of the estate or on torts committed in the course of estate admin-
13 istration may be asserted against the estate by proceeding against
14 the fiduciary in his fiduciary capacity, whether or not the fiduciary
15 is individually liable therefor.

16 d. Issues of liability as between the estate and the fiduciary in-
17 dividually may be determined in a proceeding for accounting, sur-
18 charge or indemnification or other appropriate proceeding.

1 72. If the exercise of power concerning the estate is improper, the
2 personal representative is liable to interested persons for damage
3 or loss resulting from breach of his personal representative duty
4 to the same extent as a trustee of an express trust. The rights of
5 purchasers and others dealing with a personal representative shall
6 be determined as provided in sections 73 and 74 of this act.

1 73. Any sale or encumbrance to the personal representative, his
2 spouse, agent or attorney, or any corporation or trust in which he
3 has a substantial beneficial interest, or any transaction which is
4 affected by a substantial conflict of interest on the part of the per-
5 sonal representative, is voidable by any person interested in the
6 estate except one who has consented after fair disclosure, unless:

7 a. the will or a contract entered into by the decedent expressly
8 authorized the transaction; or

9 b. the transaction is approved by the court after notice to
10 interested persons.

1 74. A person who in good faith either assists a personal repre-
2 sentative or deals with him for value is protected as if the personal
3 representative properly exercised his power. The fact that a
4 person knowingly deals with a personal representative does not
5 alone require the person to inquire into the existence of a power or
6 the propriety of its exercise. No provision in any will or order of
7 court purporting to limit the power of a personal representative is
8 effective except as to persons with actual knowledge thereof. A
9 person who in good faith pays, transfers or delivers to a fiduciary
10 money or other property is not responsible for the proper applica-
11 tion thereof by the fiduciary; and any right or title required from
12 the fiduciary in consideration of such payment, transfer or delivery
13 is not invalid in consequence of a misapplication by the fiduciary.
14 The protection here expressed extends to instances in which some
15 procedural irregularity or jurisdictional defect occurred in pro-
16 ceedings leading to the issuance of letters, including a case in which
17 the alleged decedent is found to be alive. The protection here
18 expressed is in addition to that provided by comparable provisions
19 of the laws relating to commercial transactions and laws simplify-

G. DISTRIBUTION

1 75. The estate of a nonresident decedent being administered by a
2 personal representative appointed in this State shall, if there is a
3 personal representative of the decedent's domicile willing to receive
4 it, be distributed to the domiciliary personal representative for the
5 benefit of the successors of the decedent unless (1) by virtue of the
6 decedent's will, if any, and applicable choice of law rules, the
7 successors are identified pursuant to the local law of this State
8 without reference to the local law of the decedent's domicile; or (2)
9 the personal representative of this State, after reasonable inquiry,
10 is unaware of the existence or identity of a domiciliary personal
11 representative. In other cases, distribution of the estate of a dece-
12 dent shall be made in accordance with the law.

1 76. a. Except as provided in subsection b. and except as may be
2 otherwise provided by law, shares of distributees abate, without
3 any preference or priority as between real and personal property, in
4 the following order: (1) property passing by intestacy; (2)
5 residuary devises; (3) general devises; (4) specific devises. For
6 purposes of abatement, a general devise charged on any specific
7 property or fund is a specific devise to the extent of the value of the
8 property on which it is charged, and upon the failure or in-
9 sufficiency of the property on which it is charged, a general devise
10 to the extent of the failure or insufficiency. Abatement within each
11 classification is in proportion to the amounts of property each of
12 the beneficiaries would have received if full distribution of the
13 property had been made in accordance with the terms of the will.

14 b. If the will expresses an order of abatement, or if the testa-
15 mentary plan or the express or implied purpose of the devise would
16 be defeated by the order of abatement stated in subsection a., the
17 shares of the distributees abate as may be found necessary to give
18 effect to the intention of the testator.

19 c. If the subject of a preferred devise is sold or used incident to
20 administration, abatement shall be achieved by appropriate ad-
21 justments in, or contribution from, other interests in the remain-
22 ing assets.

1 77. The amount of a noncontingent indebtedness of a successor
2 to the estate if due, or its present value if not due, shall be offset
3 against the successor's interest; but the successor has the benefit
4 of any defense which would be available to him in a direct proceed-
5 ing for recovery of the debt.

1 78. General pecuniary devises bear interest at the rate of 4% per
2 annum beginning 1 year after the first appointment of a personal

3 representative until payment, unless a contrary intent is indicated
4 by the will.

1 79. a. Unless a contrary intention is indicated by the will, the
2 distributable assets of a decedent's estate shall be distributed in
3 kind to the extent possible through application of the following
4 provisions:

5 (1) A specific devisee is entitled to distribution of the thing
6 devised to him.

7 (2) Any devise payable in money may be satisfied by value in
8 kind provided:

9 (a) the person entitled to the payment has not demanded
10 payment in cash;

11 (b) the property distributed in kind is valued at fair market
12 value as of the date of its distribution; and

13 (c) no residuary devisee has requested that the asset in
14 question remain a part of the residue of the estate.

15 (3) For the purpose of valuation under paragraph (2) securities
16 regularly traded on recognized exchanges, if distributed in kind,
17 are valued at the price for the last sale of like securities traded on
18 the business day prior to distribution, or if there was no sale on
19 that day, at the median between amounts bid and offered at the
20 close of that day. Assets consisting of sums owed the decedent or
21 the estate by solvent debtors as to which there is no known dispute
22 or defense are valued at the sum due with accrued interest or dis-
23 counted to the date of distribution. For assets which do not have
24 readily ascertainable values, a valuation as of a date not more than
25 30 days prior to the date of distribution, if otherwise reasonable,
26 controls. For purposes of facilitating distribution, the personal
27 representative may ascertain the value of the assets as of the time
28 of the proposed distribution in any reasonable way, including the
29 employment of qualified appraisers, even if the assets may have
30 been previously appraised.

31 (4) If the personal representative of either a testate or an
32 intestate estate has, in the exercise of good faith and reasonable
33 discretion, continued to hold in kind the distributable assets of an
34 intestate estate or of the residue of a testate estate, the assets
35 shall be distributed in kind if there is no objection to the proposed
36 distribution and it is practicable to distribute undivided interests,
37 otherwise those assets shall be converted into cash for distribution.

38 b. After the probable charges against the estate are known, the
39 personal representative may mail or deliver a proposal for distri-
40 bution to all persons who have a right to object to the proposed

41 distribution. The right of any distributee to object to the proposed
42 distribution on the basis of the kind or value of asset he is to
43 receive, if not waived earlier in writing, terminates if he fails to
44 object in writing received by the personal representative within
45 30 days after mailing or delivery of the proposal.

1 80. If distribution in kind is made, the personal representative
2 may and, if requested, shall execute an instrument or deed of
3 distribution assigning, transferring or releasing the assets to the
4 distributee as evidence of the distributee's title to the property.

1 81. Proof that a distributee has received an instrument or deed
2 of distribution of assets in kind, or payment in distribution, from
3 a personal representative, is conclusive evidence that the dis-
4 tributee has succeeded to the interest of the estate in the distributed
5 assets, as against all persons interested in the estate.

1 82. If property distributed in kind or a security interest therein
2 is acquired by a purchaser, or lender, for value from a distributee
3 who has received an instrument or deed of distribution from the
4 personal representative, the purchaser or lender takes title free
5 of any claims of the estate and incurs no personal liability to the
6 estate, whether or not the distribution was proper. To be protected
7 under this provision, a purchaser or lender need not inquire
8 whether a personal representative acted properly in making the
9 distribution in kind.

1 83. When two or more heirs or devisees are entitled to distribu-
2 tion of undivided interests in any real or personal property of the
3 estate, the personal representative or one or more of the heirs or
4 devisees may institute an action, prior to the formal or informal
5 closing of the estate, for partition. After notice to the interested
6 heirs or devisees, the court shall partition the property in the same
7 manner as provided by law for civil actions of partition. The court
8 may direct the personal representative to sell any property which
9 cannot be partitioned without prejudice to the owners and which
10 cannot conveniently be allotted to any one party.

1 84. Subject to the rights of creditors and taxing authorities,
2 competent successors may agree among themselves to alter the
3 interests, shares, or amounts to which they are entitled under the
4 will of the decedent, or under the laws of intestacy, in any way that
5 they provide in a written contract executed by all who are affected
6 by its provisions. The personal representative shall abide by the
7 terms of the agreement subject to his obligation to administer the
8 estate for the benefit of creditors, to pay all taxes and costs of
9 administration, and to carry out the responsibilities of his office

10 for the benefit of any successors of the decedent who are not parties.
 11 Personal representatives of decedents' estates are not required to
 12 see to the performance of trusts if the trustee thereof is another
 13 person who is willing to accept the trust. Accordingly, trustees of a
 14 testamentary trust are successors for the purposes of this section.
 15 Nothing herein relieves trustees of any duties owed to beneficiaries
 16 of trusts.

1 85. A personal representative may discharge his obligation to
 2 distribute to any person under legal disability by distributing to
 3 his guardian.

H. EFFECT OF HOMICIDE OF DECEDENT

1 86. a. A surviving spouse, heir or devisee who intentionally kills
 2 the decedent is not entitled to any benefits under a testate or
 3 intestate estate and the estate of decedent passes as if the killer had
 4 predeceased the decedent. Property appointed by the will of the
 5 decedent to or for the benefit of the killer passes as if the killer had
 6 predeceased the decedent.

7 b. Any joint tenant who intentionally kills another joint tenant
 8 thereby effects a severance of the interest of the decedent so that
 9 the share of the decedent passes as his property and the killer has
 10 no rights by survivorship. This provision applies to joint tenancies
 11 and tenancies by the entirety, joint accounts in banks, savings and
 12 loan associations, credit unions and other institutions, and any
 13 other form of coownership with survivorship incidents.

14 c. A named beneficiary of a bond, life insurance policy, or other
 15 contractual arrangement who intentionally kills the principal
 16 obligee or the person upon whose life the policy is issued is not en-
 17 titled to any benefit under the bond, policy or other contractual
 18 arrangement, and it becomes payable as though the killer had pre-
 19 deceased the decedent.

20 d. Any other acquisition of property or interest by the killer shall
 21 be treated in accordance with the principles of this section.

22 e. A final judgment of conviction of intentional killing is con-
 23 clusive for purposes of this section. In the absence of a conviction
 24 of intentional killing the court may determine by a preponderance
 25 of evidence whether the killing was intentional for purposes of this
 26 section.

27 f. This section does not affect the rights of any person who,
 28 before rights under this section have been adjudicated, purchases
 29 from the killer for value and without notice property which the
 30 killer would have acquired except for this section, but the killer is

31 liable for the amount of the proceeds or the value of the property.
 32 Any insurance company, bank, or other obligor making payment
 33 according to the terms of its policy or obligation is not liable by
 34 reason of this section unless prior to payment it has received at its
 35 home office or principal address written notice of a claim under this
 36 section.

I. SIMULTANEOUS DEATH

1 87. N. J. S. 3A:5-1 is amended to read as follows:

2 3A:5-1. Where the title to property or the devolution thereof
 3 depends upon priority of death and there is no sufficient evidence
 4 that the persons have died otherwise than simultaneously, the
 5 property of each person shall be disposed of as if he had survived,
 6 except as provided otherwise in this chapter. *This section shall not*
 7 *be applicable to a devolution of property of a decedent under a will*
 8 *or upon intestacy, where the law provides that in order to take on*
 9 *the devolution a person shall survive the decedent by 120 hours.*

J. PRESUMPTION OF DEATH

1 88. N. J. S. 3A:40-1 is amended to read as follows:

2 3A:40-1. **[If a]** A resident or nonresident of this State *who*
 3 *absents himself from the place of his last known residence for [7*
 4 *years successively and after diligent inquiry it cannot be ascer-*
 5 *tained that he was alive or that he died during the 7 years, or at*
 6 *any subsequent time, he shall, whenever his existence comes into*
 7 *question, be presumed to be dead, unless it is proved he was alive*
 8 *within the 7 years or at any subsequent time]* *a continuous period*
 9 *of 5 years, during which he has not been heard from, and whose*
 10 *absence is not satisfactorily explained after diligent search or*
 11 *inquiry is presumed to be dead. His death is presumed to have*
 12 *occurred at the end of the period unless there is sufficient evidence*
 13 *for determining that death occurred earlier.*

K. EXONERATION OF PROPERTY

1 89. N. J. S. 3A:26-1 is amended to read as follows:

2 3A:26-1. When **[real estate]** *property* subject to a mortgage or
 3 *security interest* descends to an heir or passes to a devisee, such
 4 heir or devisee shall not be entitled to have such mortgage or
 5 *security interest* discharged out of **[the personalty or]** any other
 6 **[real estate]** *property* of the ancestor or testator, but such **[real**
 7 **estate]** *property* so descending or passing to him shall be primarily
 8 liable for the mortgage or *secured* debt, unless the will of the
 9 testator shall expressly or impliedly direct that the mortgage or
 10 *security interest* be otherwise paid.

L. REPEALERS

1 90. N. J. S. 3A:1-1, 3A:3-1 through 3A:3-3, 3A:3-6 through
 2 3A:3-11, 3A:3-13, 3A:3-14, 3A:3-22, 3A:4-1 through 3A:4-7,
 3 3A:4-9 through 3A:4-11, 3A:12-7 through 3A:12-9, 3A:13-1,
 4 3A:24-2, 3A:25-1 and 3A:25-8 are hereby repealed.

1 91. This act shall take effect 1 year after its enactment.

 STATEMENT

This is one of a series of bills adopted from the proposed Uniform Probate Code which has been approved by the National Conference of Commissioners on Uniform State Laws and by the American Bar Association. It combines the texts of several bills previously introduced during the 1972-73 session of the Legislature, and incorporates some changes which have been found to be desirable as a result of a public hearing held by the Senate Judiciary Committee and further study given by the Division of Law Revision of the Legislative Services Agency.

The following statement of the provisions of this bill gives details of its consistencies and inconsistencies with our present law.

Section 1 defines words and phrases as used generally throughout the bill and repeats many definitions presently found in N. J. S. 3A:1-1.

Section 2 repeats the general law providing for the right of successors to the devolution of a decedent's property.

Section 3 lowers the age of general competence to make a will from 21 years to 18 years in conformity with N. J. S. 9:17B-3.

Section 4 relaxes the formalities required in the execution of a will so that the testator and both witnesses need not be present at the same time.

Section 5 permits any competent person to make a holographic will. It is presently permitted only to members of the Armed Forces. It is required for uniformity since this bill permits the probate in New Jersey of any will valid where made.

Section 6 provides for the acknowledgment of the execution of a will, and under section 15 such a will may be admitted to probate without further proof of execution.

Section 7 removes the prohibition of a testamentary gift to an attesting witness.

Section 8 provides a will is validly executed if execution is in compliance with sections 4 and 5 or in compliance with the law of the place where executed or where the testator was domiciled either

Sections 9 and 10 authorize the incorporation by reference of the disposition of items of tangible property.

Section 11 authorizes the disposition of property by reference to the possible happening of extraneous acts and events.

Section 12 sets forth the manner in which a will may be revoked by the physical acts of the testator.

Section 13 states the effect of a judgment of divorce or annulment or of separation on a testamentary disposition to a spouse.

Section 14 sets forth the manner in which a will or codicil may be revived.

Section 15 provides for the manner in which attested wills, self-proved wills and holographic wills may be admitted to probate in New Jersey.

Sections 16 through 19 revise the present New Jersey law concerning the probate of domestic and foreign wills to conform with the provisions of the Uniform Probate Code as set forth in this bill.

Section 20 requires that in any contested probate action at least one attesting witness must be brought in to testify, if within the State, and competent and able to testify.

Section 21 requires that full faith and credit shall be given to the judgment of a court of the testator's domicile admitting his will to probate and determining its validity and construction, provided notice and opportunity to be heard has been given to all interested parties.

Section 22 sets forth the manner in which a contract to make or revoke a will or die intestate can be established.

Section 23 provides that a devisee must survive the testator by 120 hours unless the will provides to the contrary.

Section 24 sets forth the circumstances under which a testator may exercise a choice of the law by which terms of his will shall be construed.

Section 25 provides that all property owned by a testator at the time of his death, including property acquired after the execution of a will, passes by his will. This will not change the present law.

Section 26 provides that a devise made to a grandparent or lineal descendant of a grandparent of the testator who fails to survive the testator shall go to the issue of the deceased devisee. This expands our present lapse statute.

Section 27 provides that if a devise other than a residuary devise lapses, it becomes a part of the residue.

Under section 28 if the residue is devised to two or more persons, unless a contrary intention appears in the will and a will

devisee dies before the testator and his share is not saved from lapse, his share passes to the remaining residuary devisee or devisees. This section reenacts the present New Jersey law.

Section 29 provides for the manner in which satisfaction shall be made of a specific devise of securities.

Sections 30 and 31 sets forth the right of devisees to the value of specifically devised property sold by a testator's guardian or lost by him through condemnation or by fire or other casualty or in satisfaction of a specifically devised obligation.

Under section 32 a power of appointment in a will must be specifically exercised to have a valid effect.

Section 33 provides that adopted or illegitimate children and half bloods are included in class gifts which are expressed in terms of family relationship.

Section 34 provides for the manner in which a gift made by a testator during his lifetime is to be treated as a satisfaction of a testamentary gift. This section is in accord with P. L. 1971, c. 374 relating to intestate estates.

Section 35 codifies existing New Jersey case law providing that a testamentary provision purporting to penalize any interested person for contesting or instituting any other proceedings relating to the will is unenforceable, if probable cause exists.

Sections 36 through 46 relate to intestate succession. They change existing law. The distinction between real and personal property is eliminated. The share of a surviving spouse is increased. The surviving spouse will receive \$50,000.00 plus one-half of the balance of the estate if there are surviving issue; if all of the issue are not the issue of the surviving spouse, the surviving spouse inherits only one-half of the estate. In both instances the surviving issue inherit the balance. If there are no surviving issue, the surviving spouse would receive the entire estate. Adopted persons inherit as children of the adopting parents; rights of inheritance between an adopted person and his natural parents in effect at the time of adoption are not changed by reason of such adoption. Relatives of the half blood inherit as if they were of the whole blood. An illegitimate child is a child of the mother, and is also a child of the father, if before or after the birth of the child the parents participated in a ceremonial marriage or shall have consummated a common-law marriage where such marriage is recognized as valid even though the attempted marriage is void. This language in the bill conforms to the language of our present divorce law (P. L. 1971, c. 212, s. 7). An illegitimate

adjudication or other clear and convincing proof, but neither the father nor his kindred shall inherit from or through the illegitimate child unless the father has openly treated the child as his and not refused to support him. If there are no surviving spouse or issue, the order of descent is to the decedent's parents or their issue and the decedent's grandparents or their issue. Thereafter an estate will escheat. Similar to the provisions of section 23 it will be necessary for a person to survive the decedent by 120 hours in order to inherit. A debt owed to a decedent by an heir is not chargeable against his issue who take by representation. The existing law regarding the right of aliens to take is retained.

Section 47 gives to a surviving spouse, not provided for in a will executed before marriage, an intestate share of the decedent's estate unless it appears from the will that the omission was intentional or provision was made outside of the will for the spouse and intended to be in lieu of testamentary provision. This is a new concept in New Jersey.

Section 48 will give to a child born or adopted after the execution of a will his intestate share of the decedent's estate unless: (1) it appears from the will the omission was intentional; (2) when the will was executed the testator had one or more children and devised substantially all of his estate to the other parent of the omitted child; and (3) provision was made for the child outside of the will and intended to be in lieu of testamentary provision. The section also provides that if the testator omitted a living child under the misapprehension of the child's death, such child will be entitled to his intestate share. The section incorporates some new features in New Jersey law.

Section 49 changes the existing law and prohibits a personal representative of an insolvent estate from waiving any defense of limitations and pay any claim without the consent of all successors of the estate.

Section 50 changes the existing law relating to the payment of claims by an insolvent estate by removing the priority of judgments over claims not reduced to judgment. A preference shall not be given to claims due and payable over claims not due.

Section 51 is concerned with multiprobate. All of the decedent's assets wherever located are subject to all claims wherever proved. If a preference or security is allowed in another jurisdiction, the creditor shall receive benefits from local assets only upon the balance of his claim after deducting the allowed benefit. If claims

decedent's domicile, the claims allowed here shall be paid their proportion if local assets are adequate. Any balance of local assets shall thereafter be transferred to the domiciliary representative. If local assets are insufficient to pay all local claims, local assets shall be marshaled so that local claims are paid their proportion after taking into account all dividends allowed in this State or assets of other jurisdictions.

Section 52 provides that the powers and duties of a personal representative commence upon his appointment and relate back in time to ratify acts which are beneficial to the estate. A person named in a will as executor is authorized to carry out the decedent's written instructions relating to funeral arrangements prior to appointment.

Under section 53 a person to whom letters are first issued has exclusive authority to act until his appointment is terminated or modified. If, through error, letters are issued to another, the acts of the latter done in good faith are not void for want of a valid appointment.

Section 54 provides that a personal representative shall settle and distribute his decedent's estate expeditiously and efficiently, and he shall not be liable for acts of administration, if his conduct was authorized at the time. His appointment is his authority to do all acts required consistent with the best interest of the estate. A personal representative of a decedent domiciled in this State has the same right as his decedent had to sue or be sued. Unless otherwise provided by the law, a personal representative must exercise the same standard of care in dealing with the estate as would be observed by a prudent man dealing with the property of another; if the personal representative has special skills or is named on the basis thereof, he must exercise or use those skills. This codifies existing law.

As provided in section 55, the right to possession of property transferred in fraud of creditors recovered for the benefit of creditors is exclusively in the personal representative. This section will make certain that property fraudulently conveyed will be recovered to its full extent for the benefit of all unpaid creditors and not just for the benefit of a plaintiff-creditor.

Section 56 authorizes a personal representative to settle his decedent's estate without court direction. He may apply for directions to resolve questions relating to the estate or its administration.

Under section 57, in the absence of a contrary intention in the will, a personal representative shall take possession or control

of the decedent's personal property. Tangible property may be left with the person presumptively entitled thereto unless or until it is needed for purposes of administration.

Under section 58 a personal representative has the same power of title to personal property as an absolute owner in trust, however, for the benefit of creditors or others interested in the estate.

Under section 59 a successor personal representative has the same powers and duties as an original personal representative to complete the administration and distribution of an estate unless restricted by the will.

Under section 60 if multiple personal representatives are named in a will, those appointed may exercise all powers incident to the office. A surviving personal representative may exercise all powers after the appointment of one or more is terminated.

Under sections 61 through 63 at any time 60 days after appointment of the domiciliary foreign fiduciary, anyone indebted to or possessed of personal property belonging to the estate may pay the debt and deliver the personal property to the fiduciary upon being presented with the required proof. The person making payment or delivery is released as if he had made payment or delivery to a local fiduciary. Payment or delivery may not be made if a resident creditor notifies the person of his objection.

Under sections 64 and 65 if no letters have been issued here or no action for letters is pending here, a domiciliary foreign fiduciary may file authenticated copies of his appointment in the office of a surrogate or Clerk of the Superior Court. He may then exercise all powers as if he had been appointed in this State as to all assets here, and he may sue or be sued in this State.

Section 66 provides that the issuance of local letters or an action therefore terminates the power of a foreign fiduciary, but he may be permitted to exercise limited powers to preserve the estate. Persons who deal with a foreign fiduciary are protected.

Sections 67 through 69 relate to jurisdiction over a foreign fiduciary and acts by which he submits himself thereto. In addition, a foreign fiduciary is subject to jurisdiction here to the same extent that his decedent was prior to death. Service of process shall be made as provided by the Rules of the Supreme Court of New Jersey.

Section 70 provides that an adjudication rendered in any jurisdiction against any fiduciary of an estate is as binding on the local fiduciary as if he were a party thereto.

Section 71 changes the present rule relating to the personal

a fiduciary is not individually liable on contracts entered into in his fiduciary capacity unless he fails to reveal his fiduciary capacity and identify the estate in the contract. He is not individually liable for obligations or for torts committed in the course of administration of the estate unless he is personally at fault. The estate is made primarily liable for claims, and the issues of liability between the estate and fiduciary are determined in proceedings for accounting, surcharge or indemnification.

Under section 72 a personal representative is liable to interested persons for damage or loss resulting from a breach of his duty to the same extent as the trustee of an express trust if he improperly exercises a power.

Under section 73 a sale or encumbrance by a personal representative to himself, directly or indirectly, is voidable unless duly authorized.

Under section 74 a person who in good faith deals with a personal representative is protected as to the exercise of a power by the personal representative. The title or right acquired by a person acting in good faith is not invalidated by a misapplication of funds by the personal representative. This protection is in addition to that provided by laws relating to commercial transactions and simplifying transfer of securities by personal representatives.

Section 75 relates to the distribution of the estate of a nonresident decedent being administered by a local personal representative. Such estate shall be distributed to the domiciliary personal representative unless the will provides otherwise or the local personal representative is unaware of the existence or identity of a domiciliary personal representative.

Section 76 provides for the manner in which shares of distributees abate. There is no preference or priority as between real and personal property. If a testator's will is contrary to the statute, the will controls. If the subject of a preferred devise is sold or used incident to administration, abatement shall be achieved by contribution from other interests in the remaining assets.

Section 77 provides that a noncontingent provable debt of a successor to an estate, if due, or its present value, if not due, shall be offset against the successors' interests.

Section 78 provides that, in the absence of a contrary intention expressed in a will, a general pecuniary devise bears interest at the rate of 4% per annum beginning 1 year after the appointment of a personal representative. The present statute calls for 3%

Sections 79 through 84 relate to distribution in kind of assets in a decedent's estate and directs distribution in kind whenever feasible.

Assets are to be valued and distributed in the manner therein set forth. Successors may agree in writing to alter their interest. The agreement cannot affect the rights of creditors or taxing authorities.

Section 85 provides that a personal representative may make distribution to the guardian of any person under legal disability. The present law requires a court order in some cases.

Section 86 codifies existing New Jersey case law relating to the effect of the homicide of a decedent. The perpetrator of an intentional homicide resulting in the death of the decedent cannot benefit from his wrongdoing. A final judgment of conviction of an intentional homicide is conclusive evidence of that fact, and, in the absence of such a conviction, the court may determine in a civil suit by a preponderance of evidence whether the homicide was intentional. Purchasers from the perpetrator for value and without notice are protected for making payments to a perpetrator.

Section 87 amends the Simultaneous Death Law to coordinate it with the provisions of section 23 hereof.

Section 88 amends N. J. S. 3A:40-1 to change the period after which a person is presumed dead from 7 to 5 years.

Section 89 amends N. J. S. 3A:26-1 to provide that property subject to a mortgage or security interest passes to an heir or devisee without exoneration unless the will of a testator expressly or impliedly directs otherwise.

Section 90 repeals statutes which are contrary to the provisions of this bill.

1 MR. HAWKINS: It is 11:30, and I think
2 we can begin.

3 This is public hearing on Assembly
4 1185 and Assembly 1186 is being held by the
5 Assembly Judiciary, Law, Public Safety and
6 Defense Committee in order to obtain the views
7 of the people of New Jersey on the proposed
8 enactment of these bills, which are, for the
9 most part, derived from the provisions of
10 the Uniform Probate Code. The Uniform Probate
11 Code has been approved by the National
12 Conference of Commissioners on Uniform
13 State laws and by the American Bar Association
14 and parts or all of it has been adopted in
15 Idaho, Alaska, Arizona, Colorado, North and South
16 Dakota, Maryland, Minnesota, Montana and Wisconsin.

17 The text of these bills was introduced
18 in the 1972-1973 session of the Legislature.
19 Several of those bills are now combined
20 in Assembly 1186.

21 Assembly 1185 and Assembly 1186 are the
22 basic bills of a package of 10 bills. The
23 rest of the package has not been introduced
24 in the Assembly at the present time, although
25 they have been introduced in the Senate as

1 S-1008 to S-1015.

2 Assembly 1185 provides for an "elective
3 share" for a decedent's surviving spouse. This
4 would replace dower and curtesy as the
5 protection of a spouse against disinheritance.

6 Assembly 1186 provides for many
7 changes in the present procedure for making
8 and proving wills and for interpreting
9 provisions of a will. It also changes
10 the existing law on intestate succession.
11 A summary of all the provisions of
12 Assembly 1186 begins on page 26 of the bill.
13 Assembly 1186 has one error. On page 17, Section
14 58 on line 2, the word "personal" should be
15 omitted.

16 Our sponsor of the bill is present.
17 Would Assemblyman Albert Burstein approach,
18 and welcome, sir.
19
20

21 A S S E M B L Y M A N A L B E R T B U R S T E I N ,
22

23 MR. BURSTEIN: Mr. Chairman, and
24 gentlemen, I heard the tail end of the
25

1 summary that the chairman was offering with
2 regard to the two bills, and I will not
3 extend your time. I see that there are some
4 very eloquent gentlemen in the audience to
5 speak on both bills.

6 But simply, I want to point out that
7 the probate code in New Jersey has been
8 somewhat inactive for awhile. The
9 effort to make it consistent with many of the
10 provisions of the Uniform Probate Code I
11 consider a long step forward. As the chairman
12 has just pointed out, there was a hearing
13 last September which I attended in Bergen
14 County on the bills that had been introduced
15 by Senator Thomas in the '72-'73 session of the
16 legislature. As a result of the hearings
17 that were held at that time, and particularly
18 the testimony of Professor Wellman who is
19 a reporter for the Probate section, national probate
20 section, and another professor at Seton Hall
21 University, his name escapes me, that certain
22 changes and consolidations were made
23 in the bills that had been offered. They
24 are now the products before you, at least,
25

1 1185 and 1186. 1185 makes the fundamental
2 change of according to to the surviving spouse
3 an elective share in the estate, defined
4 as an augmented estate, and the definition
5 appears in the statute or that is to say the
6 proposed bill, hopefully, eventually a
7 statute. One-third of that would be the
8 elected right of the surviving spouse. To
9 talk about other provisions, without
10 going into a lot of detail about what is
11 involved in the augmented estate, that
12 is what it takes, it does represent, nevertheless,
13 in its basic concept an effort to
14 provide against disinheritance.

15 Now, 1186 is a more detailed bill,
16 and makes some very fundamental changes in the
17 matter of the definitions of what constitutes
18 a will, and how a will is probated, from--
19 the self-proving of a will, which is a
20 new concept which I think is again a great
21 step forward. It also has the first step
22 towards elimination of the right of dower
23 and curtesy under our law which again is
24 an anachronism as I view it, and the new concept
25 and the structure of 1186, would be a

1 far better system of providing for surviving
2 spouses and for issue as defined in 1186 than
3 as heretofore has been the case. There is a great
4 deal of clarification of language, and I
5 think that this, as I say, is again a great
6 step forward. Once more, to go through all
7 the terms of the bill, would perhaps take
8 too much of your time, but basically, the
9 right of the surviving spouse in an intestacy
10 would be to take 50 per cent or the first \$50,000
11 and one-half of the balance of the estate. Once
12 again, this is protective device which we have
13 not had before. It is possible, as I know those
14 who are lawyers, at least to some extent in the
15 state, to be disinherited and the surviving
16 spouse in the event there was now a will, if
17 the person did not own real property, that
18 was one method of doing it. And secondly,
19 the matter of intestate succession in the law
20 as it now stands, created many elements of
21 unfairness with regard to surviving spouses.
22 They were limited to one-third the share
23 of the personalty, so that if you were
24 to have real property, and do you remember
25 curtesy did not apply, surviving spouse did

1 not contest--could not contest and get a
2 straight share of funds and it seems to me
3 public policy of this state that that should not
4 occur. And this change is a very fundamental
5 one and an important one.

6 Without going into articles of
7 construction and the other aspects of proving
8 the will, and the rights given to the fiduciary
9 under the terms of this bill, I would say
10 only by way of highlight that the particular
11 plan to incorporate the fiduciary section is
12 once more something that Jersey should have.
13 I think it gives a certain amount of flexibility
14 to fiduciaries in the handling of an estate's
15 assets that they have not heretofore had, and
16 it is consistent with what is going on with
17 the rest of the country.

18 I think that the chairman read one
19 change to be made in the 1186 reference to
20 the omission of the word personal. It
21 should also be changed in the statement which
22 has a reference to the word personal on
23 page 31, line 5 of the statement. So with
24 that, I would urge the committee to give us
25 favorable consideration, give some attention

1 to the experts who are here to testify and
2 to report the bill out favorably. Thank you.

3 MR. HAWKINS: Are there any questions
4 of the committee?

5 I have a few questions, sir.

6 Is the intent of this bill to take
7 away the ability of a spouse to disinherit
8 one's spouse?

9 MR. BURSTEIN: To do it by disinheritance
10 if expressly stated in the--I believe there
11 is a section here that relates to the intent
12 of the testator, and explicitly sets forth
13 that there could be a disinheritance.

14 Now, I don't recall whether it related
15 to spouse issue. I'd have to get that
16 section of the bill for you.

17 MR. HAWKINS: May I ask a specific
18 question. If a spouse intentionally gave
19 away all of his or her assets during his
20 or her lifetime because she or he did not
21 want his or her spouse to have anything, and
22 say he or she was getting ready to die and he
23 knew and she knew it, and within that 18
24 month period, gave everything to say, for
25 instance, the children, rather than see it

1 go to the wife, what legal bearing would your
2 bill have on that situation?

3 MR. BURSTEIN: Well, if you gave to
4 issue, I don't think there would be any
5 problem. There would be a problem in this
6 sense, that if there were a divestment
7 of assets by a decedent prior to death, that
8 divesting would come within the scope of
9 these bills, because the widow would have
10 the right, or widower would have the right,
11 to elect under A 1185 to take the one-third
12 share of the augmented estate and that augmented
13 estate covers the kind of situation you're
14 talking about. Those assets could be traced
15 to the donees of the gifts or however the
16 transfer was made, and there is provision
17 in the bills for a per capita contribution
18 upon the donees in order to satisfy to the
19 extent necessary that elective share of the
20 surviving spouse.

21 MR. HAWKINS: The point I'm trying to
22 find out about the bill, the bills, is the
23 law would provide when the spouse wanted
24 it to happen or not, for part of the spouse's
25 estate, existing estate prior to his death or

1 after his death, is going to have to be
2 given to his wife, whether he likes his
3 wife or not.

4 MR. BURSTEIN: That is the fact, yes.
5 Unless there is also a proviso for prenuptial
6 and postnuptial agreement. There is a
7 provision for or a waiver of right by a spouse
8 of the other spouse's estate--that can be
9 done in proviso.

10 MR. HAWKINS: I just want to finish.
11 You mean waiver by the surviving spouse?

12 MR. BURSTEIN: Yes there can be a
13 waiver, and there can be postnuptial and
14 prenuptial agreements.

15 MR. HAWKINS: That is nice, but the
16 spouse that dies has nothing to say.

17 MR. BURSTEIN: If he has nothing--

18 MR. HAWKINS: What could he do during
19 his lifetime?

20 MR. BURSTEIN: What could he do?
21 He would have to have an agreement.

22 MR. HAWKINS: That other spouse would
23 have signed?

24 MR. BURSTEIN: Yes.

25 MR. HAWKINS: Under Title three, isn't

1 there a provision if an individual divests
2 himself of a property within three years in
3 the contemplation of death, that gift can be
4 overturned as a--overturned as a violation
5 of the statute of wills?

6 MR. BURSTEIN: No, it is not an over-
7 turning of a gift. It is simply a tax. If
8 it's a tax standpoint, that a tax--that is
9 so taxed as part of the taxable estate for
10 transfer, inheritance tax purposes, and under
11 Federal law, of course, the same three years
12 presumption exists, but the gift itself
13 would not be overturned under present law.

14 MR. HAWKINS: Would this bill not
15 create possible increases in litigation; I
16 can't foresee that that would be the fact
17 that as a matter of fact. I think it would
18 be quite to the contrary. I think that there
19 has been clarification of existing probate
20 law, where previously there might have been
21 confusion. I don't think there would be.
22 Let me say this, when any fundamental change
23 takes place in the initial years, you may
24 get interpretative requirements for the court
25 to fill in in connection with parts of the bill,

1 but that happens in any kind of legislation
2 which starts out in a new bill. The
3 circumstances I'm troubled with, troubled
4 by, are the circumstances that I've already
5 outlined; for instance, the spouse giving to
6 either his children or say another close friend
7 or personal relative for love and affection
8 and all the dear things that relatives have
9 done for him or her, during his or her life,
10 and then the surviving spouse, who survives
11 within 18 months or who survives, and the
12 property was given away during the 18 months
13 prior to his death, then that spouse that
14 survives has a course of action to, I guess,
15 to appoint a receiver or some point to go
16 after the assets that were distributed within
17 the life of the decedent to get them back, and
18 this is where I think there is going to be
19 a possibility of great litigation.

20
21 MR. BURSTEIN: Well, of course, the
22 possibility exists that you're talking now
23 in terms of the widow or widower exercising
24 the elective right given under 1185, yes.
25 They can go after that. That is to say, the
widow or widower can go after gifts made during

1 the lifetime, as long as it comes within
2 the scope of the law. And I can read to
3 you the definition of the augmented estate,
4 it says here in paragraph 2A, line 4, "value
5 of property transferred by decedent at any
6 time during marriage to or for the benefit
7 of any person other than the surviving spouse
8 to the extent that the decedent did not receive
9 adequate and full consideration in money,"
10 etc. And then, it goes into a delineation
11 under that general heading of the various kinds
12 of transfers.

13 Now, what has to be remembered is that
14 if a decedent doesn't--did not like the
15 spouse during his or her lifetime, this just
16 wasn't one of those things where you cannot
17 do anything about it. It's one of those
18 givings of life, the facts of life.

19 MR. HAWKINS: Mr. Burstein, what you're
20 going to have would appear to me what would--
21 what we might have, is a mass race of goldiggers
22 who know that that law will protect them with
23 poor spouses or good spouses, so as they can
24 get their grasp around the money.

25 MR. BURSTEIN: Mr. Chairman, all I can

1 say, there is a man and a wife, this is a
2 bill that would apply if there is--if their
3 condition of life is such that, that is what
4 is involved, and the divorce courts have seen
5 an increased number of applicants all during
6 the years, and I think that that will continue.
7 We can't cover all situations. That is
8 basically what we're saying, and the unhappy
9 situation that you're describing is just one
10 of those things that will have to abide the
11 overall activity of getting a better and more
12 orderly structure in our will system or
13 probate system.

14 MR. HAWKINS: Are there any other
15 questions? Thank you very much, Mr. Burstein.

16 The next on our list is the Honorable
17 Alfred C. Clapp.

18
19
20 J U D G E A L F R E D C. C L A P P

21 MR. CLAPP: Mr. Chairman and members
22 of the Judiciary Committee. I am here to
23 speak in favor of Assembly 1185 and 1186.

24 I might say that I have returned to
25

1 speak here from a meeting of the American
2 Institute in Washington. In the opening address
3 given by Chief Justice of the United States,
4 and he made two points in his address, and
5 the first point was, you gentlemen, and these
6 are judges and law professors and lawyers,
7 should go back to your states and see to
8 the adoption of the Uniform Probate Code bills
9 which is a pretty astonishing thing coming
10 in that area of our deliberations in Washington.

11 So that let me speak therefore in favor
12 of both these bills, and speak first as
13 to 1186 which we formerly called the big bill.

14 This is a bill containing something like
15 75 changes in our law. The big policy decision
16 is the question presented by 1185, and these
17 sections are questioned. The questions raised
18 in 1186 do not deal with major decisions
19 in point of policy. Let me just mention
20 ten of them very briefly, one word or so
21 in passing because it is much too big a
22 bill to discuss in any depth. For instance,
23 the bill provides for an acknowledgement of
24 the execution of a will. Under our law today,
25 and this is in the law in Connecticut and New

1 York and not in New Jersey, under our law
2 today if you can't prove the signature of
3 the witnesses to the will, and every now and
4 then you get a will that is not done so carefully,
5 everybody forgets, nobody can remember
6 who actually saw this witness sign, your
7 will is a piece of scrap paper, and you can
8 throw it in the wastebasket. This bill provides,
9 as I say, as in Connecticut and in New York,
10 for an acknowledgement of the execution of
11 a will, so that you can prove the will by
12 just presenting to the surrogate an acknowledge-
13 ment before a notary public of the execution
14 of the will.

15 The next question I might mention
16 is the provision of Section 7, which is
17 removing the prohibition of a gift to the
18 attesting witness.

19 This was one of the two provisions,
20 I believe that the State Bar of New Jersey,
21 State Bar Association trustees disapproved.
22 It's not of major significance and my feelings
23 on these things, since I've been--there's
24 so much good to be obtained in this bill,
25 whichever way the--whichever way it goes,

1 whichever is suitable to this committee, is
2 satisfactory to me. I made mention just
3 to give you the other side of the picture, that
4 the reason for this is this is an old statute
5 of George the Third that we're trying to
6 change in this bill. This is Section 7 I'm
7 talking about, a will or probate, therefore,
8 is not invalid because the will was signed
9 by an interested witness. And under our law
10 as it stands at present an interested witness
11 is barred from taking under the will on the
12 ground that he might be pecuniarily bound. The
13 fact is this provision in our present law,
14 which as I say goes back to George the Third,
15 serves to hurt rather than help the homemade
16 will. No lawyer would ever make any mistake
17 like that and so it doesn't serve any great
18 purpose. It hurts, rather than helps when it
19 comes to questions of fraud. If the State
20 Board trustees want to keep the old law, for
21 heaven's sake, let's keep it. It isn't of
22 major significance. Let me go on and
23 mention two or three other provisions.

24 There is a section 8, on the same
25 page, provides a will is validly executed

1 if the execution is in compliance with the
2 law of the place where executed or where the
3 testator is domiciled, either at that time
4 or at his death. This applies to a will
5 executed say by an Italian in Italy, and
6 he has it over here and it is no good.
7 Most states--all states in the country
8 have a provision permitting that such a
9 will to be admitted to probate. New Jersey
10 hasn't got it. We want it.

11 Sections 9 and 10 of the same
12 bill have reference to wills with incorporation
13 by reference. That is when you can refer
14 to another paper in your will. In our
15 law, there are cases, two cases, one way, and
16 two go another. That is a mess, and this
17 improves the incorporation by reference.
18 It has another little provision under which
19 you could give an item of tangible property--
20 personal property, which was listed after
21 the execution of the will. That means, you
22 want to give Aunt Susie something, and later
23 on you want to give it to Nellie, not to
24 so and so, you can change, you can do this
25 under the will. It is inconsequential,

1 but every lawyer knows this is a pain in the
2 neck, you have to go to the lawyer and
3 rewrite the will, because you want to change
4 the gift of the sofa.

5 Section 13, states the effect of the
6 judgement of divorce. In other words, under
7 our law today, if you leave assets to your
8 wife and then divorce her, the divorced
9 wife takes, and that's contrary to
10 probable intent, and this bill changes
11 that, so that a divorce--operates
12 generally speaking as a revocation.

13 Section 14, deals with the revival
14 of wills. I don't know how much, Mr. Chairman,
15 I should go into this thing. I would just
16 mention a few of them. Our law is that a
17 will is revived if the testator intended it
18 to be revived. In other words, he makes will
19 A, and makes will B, and then he tears up will
20 B, and the question is whether A will be
21 revived. We have our law presently which is
22 that it depends upon the testator's intention,
23 which means as a practical matter you get into
24 a real ball of litigation. Somebody keeps
25 an old will in the second drawer in his desk,

1 and he tears up a later one. Did he intend
2 to revive the will in the second drawer
3 in his desk? You could spend a lot of
4 time trying to get into the legal side of
5 that, as I think you could see.

6 Section 22 provides the manner in which
7 a contract to make a will must be established.
8 In other words, in general if you're making
9 an agreement with somebody to leave him half
10 of your estate, if he would come and live with
11 you or something like that. This is another
12 common field of litigation, and this provision
13 provides for a statute of frauds under
14 which such an agreement has to be in a
15 contemporaneous writing instead of relying
16 on this old agreement.

17 MR. HAWKINS: Judge, may I ask you
18 a question?

19 MR. CLAPP: Yes.

20 MR. HAWKINS: Bearing directly on
21 Section 22, if someone were to make a
22 contractual agreement say with his dearly
23 beloved cousin to come live with him, because
24 he happens to like this cousin, and he's
25 a sick man, and he knows he's a sick man,

1 somehow or another his cousin makes it a
2 great deal better, but he also has a wife,
3 and suppose then the provisions of the will
4 gives everything to his cousin, now, in your
5 opinion, sir, what would happen in those
6 sets of circumstances, would the wife
7 be able to take anything back from the cousin or
8 what?

9 MR. CLAPP: Now you're getting into
10 elective share problems. I mean as to
11 whether you could cut off the spouse. That is
12 the next bill. But the answer is that, as the law
13 stands presently, you could cut off your wife
14 without five cents. Under the elective share
15 bill, which brings our law in conformity to
16 the law in three-quarters of the states, you
17 have to give her one-third of your "augmented
18 estate."

19 MR. HAWKINS: Yes, sir, but what I'm
20 asking, what of these bills, if they were to
21 pass into law, which provision under the set of
22 circumstances I've given you, would prevail?

23 MR. CLAPP: Which agreement
24 would be NG under this proposed bill?
25 And subsequently, your sole question

1 is to the effectiveness of the elective
2 share provision, not under the statute, if
3 I make myself clear. If the cousin
4 comes to live with the testator, because
5 it's requested by the testator, because it
6 makes the testator feel better, and the testator
7 dies, and the wife is left nothing in the
8 will, but in the will there is provision for a
9 contractual agreement to give everything to
10 the cousin because he liked the cousin to come
11 live with him, who would be entitled to what
12 when the decedent died under that set of facts?
13 If both bills were passed, you could not cut off
14 the wife regardless of the fact that you have a
15 memorandum of a contract to devise. It would
16 be applicable to what passes under the will
17 in excess of what passes under the contract to
18 devise.

19 MR. HAWKINS: In other words, the
20 wife would prevail in both circumstances?

21 MR. CLAPP: The wife would get the
22 elective share.

23 MR. HAWKINS: To what do you look to
24 make that determination?

25 MR. CLAPP: You look at the elective

1 share bill, and this bill, and I don't think it
2 in any way conflicts with it except that
3 you have to say that the elective share bill
4 cuts through all other law that is in conflict.

5 MR. HAWKINS: That is what I'm trying
6 to find out, what provision in the elective
7 bill, the elective share bill.

8 MR. CLAPP: There is nothing in it.
9 I would hope and believe that the courts
10 would so find without having to say it, because
11 it obviously overrides other situations.

12 MR. HAWKINS: Yes, sir, that is
13 the problem that we're faced with, we cannot
14 openly assume that the courts will interpret
15 something. In other words, you're suggesting
16 then that if the language is not there in
17 1185, that to clarify that and make sure it
18 is there so that it will not be conflicting
19 with a provision say in 1186. Is that what
20 you're suggesting?

21 MR. CLAPP: I suggest that.

22 MR. HAWKINS: I'm sorry to interrupt
23 you. Continue, please.

24 MR. CLAPP: Well, I can keep on going.

25 The provision as to intestacy, I believe, has

1 been referred to the surviving spouse's share
2 when the children are children of the
3 surviving spouse, the surviving spouse
4 receives \$50,000 plus one-half of the balance
5 of the estate over \$50,000. This does
6 away with our present law under which one-third
7 goes to the surviving spouse and two-thirds
8 to the children. If the children are
9 infants, you have a guardian appointed under
10 bond which is--does have premiums on--bonds
11 are expensive these days. This is a very
12 unfortunate status where there is a small
13 estate under \$50,000.

14 Section 49 I might mention, because it is
15 a pretty shocking situation in our law
16 presently. If you have a solvent estate,
17 even if you have an insolvent estate,
18 the estate can waive the statute of
19 limitations as to any creditor he likes.
20 This is pretty horrible. This law changes
21 that. There are several decisions in our
22 courts to that effect.

23 The statute as to abatement has been
24 changed. Our cases are in hopeless conflict,
25 what about abatement? It means where you don't

1 leave enough estate to pay all the legacies,
2 which legacies are preferred? There are a
3 whole line of cases in New Jersey, involving
4 gifts of real estate, which have a preference.
5 Well, that is not necessarily the thought of
6 most people today. Real estate hasn't had
7 the hallowed feeling that it had five centuries
8 ago when this law was developed.

9 Now, let me get to section--Assembly
10 1185 which is as I say is the real policy
11 problem that you gentlemen and lady have.

12 Let me say first of all in introducing
13 it, I've argued before the New Jersey Supreme
14 Court last May and repeated the same argument
15 last December, and still haven't had a
16 decision on the constitutionality as to applying
17 equitable distribution to the divorce law
18 retroactively. One of the points I made in
19 the course of the argument which seemed to
20 register very strongly with the court, was
21 that under New Jersey law, the good wife, the
22 one that stays with the husband until his death,
23 she can be cut out without five cents. Whereas
24 the one who runs away and gets a divorce,
25 she can get equitable distribution, and

1 two members of the Court asked me have
2 we ever introduced a bill in this state. I
3 said that three quarters of the states are
4 contrary on this problem, and we have introduced
5 a bill, I said, yes, in 1953. I drafted
6 Title 3A, and we had a provision in there
7 which was taken out because I didn't think it
8 was good enough for the draft. It was in the
9 New York draft at the time. This bill
10 presently is more like the present New York
11 law, and it is a complex field, yes. But
12 I suggest to you that unless you make it
13 complex you're not going to make it fair.
14 And that in an outline is what the bill does.
15 It gives the surviving spouse one-third of the
16 augmented estate. And it requires that the
17 surviving spouse give credit towards
18 benefits derived from the deceased spouse from
19 life insurance or from a trust or otherwise.
20 And that's taken care of by this "augmented
21 estate provision" and in the second place, what
22 must be included in the augmented estate,
23 are transfers that have been made by husbands
24 in order to beat the wife out of her share.
25 In other words, in order to defeat the surviving

1 spouse's claim under the statute. This was
2 the whole intent in the 1953 piece of legislation
3 I referred to that had nothing in covering
4 that situation. Under the New York law,
5 you can include it but you have to say it's
6 "a retransfer," and therefore you bring it
7 back into the estate, and that makes it a
8 pretty horrible piece of legislation which I
9 know you can all understand.

10 So that in a word is the essence of
11 this elective share bill which, as I say,
12 New Jersey--New Jersey is way out of line
13 with other states in the country. We have
14 clients, I have clients, and I have one
15 enormously wealthy person who did come
16 over to this state to beat his wife out of
17 her share. I'll lose the estate if this
18 bill goes through. We lawyers have these
19 situations, but for the public good I very
20 strongly am for the adoption of it. You'll
21 find arguments pro and con. You will find
22 my friend Mr. Saiber, and he and I have debated
23 this before. He's opposed to it. You'll find
24 as here that there's been many others of us
25 that feel it is in the public interest to have

1 such a bill as this. You asked a question
2 before, will it increase some litigation? Yes,
3 it will, but on the other hand it will do,
4 I think it will, it will do it in the
5 interest of a good purpose, and as I say,
6 bring us in line with the rest of the country.
7 The rest of the country is all stepped up
8 to this problem. See, the whole common law
9 took care of widows, they had a dower interest,
10 all wealth was in real estate, and so is
11 dower interest, which was a good way of
12 taking care of the problem, and more than
13 that, we allowed dower in personal property
14 in the old common law, so there was a
15 certain share that the wife would get--the
16 surviving spouse, the wife, they were thinking of
17 and they didn't think that the husband could
18 also be in sharing and getting this. And you'll
19 find, even in the Magna Carta you'll find,
20 speaking of the fundamentals of our law,
21 that life, liberty and dower are singled out
22 in the Magna Carta as very fundamental to
23 our society.

24 New Jersey has overlooked this in
25 the past. We, since 1953, and there has been

1 several bills introduced, and they were not
2 acted on. The court asked is there any bill
3 being considered at the present time; yes,
4 there is, so far it hasn't moved. Thank you,
5 sir. Thank you very much.

6 MR. HAWKINS: Are there any questions
7 from the committee? Thank you very much.

8
9
10 FLOYD AMORESANO, Representing New
11 Jersey State Bar Association.

12 MR. AMORESANO: Mr. Chairman and
13 members of the committee, I've been asked
14 by the trustees of the New Jersey Bar
15 Association to act as liaison between the
16 trustees and the section on real estate
17 probate and trust laws that Judge Clapp
18 was on to report the views of the New Jersey
19 State Bar Association on Assembly bills
20 1185 and 1186.

21 I might state first that in
22 connection with 1185 which is the elective
23 share, it is the opinion of the trustees
24 of the New Jersey State Bar, that the
25 public interest is strongly in favor of the

1 passage of this legislation as referred to
2 by Assemblyman Bate and also by Senator Clapp.
3 It appears to be an appropriate device for
4 rewarding faithful wives.

5 I might make some reference to one
6 of the comments Senator Clapp mentioned, I
7 think in line of a conversation that you
8 had with one of the prior witnesses that
9 whether or not this bill would increase
10 litigation. I don't think it would increase
11 the bothersome type of litigation if you
12 don't have this bill, and if you have the
13 situations, where there are provisions made
14 for people other than the wife, and the wife
15 was not given what we might consider a fair
16 share, you have in those situations the
17 type of litigation that goes to difficult
18 questions, like fraud and duress and undue
19 influence, the type of things that are
20 very difficult for judicial determination,
21 and very time-consuming and very expensive.
22 The type of litigation that you have under
23 this bill, if a wife elects it, is pretty
24 well set out arithmetically, I think that the
25 implementation of the Uniform Probate Code,

1 we've had the benefit of input of experts
2 like Senator Clapp, and the very fine services
3 of Mr. Bohlinger. I think that this bill is
4 rather clear when the wife elects it, and
5 definite guidelines tell us what share she
6 gets, what establishes this share and where
7 it comes from. I would say that in the
8 sense of the difficult situation this would
9 not be--I don't think that this--we can
10 contemplate that this would increase litigation.

11 On Senate bill 1186, which is called
12 the big bill sometimes, it's a momentous
13 bill. The New Jersey State Bar Association has
14 considered this bill and considered bills
15 that were previously introduced in the
16 '72-'73 legislature. We're strongly in
17 favor except for some comment I would like
18 to make.

19 We feel that it fills gaps in our
20 present law. It gives a definite rule
21 in cases where the case law has been varying.
22 It would make it much easier for people to
23 dispose of their estates or for their estates
24 to be administered.

25 Now, the areas where the New Jersey

1 State Bar did make some comments are in
2 connection with Section 22, and I'm dealing--
3 I have in front of me the Senate bill, I assume
4 it's the same, but in Section 22, on page 8,
5 under Section 22, in the section line 2,
6 are the words, "if executed."

7 Now, it is the purpose of this section
8 as we understand it, to enact sort of a
9 statute of frauds and to deal with situations
10 concerning contracts that are oral. But when
11 contracts are not in writing, they don't have
12 the sanctity of the provisions of this Section 22.
13 And we--it is the feeling of the trustees if it's
14 meant to cover these oral ones, and you know
15 you'll rule them out unless they have the
16 word "executed." the section should be changed so
17 that they are covered, and I believe that
18 neither Senator Blapp nor Mr. Bohlinger would
19 have any serious objection to that change. It
20 would be an aid to the bill. It reads, "a
21 contract to make a will or devise, or not to revoke
22 a will or devise or to die intestate, if executed,
23 after the effective date of this act can be
24 established, et cetera--." The purpose of this
25 is to rule out agreements which are strictly oral.

1 and add something to the written test that the
2 law provides for or would provide for, and
3 we think that the word "executed" would be
4 limiting the scope of this so it applies only
5 to the written agreements. So we think the intent
6 of this is to say that if you have a written,
7 it's not valid unless it comes under one,
8 two or three, and to have any agreement
9 covered it would have to be "made"--

10 MR. PERKINS: Wouldn't you have your
11 promise? You're asking for a clause for
12 oral contracts. Is that correct?

13 MR. AMORESANO: Well, we're asking
14 for--we're asking for the section, this
15 clause--this section to cover any contract.

16 MR. PERKINS: Don't you have then a
17 statute of frauds type problem, if you make
18 provisions for oral contracts, and wouldn't
19 litigation be increased as a result
20 of proving the contents of oral contracts?

21 MR. AMORESANO: I don't think I'm making
22 myself clear. The scope of this, sir, is
23 exactly what you say, and the scope of this is
24 to say that a contract is not valid unless it--
25 unless it covers one, two or three. But when

1 they mention a contract, and they say "if
2 executed," that would then, if you have a
3 strict interpretation, because of the word
4 "executed," you would say only a contract executed
5 or written is not valid. Now, we think that
6 that is a limitation that was not intended, and
7 therefore it should cover the whole deal. If
8 they said in contrast "in order to make valid
9 a contract that is made, which could be oral or
10 written" in order to be valid, it would then
11 have to come under one of these tests.

12 MR. PERKINS: If I understand the
13 term executed, I believe it is synonymous
14 with performed. I think you're going--

15 MR. AMORESANO: Well, I think the
16 general opinion would be it seems to mean
17 signed. "Executed," it certainly does mean
18 performed in some areas, but I think in this
19 area it would mean, it could mean, signed, therefore,
20 we're saying if you want to rule out--if you
21 want to put some test on contracts, put them on
22 all contracts.

23 MR. PERKINS: Let me go back to my
24 original question, then. If you're saying
25 all contracts, do you want to include oral

1 contracts. Is that correct?

2 MR. AMORESANO: Yes.

3 MR. PERKINS: And that is the only way
4 you could prove all contracts is by expressing
5 the verbiage contained in that contract or
6 show some type of partial performance?

7 MR. AMORESANO: Well, under this, yes.
8 In other words, if you didn't have this
9 bill, that is the type of evidence that you
10 would go in court with. Under this bill if
11 the word is changed to "made" then it would
12 cover a contract that might otherwise
13 be subject to that type of proof, say it
14 is only good if there is a provision
15 that the will states the provision of
16 the contract. It's only good if there
17 is an express reference in the will,
18 or if there is a writing signed.

19 In other words, I think we're
20 saying this: We believe this change would
21 be an aid to what the commissioners have
22 in mind.

23 MR. PERKINS: Let me attack then what the
24 commissioner has in mind. Wasn't the statute of
25 frauds applied where contracts are not

1 performable in one year and wouldn't that open
2 a floodgate of litigation and also facilitate
3 fraud with reference to oral contracts?

4 MR. AMORESANO: No, I think just the
5 opposite, sir. In other words, it is just
6 the opposite. This bill would cover any oral
7 contract. This bill would put a test on
8 all contracts.

9 MR. PERKINS: Well, let me go through
10 part one starting with line 3, "provisions of a
11 will stating material provisions of the contract,"
12 that would be in writing. Okay? "Express reference
13 in a will to a contract and extrinsic evidence
14 proving the terms of the contract." Express
15 reference to the contract. You would have to have,
16 essentially, I believe, under the old contract
17 law, the considerations and so on and so
18 forth, three writings signed by independent
19 people evidencing the contract. Again, you
20 would have to have these essential provisions.

21 MR. HAWKINS: What you then have is
22 that these provide for writings which I believe
23 would cover sufficiently the requirements
24 under the statute of frauds.

25 MR. AMORESANO: Yes, sir.

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MR. PERKINS: But now you want to add oral contracts.

MR. AMORESANO: No, I just want to say instead of "if executed," the trustees would say, "if made." Otherwise, when you have "if executed," if that means in writing, when it wasn't in writing it's already fulfilled the provisions of this bill. It should cover all contracts, and it should say, if there is a contract, it ought to fill one of these three provisions, three requirements you had just mentioned, if you have any of those, you're all right.

Am I making myself clear to the other members?

MR. PERKINS: I think I understand what you're saying.

MR. AMORESANO: In other words, the way it came up, sir, is that the trustees were strictly in favor of this, and then there was an argument made by some people, they said, we think oral contracts ought to be allowed, and the vote of the trustees was no, we'd rather have this provision, and some gentleman raised a voice, we will--well,

1 maybe this thing doesn't mean to cover
2 or place a limitation on all contracts because
3 they use the word "executed." And that is it.

4 MR. PERKINS: Let me ask you this:
5 Do you think then because of the fact of the
6 inclusion of oral contracts that there should
7 be certain bare minimums in the--in the
8 writings as required in lines 3, 4, and 6?

9 MR. AMORESANO: Well, we thought you
10 meant the provision number 2 and 3.
11 Right. Well, I do fear the wisdom of the
12 persons who drafted it. I feel that if you
13 have something in the will which has already
14 all the material provisions of a contract,
15 you have a pretty good proof and confirmation
16 of what may have gone on. I think that is
17 pretty good, and I think that two--is there an
18 express reference proving the terms of the
19 agreement? And three--are the writings signed by
20 the decedent evidencing the contract? I would
21 think they are all better than the provisions
22 we have today. The second suggestion there was
23 a small matter. I think that someone, Senator
24 Clapp referred properly to the fact
25 that when trustees of the State Bar took

1 up this matter, they also had reservations
2 and did not approve the paragraph 7B on
3 page 5 which says in effect that an
4 interested person signs a will, and both
5 the will and the provision for him are
6 not rendered invalid by his doing that.

7 We just feel that we want to encourage
8 the validity of drawing wills, but we want
9 to remove from the law those areas
10 that usually lead to suspicion and to
11 litigation. We would much better prefer,
12 we would prefer to have the will remain good,
13 but just as under the present law, not
14 to permit that witness to take the gift that
15 was made to him. And I appreciate the view
16 of Senator Clapp that he prefers this, but
17 he didn't feel this was a matter of sufficient
18 moment.

19 Now, there's my recollection that there
20 is one other area that the New Jersey State
21 Bar trustees did not--would desire a
22 change in this, and it hasn't been mentioned
23 by the previous speakers, because they had
24 the benefit of the minutes of the trustees'
25 meetings, which mentioned Section 22, the

1 mention of 7B, and which did not mention this other
2 item which I had presented to the meetings,
3 and I know the action that was taken. I
4 think I could say in confidence that the
5 minutes of the State Bar will be corrected
6 to include what I'm about to say.

7 Section 4 on page 4 provides that the
8 testator, when he makes his will, can sign
9 it or acknowledge it before at least two
10 people, each of whom shall sign it. Our
11 present law requires that both of these
12 witnesses be present at the same time. It
13 was the feeling of the Bar when they first took
14 this up in 1971, and it continues to be the
15 feeling of the Bar, as I remember what they
16 did on Saturday, that it's not too much to
17 require, for the sanctity of so important
18 a document, that we at least have the two
19 witnesses there so that each could
20 corroborate the testimony of the others. Other-
21 wise the action of the testator at any time
22 could be made with one witness at one time
23 and another witness at a second time, and even
24 though that goes back to the Statute of Wills
25 as the Senator said. The trustees, my recollection

1 is, would prefer that that section read, after
2 the words saying "each of whom witnessed," after
3 the word "whom" should be "at the same time and
4 in the presence of each other" which is
5 our present law. Those are the feelings
6 of the Bar.

7 We feel we're doing this in the public
8 interest to make it easier for the people to
9 dispose of their estate, to fill gaps where there
10 are gaps, and recommend the affirmative
11 referral by this committee to the Assembly.

12 MR. HAWKINS: Sir, would you then--
13 would the Bar Association, if you have knowledge,
14 be in favor of or contrary to the intent
15 of the paragraph--paragraph 5 on page 4,
16 Section 5?

17 MR. AMORESANO: They're in favor of
18 it, sir. I think this would be in line
19 as the Senator pointed out with maybe
20 38 or 40 of the states--we're behind the
21 other states.

22 MR. HAWKINS: Then I have a question.
23 You're in favor of the will being--not
24 necessarily signed as long as--I'm sorry.
25 Not necessarily witnessed as long as it's in

1 the handwriting and signature and is in
2 the handwriting of the testator, but you're
3 not in favor of Section 4.

4 MR. AMORESANO: We're in favor of it.
5 We want to strengthen it a little.

6 MR. HAWKINS: Then I'm still having a
7 problem. You're saying that you have to
8 have two witnesses in the presence of
9 each other, but you're also saying that
10 in the next section that you don't have
11 to have any witnesses at all.

12 MR. AMORESANO: In the law there's
13 always been some sanctity described to a
14 holographic will, a will which is fully in
15 the handwriting of the decedent, not prepared
16 by some lawyer and typed for him, and is
17 considered to carry out his intent. There's
18 always been some sanctity in holographic
19 wills, we have always done that in connection
20 with servicemen as you gentlemen know, and
21 in most states it's permitted with all of
22 them, and that clearly is in contradiction.
23 We're saying yes, let's have holographic
24 wills so as not to carry our tradition in
25 that score, but we're--you're going through
the format of executing a will, which happens

1 in 99 per cent of the cases. I say even
2 more than 99 per cent of the cases. It's
3 the feeling of the trustees that this
4 requirement that the two witnesses be there
5 is not an undue requirement.

6 MR. HAWKINS: Are there any questions
7 for Mr. Amoresano? Thank you.

8 We'll take a brief recess.
9

10
11 S A M U E L S. S A I B E R
12

13 MR. SAIBER: Mr. Chairman and members
14 of the House Committee, I shall be brief.
15 I shall--I came here to talk about the
16 so-called big bill providing for the augmented
17 estate and elective rights of the spouse.

18 But first I want to briefly address
19 myself to Assembly 1186, and just briefly
20 touch upon some of the provisions, only those
21 which I believe are not good provisions, for
22 I would like this Senate to know that I truly
23 believe that a great many of the housekeeping
24 provisions of the Uniform Probate Code are
25 good provisions and I am completely in accord

1 and appreciate the work of many dedicated
2 prople, Professor Wellman, Professor Diab and
3 many others who work for this and many, many
4 of the House bills with respect to certain
5 aspects of this bill which has been touched
6 upon earlier.

7 I do feel that it would not be well,
8 nor wise legislatively to reject the formality
9 of execution of a will, and I address myself
10 to Sections 4 and 5 simultaneously.

11 A will by which a person divests
12 himself ultimately at the end of a life-
13 time of everything that he has accumulated
14 during a time of effort is the most solemn
15 document that man or woman could sign and
16 every possible safeguard concerning the execution
17 of that document is a prime thought in the
18 manner it should be done, and it should be
19 safeguarded and kept intact. It is no great
20 thing to ask that two witnesses be present
21 at the same time with the testator or testatrix.
22 Those of us who had been in the law and had
23 occasion to execute wills, and I have had
24 hundreds and hundreds, and I never had any
25 problem with respect to calling two people and

1 having them stand there and smile and talk
2 to each other and one signs and the other
3 two sign, and that is the appropriate thing
4 to do. And in the same vein, with respect
5 to a holographic will, making it possible,
6 this is Section 5, for some person to or
7 persons to just write out in their own
8 handwriting a will and subsequently having
9 it offered as a will and in a very loose
10 way, to me is a very dangerous situation.
11 I can understand that under very specialized
12 circumstances it is appropriate, and nobody
13 will disagree with it. If we're going to open
14 the door wide open and permit this to happen
15 across the board, I want to go into handwriting
16 business I can see what can happen by way of
17 all kinds of possible changes.

18 I think the best way and the real way
19 is to have a will executed with two persons
20 present at the same time as the testator with
21 all of the natural safeguards, and only as a
22 special circumstance should a holographic
23 will, as is presently the case, be valid.

24 Now, with respect to Section 7, which removes
25 prohibition of the testamentary gift of an

1 attesting witness. I think it's dangerous,
2 I think it's bad. I think that anyone who
3 is to take under the will should not be
4 permitted to qualify as an attesting witness.

5 If a person is a witness, that person
6 because of the aspect of the problem we're
7 talking about, for want of better words,
8 that person should be disqualified, if he's
9 acting as a witness, and if he is a witness
10 he should be not permitted to take.

11 With respect to Section 23 which
12 provides that a devisee who does not survive
13 the testator by 120 hours is treated as if
14 he predeceased the testator. I point out
15 in our wills today on the taxation situation
16 the aspect of the marital deduction is
17 tremendously important in order to achieve
18 the highest degree of tax manipulation in the
19 estate by taking advantage of the marital
20 deduction. In most wills, we have a
21 simultaneous death provision with the presumption of
22 survivorship for the spouse what has the lesser
23 estate.

24 Now, this also provides to the contrary. I'm
25 not going to make too much of an issue of this.

1 I suggest that it be looked at again for it has
2 certain connotations of possible dangers involved.
3 I very strongly oppose those sections, 9 and 10
4 of the bill, which provide for the incorporation
5 by reference of disposition of items of
6 tangible property.

7 Now, if you will, I project with you that I
8 make a will today, and say that my stamp
9 collection, gun collection, coin collection, has
10 been distributed amongst certain people in certain
11 ways, and I say, look at the letter that I wrote
12 on the date of so and so that will tell you to
13 give it and when and how to give it to them. Now,
14 just picture if that happens to get lost or it happens
15 to get burned, or if tomorrow I make a new one
16 or a year later I forget I had made one,
17 the kind of things that can occur. The
18 kind of misunderstanding of the intent of the
19 testator that could come about merely by permitting
20 me to have some reference to something else because
21 I'm about to change the will every day, only to
22 say that some piece of paper that I wrote out, that
23 may be not available, cannot be found or
24 I may have changed or may have burned or lost
25 is better. What is frequently done, and we lawyers

1 do it all the time, we say we leave property to-
2 it is in the certain areas of property to their
3 advantage--and give that person a sealed letter
4 as to what we would prefer to be done with
5 it, silverware, porcelain, other items or
6 antiques of sentimental value which is
7 a preferable way and which does not involve
8 the kind of dangers which we may be faced
9 with here.

10 Now, with respect to the disposition
11 of intestate succession, I submit that this
12 matter is purely a legislative decision. We
13 save \$50,000. It is purely an arbitrary
14 figure. It could be \$40,000, it could be
15 \$60,000 or \$30,000 or \$70,000. I think that
16 this is a matter strictly for legislative
17 decision and so I have not a right personally
18 to say this is necessarily a wrong figure.
19 I want to save principal amounts of time
20 for 1185.

21 I said before that I had no problem
22 at all with the housekeeping bills and yet,
23 I have a very strong adverse feeling to this
24 bill and I will try to demonstrate my reasons
25 for it.

1 The State Bar representative came
2 here and expressed his thoughts with respect
3 to the trustees. Unfortunately I, and many
4 others like me, couldn't be present to give
5 them our arguments so they didn't hear it.

6 In the record before the Senate Judiciary
7 Committee it was pointed out that in
8 New York State they hadn't in any degree
9 changed their will laws since 1828, 150 years,
10 approximately. We in New Jersey in 1953, as
11 Judge Clapp pointed out, when he was then in
12 the Senate and I had the honor of being in
13 the Assembly, he was the architect of Title
14 3A and I had the privilege of putting it
15 through, the Legislature and the Assembly
16 at that time, passed Title 3A, which is
17 very comprehensive and very thorough and a very
18 fine probate code, and it has stood the test
19 of time. It has worked out extremely well,
20 except for some housekeeping details which
21 might make it better, and it has worked extremely
22 well. And there is no man better informed
23 than my friend Judge Clapp in the area of that
24 probate code. And now, we come to the point
25 where you suddenly--there is sought to be

1 introduced a bill which is so extreme, I
2 don't know of another word that I could use. I
3 say, gentlemen, there comes a time for all of
4 us when the position we occupy in government
5 is past and we're out and if there ever
6 was one time I wish I was back on the
7 floor of the Assembly it would be to talk
8 on this very sorry bill, because I think it's
9 terribly wrong and let me get right to the
10 issue.

11 There isn't any man or woman who, if
12 they have a good marriage and if they live
13 together properly don't provide completely
14 for their wife and children. I use wife and
15 children as against husband and children.
16 They don't think in terms of one-third, they
17 receive everything, they don't have to
18 be mandated to do it. And probably 999 out
19 of a thousand cases this happens, a
20 husband leaves everything he has to his
21 wife and children.

22 Now, picture the kind of circumstances
23 that we can be faced with here; some of them
24 were touched on before. A bad marriage, there
25 are many marriages where people have been

1 separated 20, 30 years and certainly for the
2 30 years some provision is made for that kind
3 of a circumstance, but what about the fact
4 that people are in the same household and
5 haven't talked to each other for 20 or 30
6 years. They're husband and wife legally.
7 Now, we have the word co-habit that appears
8 in this bill, who is to say whether or not
9 they are co-habiting as man and wife or are
10 not co-habiting as man and wife.

11 Now, we have the right today, and
12 incidentally, there are a number of other
13 states that haven't adopted this bill, and
14 the record should show that a referendum of
15 a statewide Bar membership in one of our
16 largest states, substantially defeated this
17 bill when it came up for legislative attention
18 and voted very greatly to disapprove this, and
19 we have the figure in the record before the
20 hearing that was held in Hackensack some
21 time ago.

22 Now, we have a situation, as it was
23 pointed out by the chairman, where some
24 member of a family or a stranger has taken care
25 of a person who was sick, or incompetent,

1 and has to wear diapers, and has to be
2 attended to, or where a husband has been
3 neglected by a legal wife, and she is automatically
4 mandated to get one-third of an estate. It
5 is absolutely wrong. It is absolutely
6 wrong and should not be. I know of an
7 actual case where husband and wife got married,
8 got on a plane to go on a honeymoon to Puerto
9 Rico, the plane crashed. I would say just
10 because there is a marriage relationship, even
11 though it is for one minute, that a spouse
12 can inherit one-third of an estate? This
13 is wrong.

14 MR. HAWKINS: May I question you about
15 that? Where would you find in either one of
16 these bills wording substantiating what you
17 just stated, if one took care of the testator
18 for say a term of years, and maybe the testator
19 agreed to, contractually, with that person, to
20 give him all of his estate, thereby effectively
21 excluding anything to be given to the wife,
22 where would you find in these bills that the
23 wife would have the opportunity then to take
24 one-third?

25 MR. SAIBER: It does not say that if

1 somebody has tended fully to the testator,
2 and has become the real object of his or her
3 bounty that that testator or testatrix can
4 give the estate or substantially give the
5 estate. I do not see that. I see that the
6 wife of the spouse has an elective share
7 in the augmented estate.

8 MR. HAWKINS: Yes, sir. Is there not
9 a provision that states that except if there
10 is a--I don't remember the provision, I'm
11 looking for it. Now, except that there is
12 consideration given, if consideration is
13 given, but not in the nature of what we're
14 talking about, and it talks in terms of
15 consideration whether--on page 1 of 1185,
16 "the value of property transferred by the
17 decedent at any time during marriage, to or
18 for the benefit of any person other than the
19 surviving spouse, to the extent that the
20 decedent did not receive adequate and full
21 consideration in money or money's worth for
22 the transfer." But suppose the man or the
23 testator transferred everything six months
24 before he died to this person who came in
25 and took care of him for all of his life;

1 would that be adequate consideration?

2 MR. SAIBER: That very well might be,
3 except for one thing, that the very kind of
4 person that would give the kind of thing
5 that money can't buy and love 24 hours a day
6 and attention under adverse conditions is
7 not the kind of person who will ask for a
8 contract or put it in writing or do it for
9 consideration. It is for love, and affection,
10 and what we are doing by this bill, and this
11 is why I feel so strongly about it, we are
12 taking away from a person, from me, or you, we are
13 taking away from me my right, if you will,
14 to take my money and throw it down the
15 sewer, or make an improper investment or take
16 a month's worth of money to the racetrack
17 and lose it. Is that the kind of thing that
18 I could be held to account for? We are
19 almost at the point, sir, if I may point out,
20 and forgive my emotionalism, where we are
21 next to the next step to mandate that all
22 children should be treated equally in
23 disposition. One may have married a millionaire
24 and another may be crippled and another may
25 have gotten married and the third--this is not

1 right. We live in a society where there must
2 be give and take. Now, there is a difference
3 between the State of Wyoming and Utah and
4 New Jersey. All kinds of conditions come into
5 play. Let me give you a few other examples
6 and I can give you a hundred. We could have
7 a widow, for instance, a wife, who may have
8 played around a little bit or who may be a
9 fairly good housekeeper and he isn't 100
10 per cent, and is she to be treated in the same
11 manner as the wife who hasn't been a good wife
12 all the way? We could have a wife who is
13 mentally incompetent or partially mentally
14 incompetent or senile; so what about the
15 possibility now of goldiggers who will
16 seek out wealthy men so they can get married
17 to them irrespective of their age, so she
18 can automatically mandate one-third of the
19 estate. What about the reverse of that?
20 Men who might seek young heiresses, the Patty
21 Hearsts or what have you, try to inherit
22 from them, to try to render them helpless,
23 if you will, overwhelm them, if you will,
24 whatever. Gentlemen, there are a number of
25 options in this bill that have not been thought

1 through.

2 I want to say, because it must be
3 said, that there is no question in the world
4 that morally it is absolutely right and
5 proper that a husband should leave to his
6 wife and not cut her off and leave it to
7 the mistress. There is a question, but
8 the fact of the matter is, he has
9 deliberately done this, unless a man is demented
10 or someone else holds a gun to his head. But
11 the problem is whether you try to mandate this
12 in the State of New Jersey, when our laws
13 have worked out while this is going on, and
14 there is no problem. Particularly I'm
15 thinking of the elderly people who some call
16 our great senior citizens. I'm getting to
17 the point where I'm included in that group,
18 but there comes a time when things begin to
19 happen and the best protection that we could
20 have for them is to have them go to a
21 reputable lawyer and make out a will to do
22 that which they know is proper and fair and
23 right and they would do it, in the presence
24 of witnesses who are there when they sign it
25 and who you have an opportunity to judge.

1 MR. HAWKINS: Let me ask you a question
2 which involves with your previous thought; if a
3 testator has an adultress for a wife, everybody
4 knows it, and is getting ready to divorce her,
5 if he is successful in divorcing her prior to
6 death, he effectively can exclude her from
7 receiving anything. Is that correct?

8 MR. SAIBER: I don't understand your
9 question.

10 MR. HAWKINS: Say he divorces his
11 wife on the ground of adultery and generally
12 speaking our courts would take that into
13 consideration, would they not, in effectively
14 excluding her from participation in the
15 distribution of the property?

16 MR. SAIBER: I would think so. I don't
17 know much about it, but, I believe, I think
18 so.

19 MR. HAWKINS: Then, for instance, he's
20 successful in getting the divorce on the
21 grounds of adultery, and effectively excluding
22 her from participating in her share of the
23 property, then would it be equitable in your
24 mind to prevent him from excluding her even
25 though she is an adultress and everybody knows

1 it, and he didn't have the opportunity to get
2 the divorce because he died first?

3 MR. SAIBER: Well, I certainly think
4 that you make a point that if a man intended
5 to do something, and couldn't get to it, that
6 there should be some relief involved. I am
7 completely for that which is the moral and
8 right and proper thing, but what I say is that
9 a person has the independent right of action,
10 and should not be mandated to do things which under
11 all circumstances apply and what of the
12 working of vast injustices. I want to point
13 out, I want to open your mind to another
14 area of things. There are marriages
15 where they happen to have made antinuptial
16 agreements, they had children by prior
17 marriages, they have properties; this
18 bill applies whether it's a second, third or
19 fifth or whatever marriage. You know, we
20 primarily talk in terms of first marriage,
21 husband, wife, children, and you might make
22 out a case, you know, to want to protect them
23 in every way. Now, this bill applies to every-
24 thing across the board, and that is why I have a
25 problem with it. My problem is that the fact

1 of the matter is that to all intents and purposes
2 we have had no problem with the fact that
3 husbands take care of wives and children
4 and vice versa every time there is a good
5 marriage, and if it is a bad marriage or
6 improper marriage or a no fault marriage or
7 a no co-habit marriage, why mandate somebody
8 to get something they should not or are not
9 entitled to get? This is the whole point of
10 the thing.

11 MR. HAWKINS: Before we get to that,
12 sir, I would like to ask Miss Donath, to
13 please take a note in our deliberations of
14 this bill, to make sure we consider the
15 possibility of including something in A1185
16 to the effect that should a person die,
17 which everyone is going to have to, but if
18 during that person's life he could have had
19 a grounds of divorce, in a divorce action
20 which would have excluded a person from
21 participating in his property while alive,
22 maybe we should consider allowing for that
23 same ground of attack once the person is
24 dead. He may have distributed this property
25 to someone else because of that action that

1 existed while he was alive. Do you under-
2 stand? I want that to be considered in our
3 deliberations on the bill.

4 MR. SAIBER: Just one further point
5 and I thank the committee for listening to
6 me this long time and I ask your indulgence.
7 I want to make this further point, that in
8 the estate planning today in our sophisticated
9 society where taxes impinge so heavily on
10 every individual person's life, it is
11 frequently important, and we do this very
12 often. I may very well say to a wife, when
13 a husband has assets and the ability to turn
14 a great deal of money too, Mrs. Jones, you need
15 not leave anything to your husband because if
16 you die and it is added to his estate, it will
17 be taxed a second time. He has ample of his
18 own and he has earning ability. In your
19 will, I would prefer that it all go to
20 your children and the husband will consent.

21 Now, these are the kinds of situations
22 that we are being mandated against doing and
23 I am troubled by the many, many things that
24 I have said and many that I have not said
25 because time doesn't permit. And again, I want

1 to thank the committee for giving me this
2 opportunity to talk to you.

3 MR. HAWKINS: All right. Thank you
4 very much, sir.

5 Next we have on the list Mr. Gill Job.
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9 G I L L C. J O B, Surrogate Bergen County.

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11 MR. JOB: Thank you very much, Mr.

12 Chairman and members of the Committee.

13 I'll be very brief because the points,
14 the specific points that I wanted to mention
15 have been mentioned by several of the preceding
16 speakers. I'm going to repeat what I said
17 at a separate hearing before the Senate Committee
18 on these bills. And that is, simply that you
19 all know the surrogates court in New Jersey
20 is a court of competent jurisdiction. We do
21 not handle disputed matters, because we do
22 not have jurisdiction, of course, nevertheless,
23 cognizant of our obligation not to overburden
24 the court--the county court probate division
25 with litigated matters.

we feel that in the analogizing these

1 provisions certain objections that we had presented
2 at a previous hearing have been taken care
3 of. And I'd like to commend this committee
4 and those who worked on this for eliminating
5 what we considered to be those difficulties
6 at that time. Some of them still remain.
7 They may be minor points in the opinion, of
8 course, of Judge Clapp, and an old friend
9 whom I respect very highly, but these are
10 matters that perhaps he is not interested in
11 too greatly when it comes down to the mechanics
12 of the thing.

13 I'm referring specifically to one
14 of the things that has been mentioned
15 previously, that is the manner of witnessing
16 the execution of a will. I would like to add
17 for the record that it is the concern of
18 our surrogates that these matters or these
19 standards not in any respect be lowered. We are in
20 favor of both witnesses being present at the same
21 time; likewise, we feel that as far as a witness
22 being able to inherit is concerned that that
23 is bad practice. I think that that could
24 be the basis for motivating quite a bit of
25 litigation as far as the county courts'
probate division are concerned. I could see

1 all kinds of litigation arising where
2 situations like this are involved. Somebody
3 who witnesses a will is there with another
4 witness, perhaps there is even collusion
5 between the two witnesses as far as
6 the attesting of a will is concerned. They
7 turn out to be chief beneficiaries of
8 the estate. We could get into all sorts of
9 litigation over that. I think it is bad
10 practice.

11 I would like to see the current law
12 remain as it is, and there are certain
13 other features of this that I believe have
14 adequately been handled by the committee,
15 and on the whole, I feel that actually these
16 are good bills that these are bills that
17 have been necessary for a period of time,
18 and the Surrogates' Association as such
19 registers no objection to them.

20 MR. HAWKINS: Thank you very much, Mr.
21 Job.

22 Next on the list we have Dr. John
23 T. Rice, American Association of Retired
24 Persons.
25

1 D R. J O H N T. R I C E, American Association
2 of Retired Persons.

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MR. RICE: Thank you very much, Mr.
5 Chairman, distinguished members of this
6 committee.

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My name is John T. Rice. I am a
retired lawyer and a member of the American
Association of Retired Persons, and I appear
before you today as the Chairman of the New
Jersey Joint State Legislative Committee of
the AARP, and the National Retired Teachers'
Association, representing their combined
membership of over 312,768 elderly citizens
of New Jersey.

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On the national level these two
associations represent over 6.5 million elderly
and retired persons. In their behalf the
associations are actively supporting the
concept of probate reform and, more specifically,
the Uniform Probate Code, before the legislative
bodies of the several states through joint
state legislative committees such as that
which I represent in my appearance before you
today.

1 For years these associations have
2 received ever increasing complaints about
3 obsolete inheritance laws and irrelevant
4 and expensive procedures that have been with
5 us for decades; so long, in fact, that
6 we tend to discount the frustrations
7 and problems they generate. In many cases
8 the reaction has been extreme, many
9 individuals choosing to give away half of all
10 they own in setting up joint ownerships solely
11 to avoid the archaic and costly probate
12 machinery. This reaction is understandable
13 but hardly an adequate solution.

14 As a result, the association determined
15 that the laws must be changed to bring the
16 probate process into conformity with the
17 needs and wishes of the average American
18 who wishes to insure the orderly distribution
19 of his estate but for whom expensive estate
20 planning is simply not feasible. It is
21 the considered opinion of these associations
22 that the comprehensive model state law known
23 as the Uniform Probate Code is an intelligent
24 and workable reform; and, as such, we have
25 endorsed and supported it in our published

1 legislative goals since 1971.

2 Without getting into any extensive
3 detail or comparison with present New Jersey
4 law, which I'm sure will be presented to you
5 by other more qualified witnesses, I would
6 like to take a few minutes to highlight those
7 provisions of the Uniform Probate Code
8 which we feel are of primary importance to
9 the elderly.

10 We believe that the passage of the
11 Uniform Probate Code will enable persons
12 of ordinary means to pass on their property
13 at death with fewer delays, less cost and
14 most importantly, with the assurance that
15 their wishes will be carried out. The
16 Probate Code accomplishes this result by
17 simplifying the making and probating of a will.
18 Just as importantly, the code relieves
19 most persons in ordinary circumstances of
20 the necessity to make such wills by providing
21 a modern intestate succsssion plan that
22 reflects the intentions of most people. Studies
23 have shown that most persons of modest
24 means want their estate to pass entirely to
25 the surviving spouse. Whereas most statutory

1 estate plans still divide a decedent's
2 property between the spouse and other relatives,
3 often including collateral relatives.

4 Under present statutes, people are
5 forced to make wills simply to avoid the
6 undesirable effects of the law.

7 Present statutes also contain other
8 provisions which tend to force people to make
9 wills: Wills are commonly used to name
10 family members to administer estates, the
11 Uniform Probate Code sets up the order of
12 priority for administration beginning with the
13 surviving spouse. Today, wills are used
14 to avoid common disaster problems, under the
15 Uniform Probate Code a spouse must survive
16 the decedent by five full days.

17 Today, old legal formalities throw
18 considerable doubt on the validity of a will
19 made in one state when the testator later
20 takes up residence in another state. Under
21 the Uniform Probate Code there would no longer
22 be necessary to make a new will when a person
23 took up residence in another state where the
24 code had been enacted, for it recognizes
25 the validity of "foreign" wills.

1 For those who prefer to control their
2 estates by their own will, the code also
3 offers some significant improvements. Under
4 it, a simple signed statement is valid as a
5 will, and even if the witnesses are used
6 for additional safety, the code permits the
7 will to be probated without calling the
8 witnesses to court after death. In short,
9 the will would have a presumption of validity
10 unless challenged by any interested party,
11 at which time a court proceeding would be
12 convened to determine its validity.

13 The code also slices away a lot of
14 red tape and reduces procedural requirements
15 relating to inheritance. By offering
16 procedures for informal probate and admin-
17 istration; that is, without court supervision,
18 the code reduces the need for a lawyer
19 in every estate and the need to wait months
20 or even years for an inheritance. The
21 simplicity and speed of code procedures
22 were to shorten delays and lower the expense
23 of settling small, trouble-free estates.

24 The code provides modern sensible
25 laws relating to the right of election of a

1 surviving spouse and to guardianships,
2 conservatorships and other means for
3 handling the affairs of persons who are
4 incapacitated by illness, advanced age or
5 other disability. The code provides for
6 powers of attorney that remain good in spite
7 of incompetency, so that persons who expect
8 difficulties in managing for themselves can
9 arrange for others to act for them.

10 In conclusion, let me say that our
11 legislative committee here in New Jersey as
12 well as two national associations in
13 Washington, would like to express our
14 appreciation for the fine work done by
15 the National Conference of Commissioners on
16 uniform state laws in furtherance of the
17 Uniform Probate Code, specifically, the
18 hard work by Dr. Richard Wellman, W-e-l-l-m-a-n,
19 Educational Director for the Commission,
20 who has testified before this committee
21 previously. It is to the credit of Dr.
22 Wellman and his colleagues that the number
23 of states which have enacted Uniform Probate
24 Code is now seven. North Dakota, Minnesota,
25 Arizona, Alaska, Maryland, Colorado, and Idaho.

1 We are associating ourselves with many comments
2 made to this committee by the Conference
3 of Commissioners and ask that you give them
4 your closest attention in your deliberations
5 on this legislation.

6 We also commend Judge Alfred Clapp
7 and his committee for their careful and
8 constructive efforts to bring the desirable
9 provisions of the Uniform Probate Code to
10 New Jersey.

11 Thank you very much for your kind
12 attention. On behalf of over 312,768 elderly
13 citizens of New Jersey we urge that you
14 recommend the wholesale enactment of the
15 Uniform Probate Code in the full legislature.
16 Thank you very much.

17 MR. HAWKINS: Mr. Rice, do you have any
18 knowledge whether or not all of these
19 states that have enacted the Uniform Probate
20 Code have enacted it in the entirety or have
21 there been changes in any sections?

22 MR. RICE: I don't think they have
23 enacted everything in its entirety; in other
24 words, there are variations to the Probate
25 Code. I think that basically most of the

1 desirable provisions have survived, and
2 that they have been enacted into law. But
3 some states have the same problem just like
4 in New Jersey, they don't want to just wipe
5 the laws out that are existing and start
6 over so to speak.

7 MR. HAWKINS: Are there any other
8 questions?

9 Thank you very much, Mr. Rice.

10 We'll stand adjourned to two o'clock.

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AFTERNOON SESSION

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3 MR. HAWKINS: All right. We'll call
4 the afternoon session of public hearing on
5 All185 and All186 to order. It is now 2:13
6 p.m., and we have two witnesses who are
7 scheduled for this afternoon's session. First,
8 we will have Rosemary Higgins Cass from the
9 State Bar Special Committee on Women's
10 Rights.

11
12
13 ROSEMARY HIGGINS CASS, State Bar
14 Special Committee on Women's Rights.

15
16 MRS. CASS: Thank you. And it is
17 a real pleasure to be here to speak this
18 afternoon on behalf of the New Jersey Bar
19 Association Committee on Women's Rights.

20 It is personally gratifying to me as
21 an attorney with a specialization in the field
22 of the estate wills and trusts, because I have
23 long been deeply interested in the present
24 inequity of our inheritance laws.

25 While our committee studies the bills

1 that are before you from the vantage point
2 of the rights of women, nevertheless, I'd
3 like to point out that these bills, while
4 benefiting women, will yet benefit men
5 in a number of situations.

6 There are today more and more women
7 who are employed, and who have assets of
8 their own, and there are wills that are
9 drawn by women cutting off their husbands.

10 Today much of the wealth of this
11 country is concentrated in the hands of women.
12 It would seem only fair that the wealth
13 that either a man or a woman has, when he
14 has wealth, that either a man or woman
15 has shared all his life with the other
16 person, it should at least upon death
17 be shared to some extent as well.

18 Additionally, the bill which
19 I don't believe is for your consideration
20 today, on the abolishing of dower and
21 curtesy, but is part of the total package
22 of the probate code, will eliminate the
23 situation that sometimes occurs when spouses
24 redo deeds under reasonable situations
25 where the property should be sold.

1 As you are, I'm sure, well aware, New
2 Jersey is one of the states that is most
3 antiquated in the probate field of any state
4 in the country. Nearly every single one
5 of the common law states, I think we are
6 one of the only two states in the union
7 which does not impose some restriction
8 on the rights of a spouse to disinherit
9 the other.

10 Traditionally this has pointed to
11 some capital and some related size of
12 holdings of the decedent rather than needs
13 of surviving spouse. Both of our neighboring
14 states, Pennsylvania and New York, the
15 latter for many years, has had far more
16 equality regarding distribution of
17 property by testate and intestate succession.

18 Additionally, this retention of the
19 concept of dower or curtesy is--impedes
20 the free alienability of real estate at a time
21 in history when it is highly undesirable
22 to do so.

23 The various changes that are proposed
24 by bills A1185 and A1186 would among other
25 things be consistent with the change in the

1 law that was promulgated by New Jersey Statute
2 2A:34-23 providing for equitable distribution
3 upon divorce.

4 It was my privilege to serve as a
5 member of the commission which proposed the
6 change in the divorce laws in 1971. We
7 considered the question of equitable distribution
8 at that time, but because of the inheritance,
9 we didn't feel we could go so as far as
10 to recommend a division of property on
11 the dissolution of marriage, when it was
12 not mandated on the death of a spouse.

13 So we're very happy that the legislature
14 at that time moved ahead and incorporated
15 the concept of equitable distribution.

16 But a very unusual situation is about
17 to prevail, that it's better to divorce a
18 spouse if you found out that he's about to
19 cut you off under his will. Then it is
20 imperative that our inheritance laws be
21 changed to provide at the least for a
22 statutory share of the decedent's assets,
23 and indeed, for a more equitable share of
24 the intestate estate to the wife as is
25 presently provided in A1186 wherein the first

1 \$50,000 of the intestate estate would pass
2 to the surviving spouse.

3 We also are gratified to see the
4 decision in the legislation presently
5 before you of the provision dealing with
6 the situation where a couple has been
7 separated for a period of 18 months under
8 such conditions, as would have enabled
9 either one of them to obtain a divorce on the
10 grounds of separation. This prevents
11 equitable distribution, which otherwise
12 could occur where a couple has been separated
13 for many years, and for some religious or other
14 reasons, never did obtain a divorce. It
15 would seem in that situation to be inequitable
16 to have a wife or husband come in after years
17 of separation and now claim a statutory share
18 of the other's assets.

19 I want, I think, because I know that
20 you have heard the very eminent and highly
21 technical testimony this morning of Judge
22 Clapp and others, who have studied the bills
23 at very great length, to simply conclude, with a
24 plea that really comes on behalf of the women
25 of the state, as I mentioned before, most common

1 law states, and of course, all your
2 community law states impose restrictions
3 on the right of one spouse, to disinherit
4 the other. The majority of wives in this
5 country are still not employed outside of their
6 homes. Their basic function is that of
7 homemaker, a nonremunerative occupation
8 yet one which if it were necessary to pay
9 for the task that a typical wife and mother
10 performs, would cost the average husband and
11 father many thousands of dollars a year.
12 For modern society has dictated and
13 justly so that the typical husband will be
14 paid for his employment outside of the home.
15 It hasn't yet found an answer to the question
16 of how to justify and compensate the equally
17 important work that is done by the wife and
18 mother in the home. Because of this
19 women are frequently at great disadvantage in our
20 money oriented society. As well as they are
21 dependent largely upon their husbands for
22 whatever money they have.

23 In the well-functioning marriage, this
24 is not a serious problem, but it can become
25 the source of much friction in the unstable

1 situation.

2 If the wife has not yet been previously
3 employed, she may sometime at a later age
4 in life, when employable skills are just
5 rusty or even nonexistent, be compelled to
6 seek employment, because what the husband
7 has left is not adequate to support her.
8 The sadder situation, however, is the
9 gross inequity resulting, not infrequently,
10 when as is currently permitted in our
11 New Jersey law, a husband upon death, for
12 whatever reason, cuts his wife off either wholly
13 or partially in his will or by his lifetime
14 gifts. Only meager protection is afforded the
15 wife by her dower interests in any real
16 estate which the man may own in his own
17 name.

18 We have a saying in law school, you
19 could leave it all to the dollies and the follies
20 in New Jersey and any lawyer can tell you how
21 many times property--real property has been
22 put in a corporate name or in the name of a
23 partnership in order to avoid even the dower
24 right of a spouse.

25 Our state has always upheld and promoted

1 the welfare of a family. We believe that it's
2 long passed time for the state to give
3 recognition to the important role of the woman
4 in the family and to insure that her equality
5 of partnership in the marriage is given real
6 protection by these much needed changes in
7 our inheritance laws. Thank you very much.

8 MR. HAWKINS: Thank you very much.

9 Are there any questions?

10 MR. BATE: Mrs. Cass, I could have
11 asked this question of one of the other
12 witnesses, but I saw that you would be coming
13 and I did not ask it because it pertains
14 to women. As you can see from the bill,
15 I'm a co sponsor, and I am very much in
16 support of both these bills actually, but
17 a prominent lawyer in my area presented
18 me with a set of facts which involved his
19 own family, and I just wondered if you have
20 any thinking on this? Someone in his
21 family, say wife number one, ran a business, she
22 was the primary person in the business. although
23 the husband had something to do with it, she
24 died and left the surviving husband and two
25 children everything. In the course of a couple

1 of years the husband remarried and assuming
2 that these bills pass, that husband will be
3 prevented from leaving these children at least
4 one substantial portion of what he received
5 from his wife; so do you have any thoughts on
6 how to rectify such a situation or indeed should
7 it be rectified?

8 MRS. CASS: Of course, one of the things
9 they could have done, especially if this was a
10 substantial business, was that the first wife
11 in her will should have provided that say, for
12 instance, the marital share would pass to the
13 husband and the other half interest go to the
14 children or possibly even be put in a
15 receiver trust to the husband which would
16 remain or go over to the children. I think that
17 just careful will-drafting will prevent this
18 kind of inequity from resulting. I could think
19 of another incident that I heard of, where a
20 contrary situation arose where a wife had
21 put her husband in business and the business was
22 in the husband's name although the money had
23 been in reality provided by the wife, and sub-
24 sequently, several--quite a number of years
25 later, he began or he became apparently

1 disenchanted with the wife and left
2 everything to a paramour and the wife had
3 no recourse upon his death, because she was
4 entitled to no statutory share, while
5 she had given him the money, she had given it
6 to him and she--in the case that ensued,
7 they didn't go to court, they apparently
8 settled it for a pittance on behalf of the
9 wife. But, this inequity could have not
10 arose at least she would have been entitled
11 to her share.

12 MR. BATE: This would be an antinuptial
13 agreement, which would help much of it, and it
14 would be up to the husband to volunteer or

15 MRS. CASS: That is another problem.
16 To handle the situation of the second marriage
17 and I think wherever there is a situation
18 with people with a sizable amount of assets for
19 their children from the first marriage, they
20 would wisely consider an antinuptual agreement
21 given this law, as is done in New York, presently,
22 this law, as is done in New York, presently,
23 they will protect the rights of the children of
24 the first marriage to receive what has been
25 the inheritance from the parent of the first

1 marriage who died. I don't think it's been
2 much of a problem in New York.

3 MR. HANKINS: If there are no further
4 questions, we wish to thank you for your
5 testimony.

6 Since Mr. Diab has not shown up--
7 did anyone have word from him--having heard
8 no word, we'll hereby declare this hearing
9 to be terminated.

10 Thank you, everyone, for your attendance.
11 (Whereupon, the hearing was concluded.)
12

13 * * * * *

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15 C E R T I F I C A T E

16 I, JOHN M. DiBLASIO, a Certified Shorthand Reporter
17 and Notary Public of the State of New Jersey, hereby
18 certify that the foregoing is a true and accurate transcript
19 of my stenographic notes.
20

21
22 JOHN M. DiBLASIO, C.S.R.
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Appendix A

Chart showing 1972 bill source
for provisions of
A-1185 and A-1186

Senate Bill No. 1006 and Assembly Bill No. 1185 - An Act
granting the surviving spouse the right to an elective share of that
decedent's estate, etc.

| <u>Section</u> | <u>Prior Bill</u> |
|---------------------|-----------------------------|
| 1. ....changed..... | Senate Bill No. 899, sec. 3 |
| 2. ....changed..... | Senate Bill No. 899, sec. 2 |
| 3. | Senate Bill No. 899, sec. 4 |
| 4. | Senate Bill No. 899, sec. 5 |
| 5. ....changed..... | Senate Bill No. 899, sec. 6 |
| 6. | Senate Bill No. 899, sec. 7 |
| 7. | Senate Bill No. 899, sec. 8 |
| 8. | New |

Senate Bill No. 1007 and Assembly Bill No. 1186 -- An

Act concerning decedents' estates, etc.

| <u>Section</u> | <u>Prior Bill</u> |
|------------------|-------------------------------------|
| 1. | Definitions |
| 2. | Senate Bill No. 2274, sec. 16 |
| 3. | Senate Bill No. 902, sec. 1 |
| 4. | Senate Bill No. 902, sec. 2 |
| 5. | New |
| 6. | Senate Bill No. 902, sec. 4a |
| 7. | Senate Bill No. 902, sec. 5 |
| 8. | Senate Bill No. 902, sec. 6 |
| 9. | Senate Bill No. 902, sec. 8 |
| 10. | Senate Bill No. 902, sec. 10 |
| 11. | Senate Bill No. 902, sec. 11 |
| 12. | Senate Bill No. 902, sec. 3 |
| 13. | Senate Bill No. 902, sec. 7 |
| 14. | Senate Bill No. 902, sec. 9 |
| 15. a. & c. | New |
| 15. b. | Senate Bill No. 902, sec. 4b |
| 16. | Senate Bill No. 2274, sec. 17 |
| 17. | New |
| 18. | Senate Bill No. 2277, sec. 3 |
| 19. | New |
| 20. | Senate Bill No. 2277, sec. 1 |
| 21. | Senate Bill No. 2277, sec. 2 |
| 22. | Senate Bill No. 1104, sec. 1 |
| 23. | Senate Bill No. 2275, sec. 2 |

SectionPrior Bill

| | | |
|-----|-------------------|-------------------------------|
| 24. | ..... | Senate Bill No. 2275, sec. 3 |
| 25. | ..... | Senate Bill No. 2275, sec. 4 |
| 26. | ..... | Senate Bill No. 2275, sec. 5 |
| 27. | ..... | Senate Bill No. 2275, sec. 6a |
| 28. |changed..... | Senate Bill No. 2275, sec. 6b |
| 29. | ..... | Senate Bill No. 2275, sec. 7 |
| 30. | ..... | Senate Bill No. 2275, sec. 8a |
| 31. | ..... | Senate Bill No. 2275, sec. 8b |
| 32. | ..... | Senate Bill No. 2275, sec. 10 |
| 33. | ..... | Senate Bill No. 2275, sec. 11 |
| 34. | ..... | Senate Bill No. 2275, sec. 12 |
| 35. | ..... | Senate Bill No. 2326, sec. 6 |
| 36. | ..... | Senate Bill No. 903, sec. 1 |
| 37. | ..... | Senate Bill No. 903, sec. 2 |
| 38. | ..... | Senate Bill No. 903, sec. 3 |
| 39. | ..... | Senate Bill No. 903, sec. 4 |
| 40. | ..... | Senate Bill No. 903, sec. 5 |
| 41. | ..... | Senate Bill No. 903, sec. 6 |
| 42. | ..... | Senate Bill No. 903, sec. 7 |
| 43. | ..... | Senate Bill No. 903, sec. 8 |
| 44. |changed..... | Senate Bill No. 903, sec. 9 |
| 45. | ..... | Senate Bill No. 903, sec. 11 |
| 46. | ..... | Senate Bill No. 903, sec. 12 |
| 47. | ..... | Senate Bill No. 905, sec. 1 |
| 48. | ..... | Senate Bill No. 905, sec. 2 |
| 49. |changed..... | Senate Bill No. 2276, sec. 2 |
| 50. | ..... | Senate Bill No. 2276, sec. 3 |

| <u>Section</u> | <u>Prior Bill</u> |
|----------------------|--------------------------------------|
| 51. | Senate Bill No. 2276, sec. 5 |
| 52. | Senate Bill No. 2274, sec. 2 |
| 53. | Senate Bill No. 2274, sec. 3 |
| 54. | Senate Bill No. 2274, sec. 4 |
| 55. ....changed..... | Senate Bill No. 2274, sec. 5 |
| 56. | Senate Bill No. 2274, sec. 6 |
| 57. | Senate Bill No. 2274, sec. 7 |
| 58. | Senate Bill No. 2274, sec. 8 |
| 59. | Senate Bill No. 2274, sec. 12 |
| 60. | Senate Bill No. 2274, sec. 13 |
| 61. | Senate Bill No. 2327, sec. 2 |
| 62. | Senate Bill No. 2327, sec. 3 |
| 63. | Senate Bill No. 2327, sec. 4 |
| 64. | Senate Bill No. 2327, sec. 5 |
| 65. | Senate Bill No. 2327, sec. 6 |
| 66. | Senate Bill No. 2327, sec. 7 |
| 67. | Senate Bill No. 2327, sec. 8 |
| 68. | Senate Bill No. 2327, sec. 9 |
| 69. | Senate Bill No. 2327, sec. 10 |
| 70. | Senate Bill No. 2327, sec. 11 |
| 71. | Senate Bill No. 2276, sec. 4 |
| 72. | Senate Bill No. 2274, sec. 9 |
| 73. | Senate Bill No. 2274, sec. 10 |
| 74. | Senate Bill No. 2274, sec. 11 |
| 75. | Senate Bill No. 2276, sec. 6 |
| 76. | Senate Bill No. 2326, sec. 3 |
| 77. | Senate Bill No. 2326, sec. 4 |

SectionPrior Bill

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| 78. | | Senate Bill No. 2326, sec. 5 |
| 79. | | Senate Bill No. 2326, sec. 7 |
| 80. | | Senate Bill No. 2326, sec. 8 |
| 81. | ..... | Senate Bill No. 2326, sec. 9 |
| 82. | ..... | Senate Bill No. 2326, sec. 10 |
| 83. | ..... | Senate Bill No. 2326, sec. 11 |
| 84. | ..... | Senate Bill No. 2326, sec. 12 |
| 85. | ..... | Senate Bill No. 2326, sec. 13 |
| 86. | ..... | Senate Bill No. 2274, sec. 15 |
| 87. | | Senate Bill No. 2293, sec. 1 |
| 88. | | Senate Bill No. 904, sec. 1 |
| 89. |changed..... | Senate Bill No. 2275, sec. 9 |

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