

SENATE, No. 952

STATE OF NEW JERSEY 209th LEGISLATURE

INTRODUCED FEBRUARY 10, 2000

Sponsored by:

Senator EDWARD T. O'CONNOR, JR.

District 31 (Hudson)

Senator WILLIAM L. GORMLEY

District 2 (Atlantic)

Co-Sponsored by:

Assemblyman Carroll

SYNOPSIS

Clarifies law with regard to commissions of executors of estates.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/12/2000)

1 AN ACT concerning executor's commissions and amending
2 N.J.S.3B:18-14 and repealing N.J.S.3B:18-1 and N.J.S.3B:18-15.

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

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7 1. N.J.S.3B:18-14 is amended to read as follows:

8 3B:18-14. Corpus commissions[; one fiduciary.

9 On the settlement of the account of one fiduciary, 5% on all corpus
10 received by the fiduciary where corpus receipts do not exceed
11 \$200,000.00, and where corpus receipts exceed \$200,000.00, 5% on
12 the first \$200,000.00, 3 1/2 % on the excess over \$200,000.00 up to
13 \$1,000,000.00, and 2% on the excess over \$1,000,000.00 or such
14 other percentage as the court may determine on the intermediate or
15 final settlement of the fiduciary's accounts, according to actual
16 services rendered.] Commissions on all corpus received by the
17 fiduciary may be taken as follows:

18 5% on the first \$200,000 of all corpus received by the
19 fiduciary:

20 3.5% on the excess over \$200,000 up to \$1,000,000;

21 2% on the excess over \$1,000,000; and

22 1% of all corpus for each additional fiduciary provided that no
23 one fiduciary shall be entitled to any greater commission than that
24 which would be allowed if there were but one fiduciary involved.

25 Such commissions may be reduced by the court having jurisdiction
26 over the estate only upon application by a beneficiary adversely
27 affected upon an affirmative showing that the services rendered were
28 materially deficient or that the actual pains, trouble and risk of the
29 fiduciary in settling the estate were substantially less than generally
30 required for estates of comparable size.

31 (cf: P.L.1983, c.394, s.1)

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33 2. N.J.S.3B:18-1 and N.J.S.3B:18-15 are repealed.

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35 3. This act shall take effect immediately.

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STATEMENT

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40 N.J.S.3B:18-14 sets forth the schedule which is used to calculate
41 the commissions to which executors of estates are entitled. Recently
42 the Internal Revenue Service has begun to take the position that it is
43 not bound by N.J.S.A.3B:18-14 unless a court has approved such

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

Matter underlined thus is new matter.

1 commissions. However, current practice in New Jersey is to refrain,
2 except in extraordinary circumstances, from incurring the additional
3 costs and delay of submitting an executor's accounting for judicial
4 approval. Therefore, a court determination of the executor's
5 commission is rare. The IRS tactic of disallowing a deduction for the
6 full executor's commission calculated in accordance with the statutory
7 schedule leaves lawyers in New Jersey open to criticism for not being
8 able to advise executors accurately of the amount of the executor's
9 commission that will be deductible on the federal estate tax return. As
10 a consequence, some estates owe additional tax interest to the IRS.
11 In order to allow practitioners to be able to administer estates with
12 greater predictability and certainty, the Real Property, Probate and
13 Trust Section of the Bar Association recommends that N.J.S.3B:18-14
14 be amended. The amendatory language contained in the bill is
15 intended to clarify that a fee calculated pursuant to the provisions of
16 N.J.S.3B:18-14 is the normally appropriate commission for a fiduciary
17 and that a court determination is necessary only if a beneficiary objects
18 to the statutory fee calculation. In addition to amending N.J.S.3B:18-
19 14, the bill also repeals two sections of laws dealing with the
20 executors' commissions which the Real Property, Probate and Trust
21 Section views as unnecessary and redundant.