

ASSEMBLY, No. 2937

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 20, 2020

Sponsored by:

Assemblyman JAY WEBBER

District 26 (Essex, Morris and Passaic)

SYNOPSIS

Provides that will is not valid unless signed by testator or substantially written in testator's handwriting.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning wills and amending N.J.S.3B:3-3 and
2 N.J.S.3B:3-2.

3

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

6

7 1. N.J.S.3B:3-2 is amended to read as follows:

8 3B:3-2. Execution; witnessed wills; writings intended as wills.

9 a. Except as provided in subsection b. of this section and in
10 N.J.S.3B:3-3, a will shall be:

11 (1) in writing;

12 (2) signed by the testator or in the testator's name by some other
13 individual in the testator's conscious presence and at the testator's
14 direction; and

15 (3) signed by at least two individuals, each of whom signed
16 within a reasonable time after each witnessed either the signing of
17 the will as described in paragraph (2) or the testator's
18 acknowledgment of that signature or acknowledgment of the will.

19 b. A will that does not comply with subsection a. is valid as a
20 writing intended as a will, whether or not witnessed, if the signature
21 and material portions of the document are in the testator's
22 handwriting.

23 c. Intent that the document constitutes the testator's will can be
24 established by extrinsic evidence, including for writings intended as
25 wills, portions of the document that are not in the testator's
26 handwriting.

27 (cf: P.L.2005, c.160, s.2)

28

29 2. N.J.S.3B:3-3 is amended to read as follows:

30 3B:3-3. Writings intended as wills.

31 Although a document or writing added upon a document was not
32 executed in compliance with N.J.S.3B:3-2, the document or writing
33 is treated as if it had been executed in compliance with N.J.S.3B:3-
34 2 if:

35 a. the document or writing is signed by the testator or is
36 substantially in the testator's handwriting; and

37 b. the proponent of the document or writing establishes by
38 clear and convincing evidence that the decedent intended the
39 document or writing to constitute: (1) the decedent's will; (2) a
40 partial or complete revocation of the will; (3) an addition to or an
41 alteration of the will; or (4) a partial or complete revival of his
42 formerly revoked will or of a formerly revoked portion of the will.

43 (cf: P.L.2005, c.160, s.3)

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

Matter underlined thus is new matter.

1 3. This act shall take effect immediately and shall be applicable
2 to any will or other document purporting to be a will filed with the
3 Surrogate on or after the effective date.

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6 STATEMENT
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8 This bill would provide that a will is not valid unless it is signed
9 by the testator or substantially written in the testator's handwriting.

10 Under current law, set out in N.J.S.3B:3-2, a will is generally
11 valid only if it is in writing, signed by the testator (or signed by
12 another person in the testator's presence and at his direction), and
13 signed by at least two witnesses. There are exceptions to these
14 requirements: (1) A will that does not comply with the requirements
15 can still be valid as "a writing intended as a will" if the signature
16 and material portions of the document are in the testator's
17 handwriting; or, (2) pursuant to N.J.S.3B:3-3, a document or
18 writing can be treated as a valid will if the proponent establishes by
19 clear and convincing evidence that the decedent intended it to
20 constitute his will.

21 In In re Estate of Ehrlich, 427 N.J. Super. 64 (App. Div. 2012),
22 the Appellate Division upheld as a valid will a copy of a typed
23 document that was titled "Last Will and Testament" but was not
24 signed by the testator or by any witnesses. The court held that
25 under the circumstances the typed document was a valid will,
26 because it was intended by the decedent to constitute his will and
27 therefore complied with the provisions of N.J.S.3B:3-3.

28 This bill is intended to overturn the Ehrlich decision as applied
29 to future cases. The bill provides that a document or writing may be
30 treated as a valid will only if, in addition to a showing by the
31 proponent of the decedent's intent, the document or writing is
32 signed by the testator or is substantially in the testator's
33 handwriting.

34 The bill would apply to any will or other document purporting to
35 be a will filed with the Surrogate on or after the bill's effective date.