

SENATE, No. 2877

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED SEPTEMBER 14, 2020

Sponsored by:

Senator JAMES BEACH

District 6 (Burlington and Camden)

SYNOPSIS

Revises and updates law pertaining to conservatorship to encourage ethical conduct by conservators and to provide stronger protections for conservatees and proposed conservatees.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning conservatorship arrangements and amending
2 various sections of the New Jersey Statutes.

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:13A-1 is amended to read as follows:

8 3B:13A-1. **[a.]** "Conservatee" means a person who has not
9 been **[adjudicated]** adjudged to be incapacitated, but who, by
10 reason of advanced age, illness, or physical infirmity, **[is]** has been
11 found by a court to be unable to care for or manage property or **[has**
12 **become]** to be unable to provide self-support or support for others
13 who depend upon that support.

14 **[b.]** "Conservator" means a person appointed by the court to
15 manage the estate of a conservatee.

16 "Conservatorship" means an arrangement, ordered by the court,
17 pursuant to which a conservator is authorized to manage the estate
18 of a conservatee.

19 "Proposed conservatee" means a person who is alleged to be
20 unable to care for or manage property, or to be unable to provide
21 self-support or support for others who depend on such support, due
22 to advanced age, illness, or physical infirmity, but who is not yet
23 subject to a conservatorship established by the court.
24 (cf: P.L.2013, c.103, s.40)

25
26 2. N.J.S.3B:13A-2 is amended to read as follows:

27 3B:13A-2. a. The Superior Court **[may]**, in a civil action
28 brought **[by the conservatee or some other person in his behalf]**
29 pursuant to this chapter, may appoint a conservator to manage the
30 estate of a conservatee**],** except that if**].**

31 b. A civil action for conservatorship may be brought either by
32 the proposed conservatee or by another person, identified in
33 N.J.S.3B:13A-5, who is acting on behalf of the proposed
34 conservatee.

35 c. In any case in which the proposed conservatee objects to the
36 imposition of a conservatorship, a conservator shall not be
37 appointed.
38 (cf: P.L.1983, c.192, s.1)

39
40 3. N.J.S.3B:13A-3 is amended to read as follows:

41 3B:13A-3. a. A conservatee or proposed conservatee shall be
42 represented by counsel throughout the course of conservatorship
43 proceedings and, if a conservatorship is established, until such time
44 as the conservatorship is terminated.

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 b. Counsel shall personally interview the conservatee or
2 proposed conservatee, as the case may be, not more than 72 hours
3 before each scheduled hearing related to conservatorship, and shall
4 certify to the court that the interview has been performed.

5 c. If the conservatee or proposed conservatee is, at any time,
6 not represented by counsel and is unable to afford counsel, the
7 **【The】** court shall 【have the right to】 appoint counsel 【for the
8 proposed conservatee if it believes that counsel is necessary to
9 adequately protect the interests of the conservatee】 therefor.

10 (cf: P.L.1983, c.192, s.1)

11
12 4. N.J.S.3B:13A-4 is amended to read as follows:

13 3B:13A-4. **【The】** A conservatee or proposed conservatee shall
14 be present at 【the】 each hearing relating to the conservatorship
15 unless 【he】 the person is unable to attend by reason of physical or
16 other inability【, and that inability is】 established to the satisfaction
17 of the court. 【If】 Whenever it is alleged that the conservatee or
18 proposed conservatee is 【found to be】 unable to attend a hearing
19 related to the conservatorship, the court shall, subject to 【rules of
20 court】 the Rules of Court, order an investigation to be conducted to
21 **【assure】** confirm that the conservatee 【does not object to the
22 conservatorship unless】 or proposed conservatee is incapable of
23 attending the hearing. An investigation shall be ordered and
24 conducted, pursuant to this section, regardless of whether the court
25 believes【, in its discretion,】 that the interests of the conservatee or
26 proposed conservatee are adequately represented and protected by
27 counsel 【representing the conservatee】.

28 (cf: P.L.1983, c.192, s.1)

29
30 5. N.J.S.3B:13A-5 is amended to read as follows:

31 3B:13A-5. **【By whom action for appointment of conservator in**
32 **behalf of conservatee may be brought. An】** A civil action for the
33 appointment of a conservator may be brought by the proposed
34 conservatee, as provided in 【section】 N.J.S.3B:13A-2, or 【in】 may
35 be brought, on the proposed conservatee's behalf, by:

36 a. **【His】** the spouse of the proposed conservatee;

37 b. **【His】** the adult children of the proposed conservatee or,
38 where there are 【none】 no adult children, the person or persons who
39 are closest in degree of kinship to the proposed conservatee;

40 c. **【Any person having concern for the financial or personal**
41 **well-being of the conservatee;】** (Deleted by amendment,
42 P.L. , c.) (pending before the Legislature as this bill)

43 d. **【A】** a public agency or a social services official of the State
44 or 【of the】 county in which the proposed conservatee resides,

1 regardless of whether or not the proposed conservatee is a recipient
2 of public assistance; **[or]**

3 e. **[The]** the chief administrator of a State licensed hospital,
4 school, or institution in which the proposed conservatee is a patient
5 or from which **[he]** the proposed conservatee receives services**[.];**
6 or

7 f. **[The]** the chief administrator of a non-profit charitable
8 institution in which the proposed conservatee is a patient or from
9 which **[he]** proposed conservatee receives services.

10 (cf: P.L.1989, c.329, s.1)

11

12 6. N.J.S.3B:13A-6 is amended to read as follows:

13 3B:13A-6. Notice of the action to appoint a conservator shall be
14 served upon the following persons:

15 a. The proposed conservatee unless he is the plaintiff;

16 b. The spouse and adult children of the proposed conservatee
17 or, where there are **[none]** no adult children, **[upon]** the person or
18 persons who are closest in degree of kinship to the proposed
19 conservatee; and

20 c. The person with whom the conservatee resides**[,]** or, if the
21 conservatee resides in an institution, **[upon]** the chief administrator
22 of that institution.

23 (cf: P.L.1983, c.192, s.1)

24

25 7. N.J.S.3B:13A-7 is amended to read as follows:

26 3B:13A-7. The persons receiving notice pursuant to
27 N.J.S.3B:13A-6 **[may, upon approval of the court and in the**
28 **interest of the conservatee,]** shall be entitled to appear at all
29 hearings and be heard [concerning] on all matters relating to the
30 conservatorship. When making any material determination related
31 to the conservatorship, the court shall consider, and shall determine
32 the relevance and credibility of, and the weight to be given to, any
33 testimony or other evidence provided by such persons.

34 (cf: P.L.1983, c.192, s.1)

35

36 8. N.J.S.3B:13A-17 is amended to read as follows:

37 3B:13A-17. **[A]** a. At time intervals ordered by the court, but
38 not less often than every six months during the course of a
39 conservatorship, the conservator [may, and if required by the court]
40 shall[,] file with the clerk of the court, under oath:

41 (1) an inventory[, under oath, of] identifying and appraising all
42 of the real and personal property [which] that has come into [his]
43 the conservator's hands or control or has come into the hands of any
44 other person [for him], on the conservator's behalf, during the
45 reporting period, under the auspices of the established
46 conservatorship arrangement; and

1 (2) a formal accounting showing each expenditure and
2 disbursement that has been made by the conservator from the
3 conservatee's estate during the reporting period.

4 b. The court shall not require an initial inventory and
5 【appraisal】 accounting statement to be filed under this section
6 until 【3】 at least three months have elapsed after the grant of letters
7 of conservatorship.

8 c. The court shall review the inventories and accounting
9 statements submitted pursuant to this section, on at least an annual
10 basis, to ensure that the conservator is properly fulfilling the
11 conservator's duties with respect to the conservatee and is operating
12 in a manner consistent with the conservatee's best interests. The
13 court may, at any time, and shall, whenever an inventory or formal
14 accounting submitted pursuant to this section indicates that the
15 conservator may not be properly fulfilling the conservator's duties
16 or acting in the conservatee's best interests, appoint a third-party to
17 interview the conservatee and conservator and to undertake any
18 other investigation the court may direct.

19 (cf: P.L.1983, c.192, s.1)

20
21 9. N.J.S.3B:13A-18 is amended to read as follows:

22 3B:13A-18. a. A conservator may expend or distribute so much
23 or all of the income or principal of the conservatee for 【his】 the
24 support, maintenance, education, care, general use, and benefit 【and
25 for the support, maintenance, education, general use and benefit】 of
26 【his】 the conservatee and the conservatee's dependents and other
27 household members, in the manner, at the time or times, and to the
28 extent, that the conservator, in an exercise of a reasonable
29 discretion, deems suitable and proper, taking into account the
30 requirements of the "Prudent Investor Act," P.L.1997, c.36
31 (C.3B:20-11.1 et seq.) and the considerations specified in
32 N.J.S.3B:13A-19 and N.J.S.3B:13A-20.

33 b. The expenditure or distribution of funds pursuant to this
34 section may occur either with or without court order【, with or
35 without regard to the duty or ability of】.

36 c. In expending or distributing funds pursuant to this section,
37 the conservator shall be authorized, but not required, to consider:

38 (1) whether any other person has the duty or ability to support or
39 provide for the conservatee【,】; and 【with or without regard to】

40 (2) whether there are any other sources of funds, income, or
41 property 【which may be】 available for 【any of those】 the purposes
42 specified in this section.

43 d. All decisions made by a conservator with respect to the
44 expenditure or distribution of funds pursuant to this section shall be
45 consistent with the conservatee's best interests and the specified
46 wishes and preferences of the conservatee, to the extent that the

1 conservatee retains the capacity to express such wishes and
2 preferences.

3 (cf: P.L.1983, c.192, s.1)

4

5 10. N.J.S.3B:13A-19 is amended to read as follows:

6 3B:13A-19. a. In making expenditures **【under】** and
7 distributions pursuant to N.J.S.3B:13A-18, a conservator shall
8 consider any recommendations relating to the **【appropriate standard**
9 **of】** expenditure and distribution of funds for the support, education,
10 care, general use, and benefit **【for】** of the conservatee, the
11 conservatee's dependents, and other members of the conservatee's
12 household, which are made by any **【party set forth】** person listed in
13 N.J.S.3B:13A-6. 【He may not be surcharged】

14 b. The conservator shall be subject to pay a penalty surcharge
15 for any sums that are paid or distributed thereby, pursuant to the
16 recommendation of a person listed in N.J.S.3B:13A-6, to persons or
17 organizations actually furnishing support, education, or care to the
18 conservatee **【pursuant to the recommendations of a parent, spouse,**
19 **or heir of the conservatee unless he】** if the recommendation
20 resulting in the payment or distribution is clearly not in the ward's
21 best interests or the conservator knows that the **【parent, spouse, or**
22 **heir of the conservatee】** person making the recommendation is
23 deriving personal financial benefit therefrom**【,** or unless the
24 recommendations are clearly not in the best interests of the
25 conservatee**】.**

26 (cf: P.L.1983, c.192, s.1)

27

28 11. N.J.S.3B:13A-20 is amended to read as follows:

29 3B:13A-20. In **【making expenditures under】** addition to
30 considering the recommendations of the persons listed in
31 N.J.S.3B:13A-6 as provided by N.J.S.3B:13A-19, 【the】 whenever a
32 conservator **【shall expend or distribute sums reasonably necessary】**
33 makes an expenditure or distribution of funds for the support,
34 education, care, general use, or benefit of the conservatee **【with】.**
35 the conservatee's dependents, or other members of the
36 conservatee's household, the conservator shall give due regard to:

37 a. **【The】** the size of the conservatee's estate;

38 b. **【The】** the probable duration of the conservatorship and the
39 likelihood that the conservatee, at some future time, may be fully
40 able to manage **【his】** the conservatee's own affairs and the estate
41 **【which】** that has been conserved for **【him】** the conservatee; 【and】

42 c. **【The】** the accustomed standard of living of the conservatee,
43 the conservatee's dependents, and other members of **【his】** the
44 conservatee's household;

45 d. the best interests of the conservatee; and

1 e. the wishes and preferences of the conservatee, to the extent
2 that the conservatee is capable of expressing those wishes and
3 preferences.
4 (cf: P.L.1983, c.192, s.1)
5

6 12. N.J.S.3B:13A-27 is amended to read as follows:

3B:13A-27. **【The】** A conservator shall [present to] annually
provide the conservatee with an **【annual】** informal report or
accounting statement setting forth the **【collection and disposition**
of】 income and other assets within the conservator's control that
have been collected and expended or otherwise distributed by the
conservator during the preceding year. The annual informal report
or accounting statement shall also be filed with the court and made
available, upon request, for inspection by any party set forth in
N.J.S.3B:13A-6. **【In addition, the court may order, upon a showing**
of good cause by the conservatee, a full accounting by the
conservator of all the conservatee's assets within the conservator's
control**】** The annual informal report or statement distributed by a
conservator under this section shall be supplemental to the formal
inventories and accounting statements that are submitted to the
court, under oath, pursuant to N.J.S.3B:13A-17.
(cf: P.L.1983, c.192, s.1)

24 13. N.J.S.3B:13A-32 is amended to read as follows:

3B:13A-32. If **the exercise of power concerning the estate is** a court finds that a conservator has breached the conservator's fiduciary duties to the conservatee by taking an action that is outside the scope of the conservatorship arrangement or that violates the rights of the conservatee, contradicts or violates the conservatee's best interests, or is otherwise deemed by the court to be improper for a fiduciary, the conservator **is** shall be liable to the conservatee or other interested persons for damage or loss resulting from breach of **his** fiduciary duty to the same extent as a trustee of an express trust.

(cf: P.L.1983, c.192, s.1)

37 14. This act shall take effect immediately.

40 STATEMENT

42 This bill revises the law pertaining to conservatorship
43 arrangements in order to encourage ethical conduct by conservators
44 and provide stronger protections for conservatees and proposed
45 conservatees. Specifically, the bill makes the following substantive
46 changes to strengthen the existing conservatorship law:

1 Existing law requires a court to appoint counsel for a proposed
2 conservatee only if it believes that counsel is necessary to
3 adequately protect the conservatee's interests. The bill would
4 amend the law to require a conservatee or proposed conservatee to
5 be represented by counsel throughout the course of conservatorship
6 proceedings and, if a conservatorship is established, until such time
7 as the conservatorship is terminated. The bill would further require
8 counsel to personally interview the conservatee or proposed
9 conservatee not more than 72 hours before each scheduled hearing
10 related to conservatorship and certify to the court that the interview
11 has been performed. If the conservatee or proposed conservatee is,
12 at any time, not represented by counsel and is unable to afford
13 counsel, the court will be required to appoint counsel for the person.

14 Existing law requires a conservatee or proposed conservatee to
15 be present at each hearing relating to the conservatorship unless the
16 person is unable to attend by reason of physical or other inability
17 established to the court's satisfaction. If it is alleged that the
18 conservatee or proposed conservatee is unable to attend, the
19 existing law requires the court to order an investigation unless the
20 court believes, in its discretion, that the interests of the conservatee
21 are adequately protected by counsel. The bill would amend the
22 existing law to require a court to order an investigation in any case
23 where it is alleged that the conservatee or proposed conservatee is
24 unable to attend the hearing in order to verify that the conservatee
25 or proposed conservatee is, in fact, incapable of attending the
26 hearing. The investigation is to be ordered regardless of whether
27 the court believes that the interests of the conservatee or the
28 proposed conservatee are adequately represented and protected by
29 counsel.

30 Existing law authorizes a civil action for conservatorship to be
31 filed either by the proposed conservatee or by one of the following
32 individuals: 1) the spouse of the conservatee; 2) the adult children
33 of the conservatee or, if there are no adult children, the person or
34 persons who are closest in degree of kinship to the conservatee; 3) a
35 public agency or social services official of the State or county in
36 which the conservatee resides; 4) the chief administrator of a State
37 licensed hospital, school, or institution in which the conservatee is a
38 patient or from which the conservatee receives services; or 5) any
39 other person having concern for the financial or personal well-being
40 of the conservatee. The bill would amend the law to remove the
41 catch-all provision that allows a civil action to be filed by any
42 person who has concern for the financial or personal well-being of
43 the conservatee.

44 The bill provides that every person who is entitled by law to
45 receive notice of a conservatorship proceeding, including: 1) the
46 proposed conservatee; 2) the spouse and adult children of the
47 conservatee or, if there are no adult children, the person or persons
48 closest in degree of kinship to the conservatee; and 3) the person

1 with whom the conservatee resides or, if the conservatee resides in
2 an institution, the chief administrator of that institution, are entitled
3 to appear at all hearings and be heard on all matters relating to the
4 conservatorship. Existing law authorizes such persons to appear at
5 hearings and be heard on matters related to the conservatorship only
6 if the court approves of such action and deems it to be in the
7 interest of the conservatee. Although the bill would entitle these
8 persons to appear and present testimony and other evidence, it
9 would preserve the court's ability to use its discretion in
10 determining the relevance and credibility of, and the weight to be
11 given to, the testimony and evidence.

12 Existing law provides for a conservator to file with the clerk of
13 court, under oath, an inventory identifying and appraising all of the
14 real and personal property that has come into the conservator's
15 hands or control or has come into the hands of any other person, on
16 the conservator's behalf; however, such inventory need only be
17 submitted if the court expressly requires such reporting. The court
18 is not currently required, by existing law, to review any inventory
19 that is filed therewith. The bill would amend the existing law to
20 require a conservator, in all cases, to file with the clerk of court,
21 under oath, at time intervals ordered by the court, but not less often
22 than every six months during the course of a conservatorship, the
23 inventory required by existing law, as well as a formal accounting
24 that shows each expenditure and disbursement that has been made
25 by the conservator from the conservatee's estate during the
26 reporting period. The bill would further require the court to review
27 the inventories and accounting statements submitted pursuant to the
28 bill, on at least an annual basis, in order to ensure that the
29 conservator is properly fulfilling the conservator's duties with
30 respect to the conservatee and is operating in a manner consistent
31 with the conservatee's best interests. The bill authorizes the court,
32 at any time, and requires the court, whenever an inventory or formal
33 accounting indicates that the conservator may not be properly
34 fulfilling the conservator's duties or acting in the conservatee's best
35 interests, to appoint a third-party to interview the conservatee and
36 conservator and to undertake any other investigation the court may
37 direct.

38 The bill would clarify that a conservator will also be required to
39 annually provide, to the conservatee and the court, an informal
40 report or accounting statement setting forth the income and other
41 assets within the conservator's control that have been collected and
42 expended or otherwise distributed by the conservator during the
43 preceding year. This informal report or accounting statement will
44 be supplemental to the formal inventory and accounting statements
45 that are to be submitted to the court, under oath, at least every six
46 months under the bill.

47 The bill would require a conservator, when expending or
48 distributing funds from the conservatee's estate, to take into account

1 the requirements of the “Prudent Investor Act,” P.L.1997, c.36
2 (C.3B:20-11.1 et seq.). The bill also specifies that the conservator
3 will be required to give due regard to, and to take actions that are
4 consistent with, the ward’s best interests and the ward’s expressed
5 wishes and preferences, to the extent that the ward is capable of
6 expressing those wishes and preferences.

7 Although existing law already provides that a conservator will be
8 liable to the conservatee or other interested parties, to the same
9 extent as a trustee of an express trust, whenever the exercise of a
10 conservator’s power is improper, the bill would clarify this
11 provision by providing a list of examples of instances where a
12 conservator’s exercise of power is improper. Specifically, the bill
13 provides that a conservator will be liable to the same extent as a
14 trustee of an express trust whenever a court finds that the
15 conservator has breached his or her fiduciary duties by taking an
16 action that is outside the scope of the conservatorship arrangement
17 or that violates the rights of the conservatee, contradicts or violates
18 the conservatee’s best interests, or is otherwise deemed by the court
19 to be improper for a fiduciary.

20 Finally, the bill amends the existing conservatorship law to
21 modernize and clarify the existing language and paragraph and
22 sentence structure and ensure that appropriate language is used
23 consistently, and is presented in an active and direct voice,
24 throughout the law.