

# SENATE JUDICIARY COMMITTEE

## STATEMENT TO

[First Reprint]

## ASSEMBLY, No. 2351

with committee amendments

# STATE OF NEW JERSEY

DATED: JUNE 12, 2023

The Senate Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 2351 (1R).

This bill provides that if a complaint has been filed for divorce, dissolution of a civil union, termination of domestic partnership, or divorce from bed and board, and either party dies prior to the entry of a final judgment, or the parties had and remained entered into an equitable distribution cut-off agreement, termination agreement, or marital settlement agreement where the underlying subject matter was for such divorce, dissolution, or termination and a party to that agreement died prior to the entry of a final judgment, the court would be authorized to proceed with awarding an equitable distribution of the couple's property. The bill further provides that under these circumstances, in which the surviving spouse or partner would still be entitled to a divided portion of the former couple's property, that person would not instead have a right to an intestate share of the decedent's estate pursuant to N.J.S.3B:5-3, or an elective share of one-third of the decedent's augmented estate pursuant to N.J.S.3B:8-1 et seq.

The bill would further make the following types of surviving spouse or partner ineligible to receive an intestate share or elective share of the decedent's property, because of an earlier arrangement providing for a distribution of the couples' property:

- if the person, at the time of death of the decedent, had (1) ceased to cohabit with the decedent under circumstances which would have given rise to a cause of action for divorce or nullity of marriage to a decedent prior to his or her death under the laws of this State; and (2) where, through written agreement, affirmative acts, or both written agreement and affirmative acts of the person and decedent there had been a division of assets equivalent to equitable distribution; and

- a person who, at the time of death of the decedent, had entered into a validly executed marital settlement agreement with the decedent where the underlying subject matter of the marital settlement agreement is divorce, dissolution of civil union, termination of domestic partnership, or divorce from bed and board.

Under current law, if a spouse or partner dies while the divorce, dissolution, or termination is pending, the survivor is excluded from an award of equitable distribution, as the matter gets removed from the Superior Court, Chancery Division, Family Part (the “family court”) to be handled as a probate matter of the decedent’s estate. In such probate matters, if the surviving spouse or partner was no longer cohabitating with the other spouse or partner at the time of death, the probate law precludes that surviving spouse or partner from being able to claim an elective share of the decedent’s estate. Thus, in some scenarios, a surviving spouse or partner who was still legally married or partnered at the time of the other’s death, having not gotten an equitable distribution through the family court, may also not have a claim on any share of the estate. This bill would address this by permitting the family court action to proceed and the surviving spouse or partner receiving an award of equitable distribution of the former couple’s property.

In addition to addressing the interplay between family law and probate law as heretofore described, the bill clarifies the laws of intestate succession and those governing elective shares of augmented estates by expressly including the surviving partner in a civil union among the types of surviving persons who may have claims under such laws. Currently, the statutes being amended by the bill only expressly list a surviving spouse or surviving domestic partner, however they apply to a surviving civil union partner by virtue of section 4 of P.L.2006, c.103 (C.37:1-37), which states that “[c]ivil union couples shall have all of the same benefits, protections and responsibilities under law . . . as are granted to spouses in a marriage.” Expressly listing them in these statutes provides further clarity as to their applicability to civil union partners.

This bill, as amended and reported, is identical to Senate Bill No. 2991, also amended and reported today by the committee.

The committee amendments to the bill:

- add several categories of individuals who are not considered to be a surviving spouse, partner in a civil union, or domestic partner for purposes of receiving an intestate share of a decedent’s estate or elective share of a decedent’s augmented estate, because of an earlier arrangement providing for a distribution of the couples’ property; and

- provide for the family court to proceed in effectuating an equitable distribution of a couples’ property pursuant to a filed complaint, when one person died prior to entry of the final judgment and the parties had and remained entered into an equitable distribution cut-off agreement, termination agreement, or marital settlement agreement where the underlying subject matter was for a divorce, dissolution of civil union, or termination of domestic partnership.