

**ASSEMBLY, No. 4000**

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**STATE OF NEW JERSEY**

**221st LEGISLATURE**

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INTRODUCED MARCH 7, 2024

**Sponsored by:**

**Assemblywoman CAROL A. MURPHY**

**District 7 (Burlington)**

**Assemblywoman SHANIQUE SPEIGHT**

**District 29 (Essex and Hudson)**

**SYNOPSIS**

Establishes Office of Professional Corporate Guardians.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 5/13/2024)**

A4000 MURPHY, SPEIGHT

2

1 AN ACT establishing an office of professional corporate guardians,  
2 and supplementing Titles 9, 52, and 53 of the Revised Statutes  
3 and N.J.S.3B:12-1 et seq.

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

7  
8 1. As used in this act:

9 “Affiliate” means any company that controls, is controlled by, or  
10 is under common control with another company.

11 “Court” means the Superior Court.

12 “Disabled person” means a person, between the ages of 18 and  
13 64 years, with a physical disability, infirmity, malformation, or  
14 disfigurement which is caused by bodily injury, birth defect, aging,  
15 or illness including epilepsy and other seizure disorders, and who,  
16 after two licensed physicians have examined and certified in  
17 writing, is deemed to be unable to physically or mentally exercise  
18 the powers granted to a general guardian.

19 “Estate” means all of the property of a disabled person, ward, or  
20 incapacitated person, whose affairs are subject to administration.

21 “Family choice guardian” means a professional corporate  
22 guardian designated by the heirs of a disabled person or an  
23 incapacitated person, either by private arrangement or court  
24 appointment, to serve as a general guardian of a disabled or  
25 incapacitated person.

26 “Heir” means those persons, including, but not limited to, the  
27 surviving spouse, the domestic partner and the descendants of the  
28 decedent, who are entitled under the statutes of intestate succession  
29 to the property of a decedent.

30 “Incapacitated person” means an adult, between the ages of 18  
31 and 64 years, declared incapacitated by a court order and for whom  
32 a professional corporate guardian has been designated by private  
33 arrangement or court appointment.

34 “Minor” means a person under the age of 18 years and who has  
35 been diagnosed with a developmental or intellectual disability.

36 “Office” means the “Office of Professional Corporate  
37 Guardians.”

38 “Personal choice guardian” means a professional corporate  
39 guardian, designated by a person on a preneed basis, to serve as a  
40 general guardian, by private arrangement, should the person become  
41 incapacitated or disabled.

42 “Professional corporate guardian” or “general guardian” means a  
43 for profit or not-for-profit business entity, corporation, partnership,  
44 limited partnership, or a limited liability company either duly  
45 formed or licensed to conduct business in New Jersey that, either by  
46 private arrangement or court appointment, has been granted the  
47 powers to exercise all assigned legal rights of a disabled or  
48 incapacitated person or a ward’s property.

1       “Property” means anything that may be the subject of ownership,  
2 whether real or personal, legal or equitable, or any interest therein.

3       “Substitute guardian” means a guardian who is an employee of a  
4 professional corporate guardian, duly registered in the State of New  
5 Jersey as a professional guardian pursuant to P.L.2005, c.370  
6 (C.52:27G-32 et. seq.) and who is designated, at the sole discretion  
7 of the professional corporate guardian, to provide guardianship  
8 services to a ward of a professional corporate guardian. A person  
9 who is a substitute guardian shall not be in violation of subsection  
10 e. of section 2 of P.L.2005, c.307 (C. 52:27G-33) or section 4 of  
11 P.L.2005, c.307 (C. 52:27G-35) as long as the employer of the  
12 professional corporate guardian is in compliance with this act.

13       “Ward” means a person for whom a professional corporate  
14 guardian is appointed by private arrangement or court appointment.  
15

16       2. a. There is established, in but not of the Department Human  
17 Services, the Office of Professional Corporate Guardians. For the  
18 purpose of complying with the provisions of Article V, Section IV,  
19 paragraph 1 of the New Jersey Constitution, the Office of  
20 Professional Corporate Guardians is hereby allocated within the  
21 Department of Human Services, but notwithstanding this allocation,  
22 the office shall be independent of any supervision or control by the  
23 department or any board or officer thereof, or any other cabinet-  
24 level department, board, or officer thereof.

25       The purpose of the office shall be to oversee the licensing  
26 requirements and establish standards of practice for professional  
27 corporate guardians.

28       b. The Commissioner of Human Services shall appoint an  
29 executive director of the office, who shall be an attorney admitted  
30 to the practice of law in this State and who shall be qualified by  
31 training and experience to perform the duties of the office. The  
32 executive director shall serve at the pleasure of the commissioner,  
33 shall be knowledgeable in communication, guardianship law, and  
34 the social services available to meet the needs of persons who are  
35 disabled or incapacitated, and shall be a person of recognized  
36 judgment, integrity, objectivity, and professionalism. The  
37 executive director shall devote his entire time to the duties of the  
38 position and shall receive a salary as determined by law.

39       c. The office shall:

40       (1) adopt rules and regulations in accordance with the  
41 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
42 seq.) to effectuate the purposes of this act;

43       (2) establish standards of practice for professional corporate  
44 guardians, and ensure the compliance with such standards of  
45 practice;

46       (3) develop criteria for qualification as a professional corporate  
47 guardian in the State;

- 1 (4) the amount to be charged in application and issuance fees for  
2 registrations authorized under this act;
- 3 (5) establish disciplinary measures for failure to uphold the  
4 practice standards established pursuant to this section, including,  
5 but not limited to, disqualifying, suspending, revoking, refusing to  
6 renew the registration of professional corporate guardians;
- 7 (6) establish procedures for organizing and conducting hearings  
8 into allegations of misconduct by registered professional corporate  
9 guardians;
- 10 (7) establish policies and procedures for addressing conflicts of  
11 interest, prohibited activities, and breach of fiduciary duties relating  
12 to professional corporate guardians pursuant to section 14 of  
13 P.L. , c. (C. ) (pending before the Legislature as this bill);
- 14 (8) develop guidelines concerning and procedures governing  
15 initial and annual guardianship reports filed by a registered  
16 professional corporate guardian; and
- 17 (9) develop and maintain a searchable database that contains and  
18 displays information on each registered professional corporate  
19 guardian. In addition, the database shall:
- 20 (a) be accessible on the Department of Human Services website;  
21 and
- 22 (b) be reviewed and updated as new information becomes  
23 available or changes are necessary.  
24
- 25 3. An entity may serve as a professional corporate guardian if  
26 that entity has been registered by the Office of Professional  
27 Corporate Guardians pursuant to P.L. , c. (C. ) (pending  
28 before the Legislature as this bill) as a professional corporate  
29 guardian. The Office of Professional Corporate Guardians shall not  
30 register an entity as a professional corporate guardian unless that  
31 entity:
- 32 (1) is duly formed in New Jersey or is duly registered as a foreign  
33 entity and maintains an office in New Jersey;
- 34 (2) has a minimum of five substitute guardians employed directly  
35 by the entity or by an affiliate thereof;
- 36 (3) has supplied proof of current professional liability insurance  
37 coverage to the Office of Professional Corporate Guardians;
- 38 (4) has posted a fiduciary bond in accordance with the provisions  
39 of N.J.S.3B:15-1;
- 40 (5) has submitted, for any owner having a direct or indirect interest  
41 in the professional corporate guardian entity a credit check report to  
42 the Office of Professional Corporate Guardians from one national  
43 credit reporting agency, which report has been issued within one  
44 month of the date of the application for registration of the entity as  
45 a professional corporate guardian;
- 46 (6) as to any owner having a direct or indirect interest in the  
47 professional corporate guardian entity, has satisfied the criminal  
48 history record background, child abuse registry, and domestic

1 violence central registry check requirements of P.L. , c. (C. )  
2 (pending before the Legislature as this bill);

3 (7) as to any owner having a direct or indirect interest in the  
4 professional corporate guardian entity, the owner is not subject to any  
5 outstanding warrants for arrest;

6 (8) as to any owner having a direct or indirect interest in the  
7 professional corporate guardian entity and who is also a licensed  
8 professional guardian, has completed approved initial training and  
9 biennial continuing education courses, as provided for in section 6  
10 of P.L. , c. (C. ) (pending before the Legislature as this bill),  
11 relating to guardianship law, procedures and ethics; and

12 (9) is not otherwise ineligible as set forth in section 4 of this act.  
13

14 4. a. In addition to the disqualification from registration as a  
15 professional corporate guardian pursuant to section 7 of P.L. ,  
16 c. (C. ) (pending before the Legislature as this bill), an entity is  
17 ineligible for registration as a professional corporate guardian or, if  
18 currently registered, may have its registration suspended or revoked  
19 pursuant to section 13 of this act, if the entity:

20 (1) was engaged in a business for which the entity was licensed,  
21 certified, or registered by a board or other authorized entity in the  
22 State and its license, certification or registration was suspended or  
23 revoked by the applicable board or other authorized entity;

24 (2) as to any owner having a direct or indirect interest in the  
25 professional corporate guardian entity, has a criminal conviction or  
26 who has been found to be civilly liable for any matter involving  
27 moral turpitude, abuse, neglect, fraud, misappropriation,  
28 misrepresentation, theft, or conversion;

29 (3) lacks financial responsibility to serve as a registered  
30 professional guardian, as determined by the Office of Professional  
31 Corporate Guardians;

32 (4) as to any owner having a direct or indirect interest in the  
33 professional corporate guardian entity, is found to have committed  
34 abuse, neglect, or exploitation of another person;

35 (5) as to any owner having a direct or indirect interest in the  
36 professional corporate guardian entity, is the subject of any other  
37 disciplinary decision or civil adjudication that would prohibit the  
38 person by law from providing services to children or vulnerable  
39 adults;

40 (6) as to any owner having a direct or indirect interest in the  
41 professional corporate guardian entity and who is also a licensed  
42 professional guardian, fails to complete the initial training or  
43 biennial continuing education courses required pursuant to this act;

44 (7) misrepresents, conceals or falsifies information on the  
45 registered professional corporate guardian application form or  
46 annual renewal form;

47 (8) is found to have committed any act which results in a  
48 substantial change in the registered professional corporate

- 1 guardian's qualifications to serve as a professional corporate  
2 guardian;
- 3 (9) engages in conduct which demonstrates unfitness to serve as  
4 a registered professional corporate guardian, including, but not  
5 limited to, persistent or repeated violations of a court order or  
6 engaging in any impropriety involving dishonesty, fraud, deceit or  
7 misrepresentation;
- 8 (10) fails to cooperate during the course of an investigation by  
9 the Office of Professional Corporate Guardians or any law  
10 enforcement agency;
- 11 (11) is the subject of a court order, finding of fact, or conclusion  
12 of law that indicates:
- 13 (a) a finding that the professional corporate guardian has violated  
14 the professional corporate guardian's duties to an incapacitated  
15 person or his estate; or
- 16 (b) a failure to comply with an order of the court;
- 17 (13) knowingly or negligently engaging in misconduct which:
- 18 (a) benefits the professional corporate guardian, an owner having  
19 a direct or indirect interest thereof, or another professional  
20 corporate guardian;
- 21 (b) operates to deceive the court;
- 22 (c) causes serious or potentially serious injury to a party, the  
23 public or the legal system; or
- 24 (d) causes serious or potentially serious interference with a legal  
25 proceeding;
- 26 (14) endangers an incapacitated person;
- 27 (15) engages in practices that fall outside the powers or role of a  
28 guardian;
- 29 (16) fails, on a repeated or significant basis to perform guardian  
30 responsibilities or fiduciary duties;
- 31 (17) fails to file required reports and forms;
- 32 (18) engages in inappropriate billing or fee payment;
- 33 (19) fails to provide a written disclosure to a ward's heirs  
34 concerning any financial interest the professional corporate  
35 guardian may have, either directly or indirectly, in the provision of  
36 professional or licensed services to such incapacitated person;
- 37 (20) fails to notify the executive director of the office in writing,  
38 of any contract entered into between the professional corporate  
39 guardian and any affiliated entity for the provision of professional  
40 or licensed corporate guardian services;
- 41 (21) entering into a contract on behalf of a ward and without  
42 prior written approval from the executive director of the office, to  
43 provide professional or licensed corporate guardian services, which  
44 contract charges, having fees in excess of commercially reasonable  
45 rates; or
- 46 (22) otherwise engages in malfeasance, nonfeasance or  
47 misfeasance.

1       b. A registered professional corporate guardian and its substitute  
2 guardian employees shall be deemed in compliance with subsection  
3 e. of section 2 of P.L.2005, c.307 (C. 52:27G-33) or section 4 of  
4 P.L.2005, c.307 (C. 52:27G-35) as long as the professional  
5 corporate guardian is complaint with this act.

6       c. A registered professional corporate guardian shall maintain  
7 records of all transactions and reports associated with an  
8 incapacitated adult in the guardian's care and shall be subject to  
9 audit or unannounced inspection at any reasonable time, at the  
10 discretion of the executive director of the Office of Professional  
11 Corporate Guardians and the executive director's authorized agents,  
12 to enable the executive director to verify satisfactory operational,  
13 fiscal and care management compliance by a professional corporate  
14 guardian.

15

16       5. a. Unless otherwise provided by private arrangement, an inter  
17 vivos gift, contract, conveyance, disposition, transfer, trust, change  
18 in beneficiary designation, appointment, or re-titling of an account  
19 or property, or a testamentary instrument affecting an incapacitated  
20 adult's money or property in favor of a registered professional  
21 corporate guardian or a family member or business associate of a  
22 substitute guardian, made or executed, as appropriate, during the  
23 two-year period before the establishment of a guardianship in which  
24 the registered professional corporate guardian is appointed as  
25 guardian shall be void, unless the court determines that:

26       (1) the registered professional corporate guardian or a family  
27 member or business associate of a substitute guardian who benefits  
28 from the inter vivos transaction or testamentary instrument  
29 described in this subsection is a spouse, domestic partner as defined  
30 in section 3 of P.L. 2003, c.246 (C.26:8A-3) or heir at law of the  
31 incapacitated adult; or

32       (2) the registered professional corporate guardian has proved by  
33 a preponderance of the evidence that the inter vivos transaction or  
34 testamentary instrument described in this subsection:

35       (a) was not made or executed, as appropriate, when the  
36 incapacitated adult was under the disability that caused the  
37 incapacitated adult to be subsequently declared incapacitated;

38       (b) was authorized and not the result of undue influence, fraud,  
39 coercion, duress, deception or misrepresentation; and

40       (c) was reviewed by an independent attorney, who is not  
41 associated with the registered professional corporate guardian or a  
42 family member or business associate of a substitute guardian,  
43 donee, contracting party, transferee, beneficiary, title holder or  
44 devisee, and that:

45       (i) the independent attorney counseled the incapacitated adult  
46 about the nature and consequences of the intended inter vivos  
47 transaction or testamentary instrument described in this subsection;  
48 and

1 (ii) the independent attorney certified that the intended inter  
2 vivos transaction or testamentary instrument described in this  
3 subsection was not the result of undue influence, fraud, coercion,  
4 duress or misrepresentation.

5 The provisions of this subsection shall not be construed to affect  
6 any other right or remedy that may be available to the incapacitated  
7 adult or the estate of the incapacitated adult with respect to an inter  
8 vivos transaction or testamentary instrument, as described in this  
9 subsection that benefits a registered professional corporate guardian  
10 or a family member or business associate of a substitute guardian.

11 The provisions of this subsection shall not be construed to  
12 invalidate a subsequent transfer for value to a bona fide transferee  
13 from a registered professional corporate guardian.

14 b. Unless otherwise provided by private arrangement or  
15 otherwise authorized by court order after notice to all interested  
16 persons, a court appointed registered professional corporate  
17 guardian shall not:

18 (1) loan an incapacitated adult's property or funds to themselves  
19 or an affiliated entity;

20 (2) make, revoke or change an incapacitated adult's beneficiary  
21 designation to themselves or an affiliated entity;

22 (3) purchase or participate in the purchase of property from an  
23 incapacitated adult's estate for the professional corporate  
24 guardian's, own or an affiliate entity's account or benefit;

25 (4) transfer an incapacitated adult's property or funds by inter  
26 vivos transaction to themselves or an affiliated entity, or receive by  
27 operation of survivorship rights any of an incapacitated adult's  
28 property or funds for themselves or an affiliated entity;

29 (5) engage in any transaction involving self-dealing or a conflict  
30 of interest concerning an incapacitated adult's property or funds  
31 unless the professional corporate guardian is in compliance with  
32 section 4 of this act; or

33 (6) make any renovation to the ward's real property in an amount  
34 greater than \$10,000, except that in extraordinary circumstances  
35 involving a catastrophic situation, the professional corporate  
36 guardian, may apply ex parte to the Superior Court for an order  
37 permitting the renovation.

38  
39 6. a. The Office of Professional Corporate Guardians shall  
40 charge each professional corporate guardian an initial application  
41 fee and an annual registration fee. The initial application fee shall  
42 be in addition to the cost of a credit history report and the child  
43 abuse registry and criminal history record background checks for  
44 any owner of the professional corporate guardian, as applicable.  
45 Annual registration shall be made on forms furnished by the office  
46 and accompanied by the applicable fee, as established by the office.  
47 The initial application and annual registration fees shall not exceed  
48 \$300. Such fees shall be retained by the office for the



1 implementation of P.L. , c. (C. ) (pending before the  
2 Legislature as this bill).

3 b. The office shall approve a vendor to provide initial training  
4 and continuing education courses biennially, in accordance with  
5 procedures to be established by the office.

6  
7 7. a. Upon receipt of an application for registration as a  
8 professional corporate guardian, the Office of Professional  
9 Corporate Guardians is authorized to determine whether criminal  
10 history record information exists on file in the Federal Bureau of  
11 Investigation, Identification Division or in the State Bureau of  
12 Identification in the Division of State Police in the Office of Law  
13 and Public Safety that would disqualify any person applying for  
14 such registration from being an owner of an professional corporate  
15 guardian entity.

16 The office is authorized to access the child abuse registry in the  
17 Department of Children and Families and the domestic violence  
18 central registry in the Administrative Office of the Courts for the  
19 purposes of conducting the child abuse registry and the criminal  
20 history record background checks required pursuant to this section.

21 A person shall be disqualified from being an direct or indirect  
22 ownership of a professional corporate guardian entity if the person's  
23 criminal history record background check reveals a record of  
24 conviction of any of the following crimes and offenses:

25 (1) In New Jersey, any crime or disorderly persons offense:

26 (a) involving danger to the person, meaning those crimes and  
27 disorderly persons offenses set forth in N.J.S.2C:11-1 et seq.,  
28 N.J.S.2C:12-1 et seq., N.J.S.2C:13-1 et seq., N.J.S.2C:14-1 et seq.  
29 or N.J.S.2C:15-1 et seq.;

30 (b) against the family, children or incompetents, meaning those  
31 crimes and disorderly persons offenses set forth in N.J.S.2C:24-1 et  
32 seq.;

33 (c) involving theft as set forth in chapter 20 of Title 2C of the  
34 New Jersey Statutes, or fraud relating to any health care plan or  
35 program as set forth in section 15 of P.L.1989, c.300 (C.2C:21-4.1),  
36 sections 2 and 3 of P.L.1997, c.353 (C.2C:21-4.2 and 2C:21-4.3),  
37 P.L.1999, c.162 (C.2C:21-22.1) or section 17 of P.L.1968, c.413  
38 (C.30:4D-17); or

39 (d) involving any controlled dangerous substance or controlled  
40 substance analog as set forth in chapter 35 of Title 2C of the New  
41 Jersey Statutes except paragraph (4) of subsection a. of  
42 N.J.S.2C:35-10.

43 (2) In any other state or jurisdiction, of conduct which, if  
44 committed in New Jersey, would constitute any of the crimes or  
45 disorderly persons offenses described in paragraph (1) of this  
46 subsection.

1 A person shall also be disqualified from being an owner of a  
2 professional corporate guardian entity if a check of the child abuse  
3 registry reveals that the person has a history of child abuse.

4 In a case in which a check of the domestic violence central  
5 registry reveals that the person has a history of domestic violence,  
6 the office shall review the record with respect to the type and date  
7 of the criminal offense or the provisions and date of the final  
8 domestic violence restraining order and make a determination as to  
9 the suitability of the person to be an owner of a professional  
10 corporate guardian entity.

11 b. Notwithstanding the provisions of subsection a. of this section  
12 to the contrary, no person shall be disqualified from being an owner  
13 of a professional corporate guardian entity on the basis of any  
14 conviction disclosed by a criminal history record background check  
15 performed pursuant to this act if the person has affirmatively  
16 demonstrated to the office clear and convincing evidence of the  
17 applicant owner's rehabilitation. In determining whether a person  
18 has affirmatively demonstrated rehabilitation, the following factors  
19 shall be considered:

20 (1) the nature and responsibility of the position which the person  
21 would hold, has held or currently holds, as the case may be;

22 (2) the nature and seriousness of the offense;

23 (3) the circumstances under which the offense occurred;

24 (4) the date of the offense;

25 (5) the age of the person when the offense was committed;

26 (6) whether the offense was an isolated or repeated incident;

27 (7) any social conditions which may have contributed to the  
28 offense; and

29 (8) any evidence of rehabilitation, including good conduct in  
30 prison or in the community, counseling or psychiatric treatment  
31 received, acquisition of additional academic or vocational  
32 schooling, work history, or the recommendation of those who have  
33 had the person under their supervision.

34 c. If a person refuses to consent to, or cooperate in, the securing  
35 of a criminal history record background check, the office shall not  
36 register the applicant entity as a professional corporate guardian and  
37 shall notify all owners identified on the application of that denial.

38

39 8. a. An owner of an applicant entity or an owner of a  
40 registered professional corporate guardian who is required to  
41 undergo a criminal history record background, child abuse registry  
42 and domestic violence central registry check pursuant to section 7  
43 of P.L. , c. (C. ) (pending before the Legislature as this bill)  
44 shall submit to the Office of Professional Corporate Guardians, the  
45 person's name, address and fingerprints, in accordance with the  
46 applicable State and federal laws, rules and regulations. The office  
47 is authorized to exchange fingerprint data with and receive criminal  
48 history record information from the Federal Bureau of Investigation

1 and the Division of State Police for use in making the  
2 determinations required pursuant to this act.

3 b. Upon receipt of the criminal history record information for a  
4 person from the Federal Bureau of Investigation or the Division of  
5 State Police, the office shall, within a reasonable time, notify all  
6 owners of the applicant entity in writing of the entity's qualification  
7 or disqualification for registration under this act. If the applicant  
8 entity is disqualified, the conviction or convictions which constitute  
9 the basis for the disqualification shall be identified in the notice to  
10 the person and all other owners of the entity.

11 c. Upon receipt of the information for a person from the child  
12 abuse registry in the Department of Children and Families or the  
13 domestic violence central registry in the Administrative Office of  
14 the Courts, the office shall, within a reasonable time, notify all  
15 owners of the applicant entity in writing of the entity's qualification  
16 or disqualification for registration as a professional corporate  
17 guardian under this act. If the person is disqualified, the incident or  
18 incidents which constitute the basis for the disqualification shall be  
19 identified in the notice to the person and all other owners of the  
20 entity.

21 d. The person has a right to be heard by the office, within 30  
22 days from the date of the written notice of disqualification, on the  
23 accuracy of the person's criminal history record, child abuse  
24 registry or domestic violence central registry information or to  
25 establish the person's rehabilitation under subsection b. of section 7  
26 of P.L. , c. (C. ) (pending before the Legislature as this bill).  
27 Upon the issuance of a final decision by the office, pursuant to this  
28 subsection, the office shall notify the person and all other owners of  
29 the applicant entity as to whether the entity remains disqualified. A  
30 person disputing an adverse determination by the office may file  
31 with the Office of Administrative Law for an administrative  
32 hearing.

33

34 9. a. In accordance with sections 7 and 8 of P.L. ,  
35 c. (pending before the Legislature as this bill), the Division of  
36 State Police in the Department of Law and Public Safety shall  
37 conduct a criminal history record background check, including a  
38 name and fingerprint identification check, of each person that is a  
39 direct or indirect owner of an applicant entity seeking registration as a  
40 professional corporate guardian who is required to undergo a  
41 criminal history record background check pursuant to P.L. ,  
42 c. (pending before the Legislature as this bill).

43 b. For the purpose of conducting a criminal history record  
44 background check pursuant to subsection a. of this section, the  
45 Division of State Police shall examine its own files and arrange for  
46 a similar examination by federal authorities. The division shall  
47 immediately forward the information obtained as a result of

1 conducting the check to the executive director of the Office of  
2 Professional Corporate Guardian.

3 c. The Division of State Police shall promptly notify the Office  
4 of Professional Corporate Guardians in the event a person who is  
5 required to undergo a criminal history record background check  
6 pursuant to section 7 of P.L. , c. (C. ) (pending before the  
7 Legislature as this bill) is convicted of a crime or offense in this  
8 State after the date the background check was performed. Upon  
9 receipt of such notification, the office shall make a determination  
10 regarding the continuation of the registration of the applicant entity  
11 as a professional corporate guardian.

12

13 10. a. In accordance with the provisions of sections 7 and 8 of  
14 P.L. , c. (C. ) (pending before the Legislature as this bill),  
15 the Department of Children and Families shall conduct a check of  
16 its child abuse registry for each person listed on an application as an  
17 owner of the applicant entity seeking registration as a professional  
18 corporate guardian who is required to undergo such a check  
19 pursuant to P.L. , c. (C. ) (pending before the Legislature as this  
20 bill). The department shall immediately forward the information  
21 obtained as a result of the check to the Office of Professional  
22 Corporate Guardians.

23 b. The department shall promptly notify the office in the event a  
24 person who is required to undergo a check of the child abuse  
25 registry pursuant to section 7 of P.L. , c. (C. ) (pending before  
26 the Legislature as this bill), is listed in the registry after the date the  
27 child abuse registry check was performed. Upon receipt of such  
28 notification, the office shall revoke the registration of the  
29 professional corporate guardian entity of which the person is an  
30 owner.

31

32 11. An entity seeking registration as a professional corporate  
33 guardian shall assume the cost of the criminal history record  
34 background and child abuse registry checks conducted pursuant to  
35 this act, in accordance with any regulations adopted by the Office of  
36 Professional Corporate Guardians.

37

38 12. a. The Office of Professional Corporate Guardians shall  
39 maintain a Statewide, searchable Internet database of registered  
40 professional corporate guardians, and make all information in the  
41 registry available to the Administrative Director of the Courts for  
42 the use of the Superior Court, or to other interested parties upon  
43 request. The registry shall include the following information for  
44 each registered professional corporate guardian and each owner, as  
45 applicable:

46 (1) full name of the entity and full name of the entity's owner;

47 (2) date of formation of the entity and date of birth of the entity's  
48 owner;

1 (3) business address;

2 (4) business telephone number;

3 (5) each owner's educational background and professional  
4 experience, including work in any related field germane to the  
5 provision of guardianship services;

6 (6) whether the professional corporate guardian entity or the  
7 entity's owner meets applicable registration requirements;

8 (7) the insurance company issuing the registered professional  
9 corporate guardian's professional liability insurance coverage; and

10 (8) the fiduciary bond posted by a professional corporate  
11 guardian in the manner required by N.J.S.3B:15-1.

12 b. In addition to the information listed in subsection a. of this  
13 section, if known to the office, the registry shall include the  
14 following information for each owner of a professional corporate  
15 guardian entity:

16 (1) whether that person has ever been removed for cause or  
17 resigned as a professional guardian in a specific case, the  
18 circumstances of the removal or resignation, and the case names,  
19 court locations and case numbers;

20 (2) any judgment entered against the person as a result of the  
21 performance of services as a professional guardian;

22 (3) any finding by a court that the person is accountable for  
23 malfeasance, nonfeasance, or misfeasance;

24 (4) any finding by a court that the person has violated a  
25 professional guardian's duties to an incapacitated adult or an  
26 incapacitated adult's estate;

27 (5) the number and type of substantiated complaints made  
28 against the professional guardian; and

29 (6) any known pending or final registration or disciplinary  
30 actions taken by the office against the professional guardian.

31

32 13. The Office of Professional Corporate Guardians may  
33 suspend or revoke an entity's registration as a professional  
34 corporate guardian and remove the entity from the Statewide  
35 registry established pursuant to section 12 of P.L. , c. (C. )  
36 (pending before the Legislature as this bill) if:

37 a. the office has reasonable cause to suspect the trustworthiness  
38 or capability of the professional corporate guardian to perform the  
39 duties of a professional corporate guardian; or

40 b. the entity is no longer in compliance with the requirements of  
41 section 3 of P.L. , c. (C. ) (pending before the Legislature as this  
42 bill) or becomes ineligible for registration as a professional  
43 corporate guardian as provided for in subsection a. of section 4 of  
44 P.L. , c. (C. ) (pending before the Legislature as this bill).

45 Notice of the suspension or revocation of the registration and  
46 removal from the registry shall be sent, within 30 days, to the  
47 Administrative Office of the Courts and the known local Surrogates  
48 on behalf of the Superior Court, Chancery Division, Probate Part

1 having jurisdiction over the professional corporate guardian's wards  
2 and the heirs of the disabled person or incapacitated person.

3

4 14. a. The powers and duties of a professional corporate  
5 guardian shall be the same as the powers and duties of a guardian of  
6 the person of a ward as enumerated in N.J.S.3B:12-56 and  
7 N.J.S.3B:12-57.

8 b. In addition to the powers and duties enumerated in  
9 N.J.S.3B:12-56 and N.J.S.3B:12-57, a professional corporate  
10 guardian shall:

11 (1) file with the Office of Professional Corporate Guardians  
12 within sixty days after designation by private arrangement, or  
13 receiving letters of guardianship, an initial guardianship report, and  
14 annually thereafter, in accordance with guidelines established by  
15 the office;

16 (2) advocate on behalf of the ward in institutional and other  
17 residential settings, including but not limited to, advocating for the  
18 ward to receive home and community-based services;

19 (3) allow the ward to maintain contact with family and friends  
20 unless the guardian believes such contact is not in the ward's best  
21 interest;

22 (4) not restrict the ward's physical movements any more than  
23 necessary to protect the ward or another person from serious  
24 physical injury, illness, or disease;

25 (5) assess the need for any additional services the ward may  
26 need, taking into account all aspects the ward's social,  
27 psychological, educational, direct service, and health and personal  
28 care needs; and

29 (6) perform any other duties required by law.

30

31 15. a. A professional corporate guardian may designate a  
32 substitute guardian to exercise all of the powers and duties of the  
33 professional corporate guardian in the event that the general  
34 guardian is unable or unavailable to provide guardianship services  
35 to a disabled or incapacitated person or otherwise delegates such  
36 powers or duties in its capacity as the employer of the substitute  
37 guardian.

38 b. A person designated as a substitute guardian under this  
39 section shall be registered as a professional guardian pursuant to  
40 P.L.2005, c.370 (C. 52:27G-32 et seq.), subject to the provisions of  
41 this act.

42 c. A person designated as a substitute guardian under this  
43 section shall complete the approved initial training and biennial  
44 continuing education courses, as provided for in section 6 of  
45 P.L. , c. (C. ) (pending before the Legislature as this bill).

46 d. (1) The designation of a substitute guardian by a professional  
47 corporate guardian to provide guardianship services to a disabled or

1 incapacitated person shall not limit the responsibility of a  
2 professional corporate guardian to its ward.

3 (2) The professional corporate guardian shall be liable for the  
4 acts of the substitute guardian in providing guardianship services  
5 pursuant to subsection a. of this section, unless the substitute  
6 guardian has engaged in fraud, acts of gross negligence or willful  
7 misconduct, or has committed intentionally malicious or criminal  
8 acts.

9 e. A professional corporate guardian has the sole discretion to  
10 terminate the authority of a substitute guardian to provide  
11 guardianship services to its ward or wards if the substitute guardian  
12 fails to complete the training and education requirements pursuant  
13 to section 6 of P.L. , c. (C. ) (pending before the Legislature  
14 as this bill.

15

16 16. A professional corporate guardian may apply to the court for  
17 judicial appointment to serve as a family choice or personal choice  
18 guardian pursuant to sections 17 and 18 of P.L. , c. (C. )  
19 (pending before the Legislature as this bill) in accordance with Rule  
20 4:86 et seq. of the Rules Governing the Courts of the State of New  
21 Jersey.

22

23 17. a. The heir of a disabled person or the guardian of an  
24 incapacitated person may designate, by private arrangement and  
25 pursuant to the terms of a written contract, a family choice guardian  
26 to serve as the general guardian of the disabled or incapacitated  
27 person.

28 b. (1) The appointment of a family choice guardian by private  
29 arrangement shall be valid if all of the following criteria are met:

30 (a) the heir or the guardian shall enter into a written contract  
31 with a professional corporate guardian registered with the Office of  
32 Professional Corporate Guardians pursuant to P.L. , c. (C. )  
33 (pending for the Legislature as this bill) to serve as the family  
34 choice guardian;

35 (b) the heir or the guardian shall provide all notices required  
36 pursuant to the provisions of Rule 4:80-6 of the Rules Governing  
37 the Courts of the State of New Jersey; and

38 (c) the heir or the guardian shall submit written notice to the  
39 Office of Professional Corporate Guardians containing information  
40 concerning the professional corporate guardian designated by the  
41 heir or guardian as a family choice guardian pursuant to subsection  
42 a. of this section within 10 days of the effective date of the contract,  
43 and enclose a notarized copy of the contract with such notice.

44 (2) A family choice guardian designated by private arrangement  
45 to serve as guardian of the disabled or incapacitated person shall be  
46 subject to the provisions of P.L. , c. (C. ) (pending before  
47 the Legislature as this bill).

1 c. Whenever a complaint is filed in the Superior Court to declare  
2 a person incapacitated and appoint a guardian pursuant to  
3 N.J.S.3B:12-1 et seq., the complaint may also request the  
4 appointment of a registered professional corporate guardian, who  
5 has applied to the court for judicial appointment pursuant to section  
6 14 of P.L. , c. (C. ) (pending before the Legislature as this  
7 bill), to serve as the family choice guardian of the person or the  
8 person's estate, or both.

9 d. The professional corporate guardian appointed by the court as  
10 a family choice guardian pursuant to subsection c. of this section  
11 shall apply to the court in a summary manner, within 20 days after  
12 assumption of the guardian's duties, for a judgment confirming that  
13 appointment. After confirmation by the court, the family choice  
14 guardian shall furnish a bond to secure performance of the  
15 guardian's duties with respect to the person or the person's estate, or  
16 both, unless the guardian is relieved from doing so by the court.

17

18 18. a. A person may designate, by private arrangement and  
19 pursuant to the terms of a written declaration, a professional  
20 corporate guardian to serve as a personal choice guardian, should  
21 the person become disabled or incapacitated.

22 b. (1) The designation of a personal choice guardian by private  
23 arrangement shall be valid if all of the following criteria are met:

24 (a) the person shall designate, in writing, a professional  
25 corporate guardian registered with the Office of Professional  
26 Corporate Guardians pursuant to P.L. , c. (C. ) (pending for  
27 the Legislature as this bill) to serve as a personal choice guardian;

28 (b) the written declaration shall:

29 (i) identify the declarant and the professional corporate guardian  
30 chosen to serve as a personal choice guardian;

31 (ii) be signed by the declarant in the presence of at least two  
32 attesting witnesses; and

33 (iii) constitute a rebuttable presumption that the personal choice  
34 guardian designated by the declarant is entitled to serve as a  
35 guardian;

36 (c) the declarant shall provide all notices required pursuant to the  
37 provisions of Rule 4:80-6 of the Rules Governing the Courts of the  
38 State of New Jersey; and

39 (d) the declarant shall submit written notice to the Office of  
40 Professional Corporate Guardians containing information  
41 concerning the professional corporate guardian designated by the  
42 declarant as a personal choice guardian pursuant to subsection a. of  
43 this section within 10 days of assumption of the guardian's duties  
44 should the declarant become disabled or incapacitated, and enclose  
45 a notarized copy of the written declaration with such notice.

46 (2) The personal choice guardian shall assume the duties of a  
47 declarant's guardian immediately upon the declarant becoming a  
48 disabled or incapacitated person.



1 c. Whenever a complaint is filed in the Superior Court to declare  
2 a person incapacitated and appoint a guardian pursuant to  
3 N.J.S.3B:12-1 et seq., the complaint may also request the  
4 appointment of a registered professional corporate guardian, who  
5 has applied to the court for judicial appointment pursuant to section  
6 14 of P.L. , c. (C. ) (pending before the Legislature as this  
7 bill), to serve as the personal choice guardian of the person or the  
8 person's estate, or both.

9 d. The professional corporate guardian appointed by the court as  
10 a personal choice guardian pursuant to subsection c. of this section  
11 shall apply to the court in a summary manner, within 20 days after  
12 assumption of the guardian's duties, for a judgment confirming that  
13 appointment. After confirmation by the court, the personal choice  
14 guardian shall furnish a bond to secure the performance of the  
15 guardian's duties with respect to the person or the person's estate, or  
16 both, unless the guardian is relieved from doing so by the court.

17  
18 19. a. The authority and responsibility of a professional  
19 corporate guardian of a disabled or incapacitated person terminate  
20 upon the:

- 21 (1) resignation or removal of the general guardian;  
22 (2) death of the disabled or incapacitated person;  
23 (3) termination of the private arrangement designating the  
24 professional corporate guardian by the general guardian or by the  
25 ward or the ward's heirs; or  
26 (4) entry of a judgment adjudicating the restoration of  
27 competency pursuant to N.J.S.3B:12-28 or termination of  
28 guardianship for other reasons.

29 b. Termination of guardianship does not affect the general  
30 guardian's liability for prior acts, nor the general guardian's  
31 obligation to account for funds and assets of the ward. Resignation  
32 of a judicially appointed guardian does not terminate the  
33 guardianship unless it has been approved by a judgment of the  
34 court.

35 c. Upon termination of the guardianship, the guardian shall pay  
36 over and distribute all funds and properties of the former ward or of  
37 the estate of the former ward in accordance with an order of the  
38 court or pursuant to private arrangement. Upon termination of a  
39 professional corporate guardian that was designated by private  
40 arrangement, the former general guardian shall immediately notify the  
41 executive director and file a closing report.

42  
43 20. a. A vacancy in a professional corporate guardianship shall  
44 be deemed to arise when a professional corporate guardian dies,  
45 resigns, is removed, or is discharged after entering into but before  
46 completing the duties of the guardian's office. The resignation of a  
47 judicially appointed professional corporate guardian that was

1 judicially appointed shall not be effective unless approved by a  
2 judgment of the Superior court.

3 b. The court shall have jurisdiction to fill a vacancy in a  
4 professional corporate guardianship by the appointment of another  
5 court-appointed professional corporate guardian prior to the  
6 resignation, removal, or discharge of the original guardian. A  
7 professional corporate guardian, who has been designated by private  
8 arrangement, but who later resigns or is terminated may be  
9 immediately replaced with a successor professional corporate guardian  
10 designated by private arrangement by the ward or the ward's heirs by  
11 private arrangement.

12

13 21. a. The Commissioner of Human Services, pursuant to the  
14 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
15 seq.), may adopt rules and regulations necessary for the  
16 implementation of this act.

17 b. The Supreme Court may adopt Rules of Court necessary for  
18 the implementation of this act.

19

20 22. This act shall take effect on the 180th day after the date of  
21 enactment, except that the Commissioner of Human Services may  
22 take such anticipatory administrative action, in advance, as shall be  
23 necessary for the implementation of this act, and the Supreme Court  
24 of New Jersey may adopt Rules of Court, in advance, as shall be  
25 necessary for the implementation of the provisions of this act.

26

27

28

#### STATEMENT

29

30 This bill establishes in, but not of, the Department Human  
31 Services, the Office of Professional Corporate Guardians. The  
32 purpose of the office is to oversee the licensing requirements of,  
33 and establish standards of practice for, professional corporate  
34 guardians.

35 As defined in the bill, a "professional corporate guardian" means a  
36 for profit or not-for-profit business entity, corporation, partnership,  
37 limited partnership, or a limited liability company either duly  
38 formed or licensed to conduct business in New Jersey and which,  
39 who either by private arrangement or court appointment, has been  
40 granted the powers to exercise all assignable legal rights of an  
41 incapacitated person or ward's property.

42 Under the provisions of the bill, the office is to: (1) adopt rules  
43 and regulations to effectuate the purposes of bill; (2) establish  
44 standards of practice for professional corporate guardians, and  
45 ensure the compliance with such standards; (3) develop the  
46 qualification criteria and amount to be charged for application and  
47 issuance fees for registrations authorized under the bill; (4)  
48 establish disciplinary measures, including, but not limited to,

1 disqualifying, suspending, revoking and refusing to renew the  
2 registration of professional corporate guardians; (5) establish  
3 procedures for organizing and conducting hearings into allegations  
4 of misconduct by registered professional corporate guardians; (6)  
5 establish policies and procedures for addressing conflicts of  
6 interest, prohibited activities, and breach of fiduciary duties relating  
7 to professional corporate guardians; (7) develop guidelines  
8 concerning and procedures governing initial and annual  
9 guardianship reports to be filed by a registered professional  
10 guardian; and (8) develop and maintain searchable database that  
11 contains and displays information on each registered professional  
12 corporate guardian in the State.

13 An entity may serve as a professional corporate guardian if that  
14 entity has been registered by the office as a professional corporate  
15 guardian and that entity meets the qualifications and pays all  
16 required fees and costs outlined in the bill.

17 The office may also suspend or revoke an entity's registration as  
18 a professional corporate guardian and remove the entity from the  
19 Statewide registry if that entity does not comply with the provisions  
20 of the bill.

21 The bill outlines the powers and duties of a professional  
22 corporate guardian including, but not limited to, designating  
23 substitute guardians to exercise all of the powers and duties of the  
24 professional corporate guardian if the professional corporate  
25 guardian is unable or unavailable to perform its duties or otherwise  
26 delegates such duties to its substitute guardian employee.

27 The bill also outlines the procedures a registered professional  
28 corporate guardians is required to follow when designated by the  
29 heir of a disabled person, or a guardian of an incapacitated person,  
30 or a disabled or incapacitated person to serve on a pre-need basis as  
31 a family choice or personal choice guardian, as applicable.

32 The bill delineates the circumstances under which the authority  
33 and responsibility of a professional corporate guardian terminate  
34 and the process for filling vacancies in professional corporate  
35 guardianships.