

**SENATE, No. 2332**

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**STATE OF NEW JERSEY**

**221st LEGISLATURE**

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INTRODUCED JANUARY 25, 2024

**Sponsored by:**

**Senator NICHOLAS P. SCUTARI**

**District 22 (Somerset and Union)**

**Senator JOSEPH F. VITALE**

**District 19 (Middlesex)**

**Co-Sponsored by:**

**Senators Space, Pou and Diegnan**

**SYNOPSIS**

Allows complaint for guardianship of minor to be filed six months before minor reaches age 18 under certain circumstances; establishes certain standards for filing guardianship complaints.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 3/14/2024)**

S2332 SCUTARI, VITALE

2

1 AN ACT concerning guardianship of a minor and amending  
2 P.L.2005, c.304 and P.L.1970, c.289.

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

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7 1. Section 12 of P.L.2005, c.304 (C.3B:12-24.1) is amended to  
8 read as follows:

9 12. Determination by the court of need for guardianship  
10 services, specific services.

11 a. General Guardian. If the court finds that an individual is  
12 incapacitated as defined in N.J.S.3B:1-2 and is without capacity to  
13 govern himself or manage his affairs, the court may appoint a  
14 general guardian who shall exercise all rights and powers of the  
15 incapacitated person. The general guardian of the estate shall  
16 furnish a bond conditioned as required by the provisions of  
17 N.J.S.3B:15-1 et seq., unless the guardian is relieved from doing so  
18 by the court.

19 b. Limited Guardian. If the court finds that an individual is  
20 incapacitated and lacks the capacity to do some, but not all, of the  
21 tasks necessary to care for himself, the court may appoint a limited  
22 guardian of the person, limited guardian of the estate, or limited  
23 guardian of both the person and estate. A court, when establishing  
24 a limited guardianship shall make specific findings regarding the  
25 individual's capacity, including, but not limited to which areas, such  
26 as residential, educational, medical, legal, vocational and financial  
27 decision making, the incapacitated person retains sufficient capacity  
28 to manage. A judgment of limited guardianship may specify the  
29 limitations upon the authority of the guardian or alternatively the  
30 areas of decision making retained by the person. The limited  
31 guardian of the estate shall furnish a bond in accordance with the  
32 provisions of N.J.S.3B:15-1 et seq., unless the guardian is relieved  
33 from doing so by the court.

34 c. Pendente lite; Temporary Guardian.

35 (1) Whenever a complaint is filed in the Superior Court to  
36 declare a person incapacitated and appoint a guardian, the  
37 complaint may also request the appointment of a temporary  
38 guardian of the person or estate, or both, pendente lite. Notice of a  
39 pendente lite temporary guardian application shall be given to the  
40 alleged incapacitated person or alleged incapacitated person's  
41 attorney or the attorney appointed by the court to represent the  
42 alleged incapacitated person.

43 (2) Pending a hearing for the appointment of a guardian, the  
44 court may for good cause shown and upon a finding that there is a

**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 critical need or risk of substantial harm, including, but not limited  
2 to:

3 (a) the physical or mental health, safety and well-being of the  
4 person may be harmed or jeopardized;

5 (b) the property or business affairs of the person may be  
6 repossessed, wasted, misappropriated, dissipated, lost, damaged or  
7 diminished or not appropriately managed;

8 (c) it is in the best interest of the alleged incapacitated person to  
9 have a temporary guardian appointed and such may be dealt with  
10 before the hearing to determine incapacity can be held, after any  
11 notice as the court shall direct, appoint a temporary guardian  
12 pendente lite of the person or estate, or both, of the alleged  
13 incapacitated person.

14 (3) A pendente lite temporary guardian appointed pursuant to  
15 this section may be granted authority to arrange interim financial,  
16 social, medical or mental health services or temporary  
17 accommodations for the alleged incapacitated person determined to  
18 be necessary to deal with critical needs of or risk of substantial  
19 harm to the alleged incapacitated person or the alleged incapacitated  
20 person's property or assets. The pendente lite temporary guardian  
21 may be authorized to make arrangements for payment for such  
22 services from the estate of the alleged incapacitated person.

23 (4) A pendente lite temporary guardian appointed hereunder  
24 shall be limited to act for the alleged incapacitated person only for  
25 those services determined by the court to be necessary to deal with  
26 critical needs or risk of substantial harm to the alleged incapacitated  
27 person.

28 (5) The alleged incapacitated person's attorney or attorney  
29 appointed by the court to represent the alleged incapacitated person  
30 shall be given notice of the appointment of the pendente lite  
31 temporary guardian. The pendente lite temporary guardian shall  
32 communicate all actions taken on behalf of the alleged incapacitated  
33 individual to the alleged incapacitated person's attorney or attorney  
34 appointed by the court to represent the alleged incapacitated person  
35 who shall have the right to object to such actions.

36 (6) A pendente lite temporary guardian appointment shall not  
37 have the effect of an adjudication of incapacity or effect of  
38 limitation on the legal rights of the individual other than those  
39 specified in the court order.

40 (7) If the court enters an order appointing a pendente lite  
41 temporary guardian without notice, the alleged incapacitated person  
42 may appear and move for its dissolution or modification on two  
43 days' notice to the plaintiff and to the temporary guardian or on  
44 such shorter notice as the court prescribes.

45 (8) Every order appointing a pendente lite temporary guardian  
46 granted without notice expires as prescribed by the court, but within  
47 a period of not more than 45 days, unless within that time the court  
48 extends it for good cause shown for the same period.

1 (9) The pendente lite temporary guardian, upon application to  
2 the court, shall be entitled to receive reasonable fees for his  
3 services, as well as reimbursement of his reasonable expenses,  
4 which shall be payable by the estate of the alleged incapacitated  
5 person or minor.

6 (10) The pendente lite temporary guardian shall furnish a bond in  
7 accordance with the provisions of N.J.S.3B:15-1 et seq., unless the  
8 guardian is relieved from doing so by the court.

9 d. Disclosure of information. Physicians and psychologists  
10 licensed by the State are authorized to disclose medical information,  
11 including but not limited to medical, mental health and substance  
12 abuse information as permitted by State and federal law, regarding  
13 the alleged incapacitated person in affidavits filed pursuant to the  
14 Rules Governing the Courts of the State of New Jersey.

15 e. Court appearance. The alleged incapacitated person shall  
16 appear in court unless the plaintiff and the court-appointed attorney  
17 certify that the alleged incapacitated person is unable to appear  
18 because of physical or mental incapacity.

19 f. Communication. When a person who is allegedly in need of  
20 guardianship services appears to have a receptive or expressive  
21 communication deficit, all reasonable means of communication  
22 with the person shall be attempted for the purposes of this section,  
23 including written, spoken, sign or non-formal language, which  
24 includes translation of the person's spoken or written word when the  
25 person is unable to communicate in English, and the use of adaptive  
26 equipment.

27 g. Additional subject areas. At the request of the limited  
28 guardian, and if the incapacitated person is not represented, after  
29 appointment of an attorney for the incapacitated person and with  
30 notice to all interested parties, the court may determine that a  
31 person is in need of guardian services regarding additional subject  
32 areas and may enlarge the powers of the guardian to protect the  
33 person from significant harm.

34 h. Limitations of guardian powers. At the request of the  
35 guardian, the incapacitated person or another interested person, and  
36 if the incapacitated person is not represented, after appointment of  
37 an attorney for the incapacitated person and with notice to all  
38 interested parties, the court may limit the powers conferred upon a  
39 guardian.

40 i. Complaint for Adjudication of Incapacity and Appointment  
41 of Guardian.

42 (1) A complaint for adjudication of incapacity and appointment  
43 of a guardian of an individual who is alleged to be incapacitated as  
44 defined in N.J.S.3B:1-2 shall be filed in accordance with the Rules  
45 of Court.

46 (2) The complaint and accompanying documentation shall not  
47 be withdrawn absent a showing that the individual is deceased or  
48 has capacity. This showing shall not require medical evidence but

1 may, in the court's discretion, be satisfied by the testimony of the  
2 applicant or other witness with knowledge of the alleged  
3 incapacitated person's condition and circumstances.

4 (3) If the individual is a minor under the age of 18 who is  
5 anticipated to require a guardian upon attaining the age of 18, the  
6 complaint may be filed up to 180 days prior to the date the minor  
7 attains the age of 18. Any judgment designating a guardian  
8 pursuant to this paragraph shall take effect no earlier than the date  
9 the minor attains the age of 18.

10 (cf: P.L.2005, c.304, s.12)

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12 2. Section 1 of P.L.1970, c.289 (C.30:4-165.7) is amended to  
13 read as follows:

14 1. a. The commissioner or any parent, spouse, relative, or  
15 interested party, on behalf of an alleged incapacitated person who is  
16 receiving functional or other services and is **[over]** 18 years of age  
17 or over, may file a complaint upon notice to the alleged  
18 incapacitated person with the Superior Court in the county  
19 furnishing the services or in which **[such]** the parent, spouse,  
20 relative, or interested party resides, for a judgment designating a  
21 guardian.

22 b. If the commissioner or any parent, relative, or interested party  
23 on behalf of a minor under the age of 18 who is receiving functional  
24 or other services anticipates that the minor may require a guardian  
25 upon attaining the age of 18, the commissioner, parent, relative, or  
26 interested party may file a complaint with the Superior Court in the  
27 county furnishing the services or in which the parent, relative, or  
28 interested party resides, for a judgment designating a guardian. The  
29 complaint may be filed up to 180 days prior to the date the minor  
30 attains the age of 18. Any judgment designating a guardian shall  
31 take effect no earlier than the date the minor attains the age of 18.

32 c. The county of settlement shall be served with a copy of the  
33 moving papers, however, the county may waive service of the  
34 moving papers if it has no reason to oppose the action. If the  
35 county elects to oppose the action it shall do so within 30 days after  
36 being served with a copy of the moving papers.

37 d. Unless filed by the commissioner, a complaint shall be served  
38 by the filing party upon the Division of Developmental Disabilities,  
39 to the attention of the Regional Director for the region in which the  
40 alleged incapacitated person is receiving functional or other  
41 services. The filing party shall likewise serve upon the Regional  
42 Director a copy of the Order Fixing Hearing Date and Appointing  
43 Attorney for Alleged Incapacitated Person, as well as a copy of any  
44 Judgment of Incapacity and Order Appointing Guardian.

45 (cf: P.L.2015, c.132, s.2)

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47 3. This act shall take effect on the first day of the fourth month  
48 following enactment.

STATEMENT

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This bill allows a complaint for guardianship of a minor who is anticipated to require a guardian upon attaining the age of 18 to be filed six months before the minor attains the age of 18. The bill also establishes certain standards for filing guardianship complaints in general.

Under current law, once a child reaches age 18, a parent or other appropriate person may file a complaint for guardianship. However, if proceedings are delayed and a guardian is not yet appointed, the young person is left without the legal protection of a parent, other appropriate person, or appointed guardian, until such time as the guardian is actually appointed. Allowing guardianship proceedings to be initiated in advance will help avoid potential administrative or procedural delays and ensure a seamless transition as the minor turns age 18. Under the bill, an order of guardianship entered before a minor is 18 would not take effect until the day the minor turns 18.

The bill additionally specifies that a complaint for adjudication of incapacity and appointment of a guardian shall not be withdrawn absent a showing that the alleged incapacitated person is deceased or has capacity. The showing of capacity does not require medical evidence but may, in the court's discretion, be satisfied by testimony of a witness with knowledge of the alleged incapacitated person's condition and circumstances.