

**SENATE, No. 3148**

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**STATE OF NEW JERSEY**

**221st LEGISLATURE**

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INTRODUCED MAY 6, 2024

**Sponsored by:**

**Senator RAJ MUKHERJI**

**District 32 (Hudson)**

**Senator ANGELA V. MCKNIGHT**

**District 31 (Hudson)**

**SYNOPSIS**

Establishes Office of Professional Corporate Guardians.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 5/9/2024)**

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;

48       (4) the amount to be charged in application and issuance fees for  
49 registrations authorized under this act;

1 (5) establish disciplinary measures for failure to uphold the  
2 practice standards established pursuant to this section, including,  
3 but not limited to, disqualifying, suspending, revoking, refusing to  
4 renew the registration of professional corporate guardians;

5 (6) establish procedures for organizing and conducting hearings  
6 into allegations of misconduct by registered professional corporate  
7 guardians;

8 (7) establish policies and procedures for addressing conflicts of  
9 interest, prohibited activities, and breach of fiduciary duties relating  
10 to professional corporate guardians pursuant to section 14 of  
11 P.L. , c. (C. ) (pending before the Legislature as this bill);

12 (8) develop guidelines concerning and procedures governing  
13 initial and annual guardianship reports filed by a registered  
14 professional corporate guardian; and

15 (9) develop and maintain a searchable database that contains and  
16 displays information on each registered professional corporate  
17 guardian. In addition, the database shall:

18 (a) be accessible on the Department of Human Services website;  
19 and

20 (b) be reviewed and updated as new information becomes  
21 available or changes are necessary.

22

23 3. An entity may serve as a professional corporate guardian if  
24 that entity has been registered by the Office of Professional  
25 Corporate Guardians pursuant to P.L. , c. (C. ) (pending  
26 before the Legislature as this bill) as a professional corporate  
27 guardian. The Office of Professional Corporate Guardians shall not  
28 register an entity as a professional corporate guardian unless that  
29 entity:

30 (1) is duly formed in New Jersey or is duly registered as a foreign  
31 entity and maintains an office in New Jersey;

32 (2) has a minimum of five substitute guardians employed directly  
33 by the entity or by an affiliate thereof;

34 (3) has supplied proof of current professional liability insurance  
35 coverage to the Office of Professional Corporate Guardians;

36 (4) has posted a fiduciary bond in accordance with the provisions  
37 of N.J.S.3B:15-1;

38 (5) has submitted, for any owner having a direct or indirect interest  
39 in the professional corporate guardian entity a credit check report to  
40 the Office of Professional Corporate Guardians from one national  
41 credit reporting agency, which report has been issued within one  
42 month of the date of the application for registration of the entity as  
43 a professional corporate guardian;

44 (6) as to any owner having a direct or indirect interest in the  
45 professional corporate guardian entity, has satisfied the criminal  
46 history record background, child abuse registry, and domestic  
47 violence central registry check requirements of P.L. , c. (C. )  
48 (pending before the Legislature as this bill);

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

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

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

11

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

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

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

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

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

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

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

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

46 (8) is found to have committed any act which results in a  
47 substantial change in the registered professional corporate  
48 guardian's qualifications to serve as a professional corporate  
49 guardian;

- 1 (9) engages in conduct which demonstrates unfitness to serve as  
2 a registered professional corporate guardian, including, but not  
3 limited to, persistent or repeated violations of a court order or  
4 engaging in any impropriety involving dishonesty, fraud, deceit or  
5 misrepresentation;
  - 6 (10) fails to cooperate during the course of an investigation by  
7 the Office of Professional Corporate Guardians or any law  
8 enforcement agency;
  - 9 (11) is the subject of a court order, finding of fact, or conclusion  
10 of law that indicates:
    - 11 (a) a finding that the professional corporate guardian has violated  
12 the professional corporate guardian's duties to an incapacitated  
13 person or his estate; or
    - 14 (b) a failure to comply with an order of the court;
  - 15 (13) knowingly or negligently engaging in misconduct which:
    - 16 (a) benefits the professional corporate guardian, an owner having  
17 a direct or indirect interest thereof, or another professional  
18 corporate guardian;
    - 19 (b) operates to deceive the court;
    - 20 (c) causes serious or potentially serious injury to a party, the  
21 public or the legal system; or
    - 22 (d) causes serious or potentially serious interference with a legal  
23 proceeding;
  - 24 (14) endangers an incapacitated person;
  - 25 (15) engages in practices that fall outside the powers or role of a  
26 guardian;
  - 27 (16) fails, on a repeated or significant basis to perform guardian  
28 responsibilities or fiduciary duties;
  - 29 (17) fails to file required reports and forms;
  - 30 (18) engages in inappropriate billing or fee payment;
  - 31 (19) fails to provide a written disclosure to a ward's heirs  
32 concerning any financial interest the professional corporate  
33 guardian may have, either directly or indirectly, in the provision of  
34 professional or licensed services to such incapacitated person;
  - 35 (20) fails to notify the executive director of the office in writing,  
36 of any contract entered into between the professional corporate  
37 guardian and any affiliated entity for the provision of professional  
38 or licensed corporate guardian services;
  - 39 (21) entering into a contract on behalf of a ward and without  
40 prior written approval from the executive director of the office, to  
41 provide professional or licensed corporate guardian services, which  
42 contract charges, having fees in excess of commercially reasonable  
43 rates; or
  - 44 (22) otherwise engages in malfeasance, nonfeasance or  
45 misfeasance.
- 46 b. A registered professional corporate guardian and its substitute  
47 guardian employees shall be deemed in compliance with subsection  
48 e. of section 2 of P.L.2005, c.307 (C.52:27G-33) or section 4 of

1 P.L.2005, c.307 (C.52:27G-35) as long as the professional corporate  
2 guardian is complaint with this act.

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

12  
13 5. a. Unless otherwise provided by private arrangement, an inter  
14 vivos gift, contract, conveyance, disposition, transfer, trust, change  
15 in beneficiary designation, appointment, or re-titling of an account  
16 or property, or a testamentary instrument affecting an incapacitated  
17 adult's money or property in favor of a registered professional  
18 corporate guardian or a family member or business associate of a  
19 substitute guardian, made or executed, as appropriate, during the  
20 two-year period before the establishment of a guardianship in which  
21 the registered professional corporate guardian is appointed as  
22 guardian shall be void, unless the court determines that:

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

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

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

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

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

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

46 (ii) the independent attorney certified that the intended inter  
47 vivos transaction or testamentary instrument described in this  
48 subsection was not the result of undue influence, fraud, coercion,  
49 duress or misrepresentation.

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

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

10      b. Unless otherwise provided by private arrangement or  
11 otherwise authorized by court order after notice to all interested  
12 persons, a court appointed registered professional corporate  
13 guardian shall not:

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

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

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

21       (4) transfer an incapacitated adult's property or funds by inter  
22 vivos transaction to themselves or an affiliated entity, or receive by  
23 operation of survivorship rights any of an incapacitated adult's  
24 property or funds for themselves or an affiliated entity;

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

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

34

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

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



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

10       The office is authorized to access the child abuse registry in the  
11 Department of Children and Families and the domestic violence  
12 central registry in the Administrative Office of the Courts for the  
13 purposes of conducting the child abuse registry and the criminal  
14 history record background checks required pursuant to this section.

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

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

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

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

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

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

37       (2) In any other state or jurisdiction, of conduct which, if  
38 committed in New Jersey, would constitute any of the crimes or  
39 disorderly persons offenses described in paragraph (1) of this  
40 subsection.

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

44       In a case in which a check of the domestic violence central  
45 registry reveals that the person has a history of domestic violence,  
46 the office shall review the record with respect to the type and date  
47 of the criminal offense or the provisions and date of the final  
48 domestic violence restraining order and make a determination as to

1 the suitability of the person to be an owner of a professional  
2 corporate guardian entity.

3 b. Notwithstanding the provisions of subsection a. of this section  
4 to the contrary, no person shall be disqualified from being an owner  
5 of a professional corporate guardian entity on the basis of any  
6 conviction disclosed by a criminal history record background check  
7 performed pursuant to this act if the person has affirmatively  
8 demonstrated to the office clear and convincing evidence of the  
9 applicant owner's rehabilitation. In determining whether a person  
10 has affirmatively demonstrated rehabilitation, the following factors  
11 shall be considered:

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

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

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

16 (4) the date of the offense;

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

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

19 (7) any social conditions which may have contributed to the  
20 offense; and

21 (8) any evidence of rehabilitation, including good conduct in  
22 prison or in the community, counseling or psychiatric treatment  
23 received, acquisition of additional academic or vocational  
24 schooling, work history, or the recommendation of those who have  
25 had the person under their supervision.

26 c. If a person refuses to consent to, or cooperate in, the securing  
27 of a criminal history record background check, the office shall not  
28 register the applicant entity as a professional corporate guardian and  
29 shall notify all owners identified on the application of that denial.  
30

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

43 b. Upon receipt of the criminal history record information for a  
44 person from the Federal Bureau of Investigation or the Division of  
45 State Police, the office shall, within a reasonable time, notify all  
46 owners of the applicant entity in writing of the entity's qualification  
47 or disqualification for registration under this act. If the applicant  
48 entity is disqualified, the conviction or convictions which constitute

1 the basis for the disqualification shall be identified in the notice to  
2 the person and all other owners of the entity.

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

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

25  
26 9. a. In accordance with sections 7 and 8 of  
27 P.L. , c. (pending before the Legislature as this bill), the  
28 Division of State Police in the Department of Law and Public  
29 Safety shall conduct a criminal history record background check,  
30 including a name and fingerprint identification check, of each  
31 person that is a direct or indirect owner of an applicant entity seeking  
32 registration as a professional corporate guardian who is required to  
33 undergo a criminal history record background check pursuant to  
34 P.L. , c. (pending before the Legislature as this bill).

35 b. For the purpose of conducting a criminal history record  
36 background check pursuant to subsection a. of this section, the  
37 Division of State Police shall examine its own files and arrange for  
38 a similar examination by federal authorities. The division shall  
39 immediately forward the information obtained as a result of  
40 conducting the check to the executive director of the Office of  
41 Professional Corporate Guardian.

42 c. The Division of State Police shall promptly notify the Office  
43 of Professional Corporate Guardians in the event a person who is  
44 required to undergo a criminal history record background check  
45 pursuant to section 7 of P.L. , c. (C. ) (pending before the  
46 Legislature as this bill) is convicted of a crime or offense in this  
47 State after the date the background check was performed. Upon  
48 receipt of such notification, the office shall make a determination

1 regarding the continuation of the registration of the applicant entity  
2 as a professional corporate guardian.

3  
4 10. a. In accordance with the provisions of sections 7 and 8 of  
5 P.L. , c, (C. ) (pending before the Legislature as this bill),  
6 the Department of Children and Families shall conduct a check of  
7 its child abuse registry for each person listed on an application as an  
8 owner of the applicant entity seeking registration as a professional  
9 corporate guardian who is required to undergo such a check  
10 pursuant to P.L. , c. (C ) (pending before the Legislature as this  
11 bill). The department shall immediately forward the information  
12 obtained as a result of the check to the Office of Professional  
13 Corporate Guardians.

14 b. The department shall promptly notify the office in the event a  
15 person who is required to undergo a check of the child abuse  
16 registry pursuant to section 7 of P.L. , c. (C. ) (pending before  
17 the Legislature as this bill), is listed in the registry after the date the  
18 child abuse registry check was performed. Upon receipt of such  
19 notification, the office shall revoke the registration of the  
20 professional corporate guardian entity of which the person is an  
21 owner.

22  
23 11. An entity seeking registration as a professional corporate  
24 guardian shall assume the cost of the criminal history record  
25 background and child abuse registry checks conducted pursuant to  
26 this act, in accordance with any regulations adopted by the Office of  
27 Professional Corporate Guardians.

28  
29 12. a. The Office of Professional Corporate Guardians shall  
30 maintain a Statewide, searchable Internet database of registered  
31 professional corporate guardians, and make all information in the  
32 registry available to the Administrative Director of the Courts for  
33 the use of the Superior Court, or to other interested parties upon  
34 request. The registry shall include the following information for  
35 each registered professional corporate guardian and each owner, as  
36 applicable:

- 37 (1) full name of the entity and full name of the entity's owner;  
38 (2) date of formation of the entity and date of birth of the entity's  
39 owner;  
40 (3) business address;  
41 (4) business telephone number;  
42 (5) each owner's educational background and professional  
43 experience, including work in any related field germane to the  
44 provision of guardianship services;  
45 (6) whether the professional corporate guardian entity or the  
46 entity's owner meets applicable registration requirements;  
47 (7) the insurance company issuing the registered professional  
48 corporate guardian's professional liability insurance coverage; and

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

3 b. In addition to the information listed in subsection a. of this  
4 section, if known to the office, the registry shall include the  
5 following information for each owner of a professional corporate  
6 guardian entity:

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

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

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

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

18 (5) the number and type of substantiated complaints made  
19 against the professional guardian; and

20 (6) any known pending or final registration or disciplinary  
21 actions taken by the office against the professional guardian.  
22

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

28 a. the office has reasonable cause to suspect the trustworthiness  
29 or capability of the professional corporate guardian to perform the  
30 duties of a professional corporate guardian; or

31 b. the entity is no longer in compliance with the requirements of  
32 section 3 of P.L. , c. (C. ) (pending before the Legislature as this  
33 bill) or becomes ineligible for registration as a professional  
34 corporate guardian as provided for in subsection a. of section 4 of  
35 P.L. , c. (C. ) (pending before the Legislature as this bill).

36 Notice of the suspension or revocation of the registration and  
37 removal from the registry shall be sent, within 30 days, to the  
38 Administrative Office of the Courts and the known local Surrogates  
39 on behalf of the Superior Court, Chancery Division, Probate Part  
40 having jurisdiction over the professional corporate guardian's wards  
41 and the heirs of the disabled person or incapacitated person.  
42

43 14. a. The powers and duties of a professional corporate  
44 guardian shall be the same as the powers and duties of a guardian of  
45 the person of a ward as enumerated in N.J.S.3B:12-56 and  
46 N.J.S.3B:12-57.

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

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

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

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

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

15 (5) assess the need for any additional services the ward may  
16 need, taking into account all aspects the ward's social,  
17 psychological, educational, direct service, and health and personal  
18 care needs; and

19 (6) perform any other duties required by law.  
20

21 15. a. A professional corporate guardian may designate a  
22 substitute guardian to exercise all of the powers and duties of the  
23 professional corporate guardian in the event that the general  
24 guardian is unable or unavailable to provide guardianship services  
25 to a disabled or incapacitated person or otherwise delegates such  
26 powers or duties in its capacity as the employer of the substitute  
27 guardian.

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

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

36 d. (1) The designation of a substitute guardian by a professional  
37 corporate guardian to provide guardianship services to a disabled or  
38 incapacitated person shall not limit the responsibility of a  
39 professional corporate guardian to its ward.

40 (2) The professional corporate guardian shall be liable for the  
41 acts of the substitute guardian in providing guardianship services  
42 pursuant to subsection a. of this section, unless the substitute  
43 guardian has engaged in fraud, acts of gross negligence or willful  
44 misconduct, or has committed intentionally malicious or criminal  
45 acts.

46 e. A professional corporate guardian has the sole discretion to  
47 terminate the authority of a substitute guardian to provide  
48 guardianship services to its ward or wards if the substitute guardian  
49 fails to complete the training and education requirements pursuant

1 to section 6 of P.L. , c. (C. ) (pending before the Legislature  
2 as this bill.

3  
4 16. A professional corporate guardian may apply to the court for  
5 judicial appointment to serve as a family choice or personal choice  
6 guardian pursuant to sections 17 and 18 of P.L. , c. (C. )  
7 (pending before the Legislature as this bill) in accordance with Rule  
8 4:86 et seq. of the Rules Governing the Courts of the State of New  
9 Jersey.

10

11 17. a. The heir of a disabled person or the guardian of an  
12 incapacitated person may designate, by private arrangement and  
13 pursuant to the terms of a written contract, a family choice guardian  
14 to serve as the general guardian of the disabled or incapacitated  
15 person.

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

18 (a) the heir or the guardian shall enter into a written contract  
19 with a professional corporate guardian registered with the Office of  
20 Professional Corporate Guardians pursuant to P.L. , c. (C. )  
21 (pending for the Legislature as this bill) to serve as the family  
22 choice guardian;

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

26 (c) the heir or the guardian shall submit written notice to the  
27 Office of Professional Corporate Guardians containing information  
28 concerning the professional corporate guardian designated by the  
29 heir or guardian as a family choice guardian pursuant to subsection  
30 a. of this section within 10 days of the effective date of the contract,  
31 and enclose a notarized copy of the contract with such notice.

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

36 c. Whenever a complaint is filed in the Superior Court to declare  
37 a person incapacitated and appoint a guardian pursuant to  
38 N.J.S.3B:12-1 et seq., the complaint may also request the  
39 appointment of a registered professional corporate guardian, who  
40 has applied to the court for judicial appointment pursuant to section  
41 14 of P.L. , c. (C. ) (pending before the Legislature as this  
42 bill), to serve as the family choice guardian of the person or the  
43 person's estate, or both.

44 d. The professional corporate guardian appointed by the court as  
45 a family choice guardian pursuant to subsection c. of this section  
46 shall apply to the court in a summary manner, within 20 days after  
47 assumption of the guardian's duties, for a judgment confirming that  
48 appointment. After confirmation by the court, the family choice  
49 guardian shall furnish a bond to secure performance of the

1 guardian's duties with respect to the person or the person's estate, or  
2 both, unless the guardian is relieved from doing so by the court.

3

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

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

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

14 (b) the written declaration shall:

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

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

19 (iii) constitute a rebuttable presumption that the personal choice  
20 guardian designated by the declarant is entitled to serve as a  
21 guardian;

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

25 (d) the declarant shall submit written notice to the Office of  
26 Professional Corporate Guardians containing information  
27 concerning the professional corporate guardian designated by the  
28 declarant as a personal choice guardian pursuant to subsection a. of  
29 this section within 10 days of assumption of the guardian's duties  
30 should the declarant become disabled or incapacitated, and enclose  
31 a notarized copy of the written declaration with such notice.

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

35 c. Whenever a complaint is filed in the Superior Court to declare  
36 a person incapacitated and appoint a guardian pursuant to  
37 N.J.S.3B:12-1 et seq., the complaint may also request the  
38 appointment of a registered professional corporate guardian, who  
39 has applied to the court for judicial appointment pursuant to section  
40 14 of P.L. , c. (C. ) (pending before the Legislature as this  
41 bill), to serve as the personal choice guardian of the person or the  
42 person's estate, or both.

43 d. The professional corporate guardian appointed by the court as  
44 a personal choice guardian pursuant to subsection c. of this section  
45 shall apply to the court in a summary manner, within 20 days after  
46 assumption of the guardian's duties, for a judgment confirming that  
47 appointment. After confirmation by the court, the personal choice  
48 guardian shall furnish a bond to secure the performance of the



1 guardian's duties with respect to the person or the person's estate, or  
2 both, unless the guardian is relieved from doing so by the court.

3  
4 19. a. The authority and responsibility of a professional  
5 corporate guardian of a disabled or incapacitated person terminate  
6 upon the:

7 (1) resignation or removal of the general guardian;

8 (2) death of the disabled or incapacitated person;

9 (3) termination of the private arrangement designating the  
10 professional corporate guardian by the general guardian or by the  
11 ward or the ward's heirs; or

12 (4) entry of a judgment adjudicating the restoration of  
13 competency pursuant to N.J.S.3B:12-28 or termination of  
14 guardianship for other reasons.

15 b. Termination of guardianship does not affect the general  
16 guardian's liability for prior acts, nor the general guardian's  
17 obligation to account for funds and assets of the ward. Resignation  
18 of a judicially appointed guardian does not terminate the  
19 guardianship unless it has been approved by a judgment of the  
20 court.

21 c. Upon termination of the guardianship, the guardian shall pay  
22 over and distribute all funds and properties of the former ward or of  
23 the estate of the former ward in accordance with an order of the  
24 court or pursuant to private arrangement. Upon termination of a  
25 professional corporate guardian that was designated by private  
26 arrangement, the former general guardian shall immediately notify the  
27 executive director and file a closing report.

28  
29 20. a. A vacancy in a professional corporate guardianship shall  
30 be deemed to arise when a professional corporate guardian dies,  
31 resigns, is removed, or is discharged after entering into but before  
32 completing the duties of the guardian's office. The resignation of a  
33 judicially appointed professional corporate guardian that was  
34 judicially appointed shall not be effective unless approved by a  
35 judgment of the Superior court.

36 b. The court shall have jurisdiction to fill a vacancy in a  
37 professional corporate guardianship by the appointment of another  
38 court-appointed professional corporate guardian prior to the  
39 resignation, removal, or discharge of the original guardian. A  
40 professional corporate guardian, who has been designated by private  
41 arrangement, but who later resigns or is terminated may be  
42 immediately replaced with a successor professional corporate guardian  
43 designated by private arrangement by the ward or the ward's heirs by  
44 private arrangement.

45  
46 21. a. The Commissioner of Human Services, pursuant to the  
47 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
48 seq.), may adopt rules and regulations necessary for the  
49 implementation of this act.

1       b. The Supreme Court may adopt Rules of Court necessary for  
2 the implementation of this act.

3

4       22. This act shall take effect on the 180th day after the date of  
5 enactment, except that the Commissioner of Human Services may  
6 take such anticipatory administrative action, in advance, as shall be  
7 necessary for the implementation of this act, and the Supreme Court  
8 of New Jersey may adopt Rules of Court, in advance, as shall be  
9 necessary for the implementation of the provisions of this act.

10

11

12

STATEMENT

13

14       This bill establishes in, but not of, the Department Human  
15 Services, the Office of Professional Corporate Guardians. The  
16 purpose of the office is to oversee the licensing requirements of,  
17 and establish standards of practice for, professional corporate  
18 guardians.

19       As defined in the bill, a “professional corporate guardian” means a  
20 for profit or not-for-profit business entity, corporation, partnership,  
21 limited partnership, or a limited liability company either duly  
22 formed or licensed to conduct business in New Jersey and which,  
23 who either by private arrangement or court appointment, has been  
24 granted the powers to exercise all assignable legal rights of an  
25 incapacitated person or ward’s property.

26       Under the provisions of the bill, the office is to: (1) adopt rules  
27 and regulations to effectuate the purposes of bill; (2) establish  
28 standards of practice for professional corporate guardians, and  
29 ensure the compliance with such standards; (3) develop the  
30 qualification criteria and amount to be charged for application and  
31 issuance fees for registrations authorized under the bill; (4)  
32 establish disciplinary measures, including, but not limited to,  
33 disqualifying, suspending, revoking and refusing to renew the  
34 registration of professional corporate guardians; (5) establish  
35 procedures for organizing and conducting hearings into allegations  
36 of misconduct by registered professional corporate guardians; (6)  
37 establish policies and procedures for addressing conflicts of  
38 interest, prohibited activities, and breach of fiduciary duties relating  
39 to professional corporate guardians; (7) develop guidelines  
40 concerning and procedures governing initial and annual  
41 guardianship reports to be filed by a registered professional  
42 guardian; and (8) develop and maintain searchable database that  
43 contains and displays information on each registered professional  
44 corporate guardian in the State.

45       An entity may serve as a professional corporate guardian if that  
46 entity has been registered by the office as a professional corporate  
47 guardian and that entity meets the qualifications and pays all  
48 required fees and costs outlined in the bill.

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

5       The bill outlines the powers and duties of a professional  
6 corporate guardian including, but not limited to, designating  
7 substitute guardians to exercise all of the powers and duties of the  
8 professional corporate guardian if the professional corporate  
9 guardian is unable or unavailable to perform its duties or otherwise  
10 delegates such duties to its substitute guardian employee.

11       The bill also outlines the procedures a registered professional  
12 corporate guardians is required to follow when designated by the  
13 heir of a disabled person, or a guardian of an incapacitated person,  
14 or a disabled or incapacitated person to serve on a pre-need basis as  
15 a family choice or personal choice guardian, as applicable.

16       The bill delineates the circumstances under which the authority  
17 and responsibility of a professional corporate guardian terminate  
18 and the process for filling vacancies in professional corporate  
19 guardianships.