

4591--A

2011-2012 Regular Sessions

I N   S E N A T E

April 13, 2011

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Introduced by Sen. BONACIC -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the estates, powers and trusts law and the surrogate's court procedure act, in relation to examinations before trial where the will contains a provision conditioning a disposition on the beneficiary of the disposition not contesting the will

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Item (D) of subparagraph 3 of paragraph (b) of section  
2     3-3.5 of the estates, powers and trusts law, as amended by chapter 514  
3     of the laws of 1993, is amended to read as follows:  
4     (D) The preliminary examination, under SCPA 1404, of a proponent's  
5     witnesses, the person who prepared the will, the nominated executors and  
6     the proponents in a probate proceeding AND, UPON APPLICATION TO THE  
7     COURT BASED UPON SPECIAL CIRCUMSTANCES, ANY PERSON WHOSE EXAMINATION THE  
8     COURT DETERMINES MAY PROVIDE INFORMATION WITH RESPECT TO THE VALIDITY OF  
9     THE WILL THAT IS OF SUBSTANTIAL IMPORTANCE OR RELEVANCE TO A DECISION TO  
10    FILE OBJECTIONS TO THE WILL.  
11    S 2. Subdivision 4 of section 1404 of the surrogate's court procedure  
12    act, as amended by chapter 576 of the laws of 1996, is amended to read  
13    as follows:  
14    4. In all cases the proofs must be reduced to writing. Any party to  
15    the proceeding, before or after filing objections to the probate of the  
16    will, may examine any or all of the attesting witnesses, the person who  
17    prepared the will, and if the will contains a provision designed to  
18    prevent a disposition or distribution from taking effect in case the  
19    will, or any part thereof, is contested, the nominated executors in the  
20    will and the proponents AND, UPON APPLICATION TO THE COURT BASED UPON

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 SPECIAL CIRCUMSTANCES, ANY PERSON WHOSE EXAMINATION THE COURT DETERMINES  
2 MAY PROVIDE INFORMATION WITH RESPECT TO THE VALIDITY OF THE WILL THAT IS  
3 OF SUBSTANTIAL IMPORTANCE OR RELEVANCE TO A DECISION TO FILE OBJECTIONS  
4 TO THE WILL. No person who has been examined as a witness under this  
5 section shall be examined in the same proceeding under any other  
6 provision of law except by direction of the court. The attesting  
7 witnesses, the person who prepared the will, the nominated executors in  
8 the will and the proponents may be examined as to all relevant matters  
9 which may be the basis of objections to the probate of the propounded  
10 instrument. There shall be made available to the party conducting such  
11 examination, all rights granted under article 31 of the civil practice  
12 law and rules with respect to document discovery.

13 S 3. This act shall take effect immediately and shall apply only to  
14 estates of decedents who shall have died on and after such effective  
15 date.