

4591

2011-2012 Regular Sessions

I N S E N A T E

April 13, 2011

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

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 OF SUBSTANTIAL IMPORTANCE OR
9 RELEVANCE WITH RESPECT TO THE VALIDITY OF THE WILL TO A DECISION TO FILE
10 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
21 SPECIAL CIRCUMSTANCES, ANY PERSON WHOSE EXAMINATION THE COURT DETERMINES
22 MAY PROVIDE INFORMATION OF SUBSTANTIAL IMPORTANCE OR RELEVANCE WITH

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

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1 RESPECT TO THE VALIDITY OF THE WILL TO A DECISION TO FILE OBJECTIONS TO
2 THE WILL. No person who has been examined as a witness under this
3 section shall be examined in the same proceeding under any other
4 provision of law except by direction of the court. The attesting
5 witnesses, the person who prepared the will, the nominated executors in
6 the will and the proponents may be examined as to all relevant matters
7 which may be the basis of objections to the probate of the propounded
8 instrument. There shall be made available to the party conducting such
9 examination, all rights granted under article 31 of the civil practice
10 law and rules with respect to document discovery.
11 S 3. This act shall take effect immediately and shall apply only to
12 estates of decedents who shall have died on and after such effective
13 date.