S T A T E O F N E W Y O R K

3819

2009-2010 Regular Sessions

I N A S S E M B L Y

January 28, 2009

Introduced by M. of A. CLARK -- read once and referred to the Committee on Judiciary

AN ACT to amend the estates, powers and trusts law, in relation to establishing certain trusts as void as against public policy

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

Section 1. Legislative intent. The legislature hereby finds that many citizens are engaging in the creation of trusts containing all or most of their assets for the purpose of enabling them to qualify for medicaid in the event of a protracted hospital stay or their entrance into a nursing home. While the creation of a trust to manage one's assets has long been recognized as being a legitimate means of estate planning, the legislature recognizes and by this act establishes, as a matter of public policy, that the citizens of this state have an obligation to pay for their own health care when able to do so and that the diversion of normal payments from the beneficiary of a trust in order to avoid that responsibility violates such public policy.

S 2. Paragraph (b) of section 7-3.1 of the estates, powers and trusts law is amended by adding a new subparagraph 5 to read as follows:

(5) A DISPOSITION IN TRUST WHICH PROVIDES FOR THE SUSPENSION, TERMINATION OR DIVERSION OF THE TRUST OR THE BENEFICIAL INTEREST OF ANY BENEFICIARY OF SUCH TRUST IN THE EVENT THAT SUCH BENEFICIARY SHOULD REQUIRE OR IS DIAGNOSED AS REQUIRING MEDICAL, HOSPITAL OR NURSING CARE OR LONG TERM CUSTODIAL, NURSING OR MEDICAL CARE SHALL BE VOID AS AGAINST THE PUBLIC POLICY OF THE STATE OF NEW YORK. THE COMMISSIONER OF HEALTH IS HEREBY AUTHORIZED, UPON THE APPLICATION OF ANY SUCH BENEFICIARY FOR MEDICAL BENEFITS, TO MAINTAIN AN ACTION TO COLLECT FROM SUCH TRUST THE BENEFICIAL INTEREST OF SUCH BENEFICIARY, INCLUDING THE INCOME AND ANY PRINCIPAL AMOUNTS TO WHICH SUCH BENEFICIARY WOULD HAVE BEEN ENTITLED, BY THE TERMS OF SUCH TRUST BY RIGHT OR IN THE DISCRETION OF THE TRUSTEE, HAD SUCH BENEFICIARY NOT REQUIRED OR BEEN DIAGNOSED AS REQUIRING

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

LBD07160-01-9

MEDICAL, HOSPITAL OR NURSING CARE OR LONG TERM CUSTODIAL, NURSING OR MEDICAL CARE.

S 3. This act shall take effect immediately and shall apply to all trusts created or amended on or after such date.