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

8297--A

2011-2012 Regular Sessions

I N A S S E M B L Y

June 10, 2011

Introduced by M. of A. WEINSTEIN -- (at request of the Office of Court Administration) -- read once and referred 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, in relation to the exercise of a power of appointment and an authorized trustee's authority to invade trust principal; and to repeal certain provisions of such law relating thereto

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

Section 1. Paragraphs (b), (c), (d), (e), (f) and (g) of section 10-6.6 of the estates, powers and trusts law are REPEALED.

S 2. Section 10-6.6 of the estates, powers and trusts law is amended by adding 18 new paragraphs (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r) and (s) to read as follows:

(B) AN AUTHORIZED TRUSTEE WITH UNLIMITED DISCRETION TO INVADE TRUST PRINCIPAL MAY APPOINT PART OR ALL OF SUCH PRINCIPAL TO A TRUSTEE OF AN APPOINTED TRUST FOR, AND ONLY FOR THE BENEFIT OF, ONE, MORE THAN ONE OR ALL OF THE CURRENT BENEFICIARIES OF THE INVADED TRUST (TO THE EXCLUSION OF ANY ONE OR MORE OF SUCH CURRENT BENEFICIARIES). THE SUCCESSOR AND REMAINDER BENEFICIARIES OF SUCH APPOINTED TRUST SHALL BE ONE, MORE THAN ONE OR ALL OF THE SUCCESSOR AND REMAINDER BENEFICIARIES OF SUCH INVADED TRUST (TO THE EXCLUSION OF ANY ONE OR MORE OF SUCH SUCCESSOR AND REMAINDER BENEFICIARIES).

(1) AN AUTHORIZED TRUSTEE EXERCISING THE POWER UNDER THIS PARAGRAPH MAY GRANT A DISCRETIONARY POWER OF APPOINTMENT AS DEFINED IN PARAGRAPH (C) OF SECTION 10-3.4 OF THIS ARTICLE (INCLUDING A PRESENTLY EXERCISABLE POWER OF APPOINTMENT) IN THE APPOINTED TRUST TO ONE OR MORE OF THE CURRENT BENEFICIARIES OF THE INVADED TRUST, PROVIDED THAT THE BENEFICIARY GRANTED A POWER TO APPOINT COULD RECEIVE THE PRINCIPAL OUTRIGHT UNDER THE TERMS OF THE INVADED TRUST.

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

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(2) IF THE AUTHORIZED TRUSTEE GRANTS A POWER OF APPOINTMENT UNDER SUBPARAGRAPH (L) OF THIS PARAGRAPH, EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPH (3) OF THIS PARAGRAPH, THE GRANTED POWER MAY ONLY EXCLUDE AS PERMISSIBLE APPOINTEES ONE OR MORE OF THE BENEFICIARY, THE CREATOR, OR THE CREATOR'S SPOUSE, OR ANY OF THE ESTATES, CREDITORS, OR CREDITORS OF THE ESTATES OF THE BENEFICIARY, THE CREATOR OR THE CREATOR'S SPOUSE.

(3) IF THE AUTHORIZED TRUSTEE EXERCISES THE POWER UNDER THIS PARAGRAPH, THE APPOINTED TRUST MAY GRANT ANY POWER OF APPOINTMENT INCLUDED IN THE INVADED TRUST PROVIDED SUCH POWER HAS THE SAME CLASS OF PERMISSIBLE APPOINTEES AS THE POWER OF APPOINTMENT IN THE INVADED TRUST AND IS EXERCISABLE IN THE SAME FASHION AS THE POWER OF APPOINTMENT IN THE INVADED TRUST.

(4) IF THE BENEFICIARY OR BENEFICIARIES OF THE INVADED TRUST ARE DESCRIBED BY A CLASS, THE BENEFICIARY OR BENEFICIARIES OF THE APPOINTED TRUST MAY INCLUDE PRESENT OR FUTURE MEMBERS OF SUCH CLASS.

(C) AN AUTHORIZED TRUSTEE WITH THE POWER TO INVADE TRUST PRINCIPAL BUT WITHOUT UNLIMITED DISCRETION MAY APPOINT PART OR ALL OF THE PRINCIPAL OF THE TRUST TO A TRUSTEE OF AN APPOINTED TRUST, PROVIDED THAT THE CURRENT BENEFICIARIES OF THE APPOINTED TRUST SHALL BE THE SAME AS THE CURRENT BENEFICIARIES OF THE INVADED TRUST AND THE SUCCESSOR AND REMAINDER BENEFICIARIES OF THE APPOINTED TRUST SHALL BE THE SAME AS THE SUCCESSOR AND REMAINDER BENEFICIARIES OF THE INVADED TRUST.

(1) IF THE AUTHORIZED TRUSTEE EXERCISES THE POWER UNDER THIS PARAGRAPH, THE APPOINTED TRUST SHALL INCLUDE THE SAME LANGUAGE AUTHORIZING THE TRUSTEE TO DISTRIBUTE THE INCOME OR INVADE THE PRINCIPAL OF THE APPOINTED TRUST AS IN THE INVADED TRUST.

(2) IF THE AUTHORIZED TRUSTEE EXERCISES THE POWER UNDER THIS PARAGRAPH TO EXTEND THE TERM OF THE APPOINTED TRUST BEYOND THE TERM OF THE INVADED TRUST, FOR ANY PERIOD AFTER THE INVADED TRUST WOULD HAVE OTHERWISE TERMINATED UNDER THE PROVISIONS OF THE INVADED TRUST, THE APPOINTED TRUST, IN ADDITION TO THE LANGUAGE REQUIRED TO BE INCLUDED IN THE APPOINTED TRUST PURSUANT TO SUBPARAGRAPH (1) OF THIS PARAGRAPH, MAY ALSO INCLUDE LANGUAGE PROVIDING THE TRUSTEES WITH UNLIMITED DISCRETION TO INVADE THE PRINCIPAL OF THE APPOINTED TRUST DURING SUCH EXTENDED TERM.

(3) IF THE BENEFICIARY OR BENEFICIARIES OF THE INVADED TRUST ARE DESCRIBED BY A CLASS, THE BENEFICIARY OR BENEFICIARIES OF THE APPOINTED TRUST SHALL INCLUDE PRESENT OR FUTURE MEMBERS OF SUCH CLASS.

(4) IF THE AUTHORIZED TRUSTEE EXERCISES THE POWER UNDER THIS PARAGRAPH AND IF THE INVADED TRUST GRANTS A POWER OF APPOINTMENT TO A BENEFICIARY OF THE TRUST, THE APPOINTED TRUST SHALL GRANT SUCH POWER OF APPOINTMENT IN THE APPOINTED TRUST AND THE CLASS OF PERMISSIBLE APPOINTEES SHALL BE THE SAME AS IN THE INVADED TRUST.

(D) AN EXERCISE OF THE POWER TO INVADE TRUST PRINCIPAL UNDER PARAGRAPHS (B) AND (C) OF THIS SECTION SHALL BE CONSIDERED THE EXERCISE OF A SPECIAL POWER OF APPOINTMENT AS DEFINED IN SECTION 10-3.2 OF THIS ARTICLE.

(E) THE APPOINTED TRUST TO WHICH AN AUTHORIZED TRUSTEE APPOINTS THE ASSETS OF THE INVADED TRUST MAY HAVE A TERM THAT IS LONGER THAN THE TERM SET FORTH IN THE INVADED TRUST, INCLUDING, BUT NOT LIMITED TO, A TERM MEASURED BY THE LIFETIME OF A CURRENT BENEFICIARY.

(F) IF AN AUTHORIZED TRUSTEE HAS UNLIMITED DISCRETION TO INVADE THE PRINCIPAL OF A TRUST AND THE SAME TRUSTEE OR ANOTHER TRUSTEE HAS THE POWER TO INVADE PRINCIPAL UNDER THE TRUST INSTRUMENT WHICH POWER IS NOT SUBJECT TO UNLIMITED DISCRETION, SUCH AUTHORIZED TRUSTEE HAVING UNLIMITED DISCRETION MAY EXERCISE THE POWER OF APPOINTMENT UNDER PARAGRAPH (B) OF THIS SECTION.

(G) AN AUTHORIZED TRUSTEE MAY EXERCISE THE POWER TO APPOINT IN FAVOR OF AN APPOINTED TRUST UNDER PARAGRAPHS (B) AND (C) OF THIS SECTION WHETHER OR NOT THERE IS A CURRENT NEED TO INVADE PRINCIPAL UNDER THE TERMS OF THE INVADED TRUST.

(H) AN AUTHORIZED TRUSTEE EXERCISING THE POWER UNDER THIS SECTION HAS A FIDUCIARY DUTY TO EXERCISE THE POWER IN THE BEST INTERESTS OF ONE OR MORE PROPER OBJECTS OF THE EXERCISE OF THE POWER AND AS A PRUDENT PERSON WOULD EXERCISE THE POWER UNDER THE PREVAILING CIRCUMSTANCES. THE AUTHORIZED TRUSTEE MAY NOT EXERCISE THE POWER UNDER THIS SECTION IF THERE IS SUBSTANTIAL EVIDENCE OF A CONTRARY INTENT OF THE CREATOR AND IT CANNOT BE ESTABLISHED THAT THE CREATOR WOULD BE LIKELY TO HAVE CHANGED SUCH INTENTION UNDER THE CIRCUMSTANCES EXISTING AT THE TIME OF THE EXERCISE OF THE POWER. THE PROVISIONS OF THE INVADED TRUST ALONE ARE NOT TO BE VIEWED AS SUBSTANTIAL EVIDENCE OF A CONTRARY INTENT OF THE CREATOR UNLESS THE INVADED TRUST EXPRESSLY PROHIBITS THE EXERCISE OF THE POWER IN THE MANNER INTENDED BY THE AUTHORIZED TRUSTEE.

(I) UNLESS THE AUTHORIZED TRUSTEE PROVIDES OTHERWISE:

(1) THE APPOINTMENT OF ALL OF THE ASSETS COMPRISING THE PRINCIPAL OF THE INVADED TRUST TO AN APPOINTED TRUST SHALL INCLUDE SUBSEQUENTLY DISCOVERED ASSETS OF THE INVADED TRUST AND UNDISTRIBUTED PRINCIPAL OF THE INVADED TRUST ACQUIRED AFTER THE APPOINTMENT TO THE APPOINTED TRUST; AND

(2) THE APPOINTMENT OF PART BUT NOT ALL OF THE ASSETS COMPRISING THE PRINCIPAL OF THE INVADED TRUST TO AN APPOINTED TRUST SHALL NOT INCLUDE SUBSEQUENTLY DISCOVERED ASSETS BELONGING TO THE INVADED TRUST AND PRINCIPAL PAID TO OR ACQUIRED BY THE INVADED TRUST AFTER THE APPOINTMENT TO THE APPOINTED TRUST; SUCH ASSETS SHALL REMAIN THE ASSETS OF THE INVADED TRUST.

(J) THE EXERCISE OF THE POWER TO APPOINT TO AN APPOINTED TRUST UNDER PARAGRAPH (B) OR (C) OF THIS SECTION SHALL BE EVIDENCED BY AN INSTRUMENT IN WRITING, SIGNED, DATED AND ACKNOWLEDGED BY THE AUTHORIZED TRUSTEE. THE EXERCISE OF THE POWER SHALL BE EFFECTIVE THIRTY DAYS AFTER THE DATE OF SERVICE OF THE INSTRUMENT AS SPECIFIED IN SUBPARAGRAPH (2) OF THIS PARAGRAPH, UNLESS THE PERSONS ENTITLED TO NOTICE CONSENT IN WRITING TO A SOONER EFFECTIVE DATE.

(1) AN AUTHORIZED TRUSTEE MAY EXERCISE THE POWER AUTHORIZED BY PARAGRAPHS (B) AND (C) OF THIS SECTION WITHOUT THE CONSENT OF THE CREATOR, OR OF THE PERSONS INTERESTED IN THE INVADED TRUST, AND WITHOUT COURT APPROVAL, PROVIDED THAT THE AUTHORIZED TRUSTEE MAY SEEK COURT APPROVAL FOR THE EXERCISE WITH NOTICE TO ALL PERSONS INTERESTED IN THE INVADED TRUST.

(2) A COPY OF THE INSTRUMENT EXERCISING THE POWER AND A COPY OF EACH OF THE INVADED TRUST AND THE APPOINTED TRUST SHALL BE DELIVERED (A) TO THE CREATOR, IF LIVING, OF THE INVADED TRUST, (B) TO ANY PERSON HAVING THE RIGHT, PURSUANT TO THE TERMS OF THE INVADED TRUST, TO REMOVE OR REPLACE THE AUTHORIZED TRUSTEE EXERCISING THE POWER UNDER PARAGRAPH (B) OR (C) OF THIS SECTION, AND (C) TO ANY PERSONS INTERESTED IN THE INVADED TRUST AND THE APPOINTED TRUST (OR, IN THE CASE OF ANY PERSONS INTERESTED IN THE TRUST, TO ANY GUARDIAN OF THE PROPERTY, CONSERVATOR OR PERSONAL REPRESENTATIVE OF ANY SUCH PERSON OR THE PARENT OR PERSON WITH WHOM ANY SUCH MINOR PERSON RESIDES), BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OR BY PERSONAL DELIVERY OR IN ANY OTHER MANNER DIRECTED BY THE COURT HAVING JURISDICTION OVER THE INVADED TRUST.

(3) THE INSTRUMENT EXERCISING THE POWER SHALL STATE WHETHER THE APPOINTMENT IS OF ALL THE ASSETS COMPRISING THE PRINCIPAL OF THE INVADED TRUST OR A PART BUT NOT ALL THE ASSETS COMPRISING THE PRINCIPAL OF THE

INVADED TRUST AND IF A PART, THE APPROXIMATE PERCENTAGE OF THE VALUE OF THE PRINCIPAL OF THE INVADED TRUST THAT IS THE SUBJECT OF THE APPOINTMENT.

(4) A PERSON INTERESTED IN THE INVADED TRUST MAY OBJECT TO THE TRUSTEE'S EXERCISE OF THE POWER UNDER THIS SECTION BY SERVING A WRITTEN NOTICE OF OBJECTION UPON THE TRUSTEE PRIOR TO THE EFFECTIVE DATE OF THE EXERCISE OF THE POWER. THE FAILURE TO OBJECT SHALL NOT CONSTITUTE A CONSENT.

(5) THE RECEIPT OF A COPY OF THE INSTRUMENT EXERCISING THE POWER SHALL NOT AFFECT THE RIGHT OF ANY PERSON INTERESTED IN THE INVADED TRUST TO COMPEL THE AUTHORIZED TRUSTEE WHO EXERCISED THE POWER OF APPOINTMENT PURSUANT TO PARAGRAPH (B) OR (C) OF THIS SECTION TO ACCOUNT FOR SUCH EXERCISE AND SHALL NOT FORECLOSE ANY SUCH INTERESTED PERSON FROM OBJECTING TO AN ACCOUNT OR COMPELLING A TRUSTEE TO ACCOUNT.

(6) A COPY OF THE INSTRUMENT EXERCISING THE POWER SHALL BE KEPT WITH THE RECORDS OF THE INVADED TRUST AND THE ORIGINAL SHALL BE FILED IN THE COURT HAVING JURISDICTION OVER THE INVADED TRUST. WHERE A TRUSTEE OF AN INTER VIVOS TRUST EXERCISES THE POWER AND THE TRUST HAS NOT BEEN THE SUBJECT OF A PROCEEDING IN THE SURROGATE'S COURT, NO FILING IS REQUIRED.

(K) THIS SECTION SHALL NOT BE CONSTRUED TO ABRIDGE THE RIGHT OF ANY TRUSTEE TO APPOINT PROPERTY IN FURTHER TRUST THAT ARISES UNDER THE TERMS OF THE GOVERNING INSTRUMENT OF A TRUST OR UNDER ANY OTHER PROVISION OF LAW OR UNDER COMMON LAW, OR AS DIRECTED BY ANY COURT HAVING JURISDICTION OVER THE TRUST.

(1) NOTHING IN THIS SECTION IS INTENDED TO CREATE OR IMPLY A DUTY TO EXERCISE A POWER TO INVADE PRINCIPAL, AND NO INFERENCE OF IMPROPRIETY SHALL BE MADE AS A RESULT OF AN AUTHORIZED TRUSTEE NOT EXERCISING THE POWER CONFERRED UNDER PARAGRAPH (B) OR (C) OF THIS SECTION.

(M) A POWER AUTHORIZED BY PARAGRAPH (B) OR (C) OF THIS SECTION MAY BE EXERCISED, SUBJECT TO THE PROVISIONS OF PARAGRAPH (H) OF THIS SECTION, UNLESS EXPRESSLY PROHIBITED BY THE TERMS OF THE GOVERNING INSTRUMENT, BUT A GENERAL PROHIBITION OF THE AMENDMENT OR REVOCATION OF THE INVADED TRUST OR A PROVISION THAT CONSTITUTES A SPENDTHRIFT CLAUSE SHALL NOT PRECLUDE THE EXERCISE OF A POWER UNDER PARAGRAPH (B) OR (C) OF THIS SECTION.

(N) AN AUTHORIZED TRUSTEE MAY NOT EXERCISE A POWER AUTHORIZED BY PARAGRAPH (B) OR (C) OF THIS SECTION TO EFFECT ANY OF THE FOLLOWING:

(1) TO REDUCE, LIMIT OR MODIFY ANY BENEFICIARY'S CURRENT RIGHT TO A MANDATORY DISTRIBUTION OF INCOME OR PRINCIPAL, A MANDATORY ANNUITY OR UNITRUST INTEREST, A RIGHT TO WITHDRAW A PERCENTAGE OF THE VALUE OF THE TRUST OR A RIGHT TO WITHDRAW A SPECIFIED DOLLAR AMOUNT, PROVIDED THAT SUCH MANDATORY RIGHT HAS COME INTO EFFECT WITH RESPECT TO THE BENEFICIARY. NOTWITHSTANDING THE FOREGOING, BUT SUBJECT TO THE OTHER LIMITATIONS IN THIS SECTION, AN AUTHORIZED TRUSTEE MAY EXERCISE A POWER AUTHORIZED BY PARAGRAPH (B) OR (C) OF THIS SECTION TO APPOINT TO AN APPOINTED TRUST THAT IS A SUPPLEMENTAL NEEDS TRUST THAT CONFORMS TO THE PROVISIONS OF SECTION 7-1.12 OF THIS CHAPTER;

(2) TO DECREASE OR INDEMNIFY AGAINST A TRUSTEE'S LIABILITY OR EXONERATE A TRUSTEE FROM LIABILITY FOR FAILURE TO EXERCISE REASONABLE CARE, DILIGENCE AND PRUDENCE;

(3) TO ELIMINATE A PROVISION GRANTING ANOTHER PERSON THE RIGHT TO REMOVE OR REPLACE THE AUTHORIZED TRUSTEE EXERCISING THE POWER UNDER PARAGRAPH (B) OR (C) OF THIS SECTION UNLESS A COURT HAVING JURISDICTION OVER THE TRUST SPECIFIES OTHERWISE;

(4) TO MAKE A BINDING AND CONCLUSIVE FIXATION OF THE VALUE OF ANY ASSET FOR PURPOSES OF DISTRIBUTION, ALLOCATION OR OTHERWISE; OR

(5) TO JEOPARDIZE (A) THE DEDUCTION OR EXCLUSION ORIGINALLY CLAIMED WITH RESPECT TO ANY CONTRIBUTION TO THE INVADED TRUST THAT QUALIFIED FOR THE ANNUAL EXCLUSION UNDER SECTION 2503(B) OF THE INTERNAL REVENUE CODE, THE MARITAL DEDUCTION UNDER SECTION 2056(A) OR 2523(A) OF THE INTERNAL REVENUE CODE, OR THE CHARITABLE DEDUCTION UNDER SECTION 170(A), 642(C), 2055(A) OR 2522(A) OF THE INTERNAL REVENUE CODE, (B) THE QUALIFICATION OF A TRANSFER AS A DIRECT SKIP UNDER SECTION 2642(C) OF THE INTERNAL REVENUE CODE, OR (C) ANY OTHER SPECIFIC TAX BENEFIT FOR WHICH A CONTRIBUTION ORIGINALLY QUALIFIED FOR INCOME, GIFT, ESTATE, OR GENERATION-SKIPPING TRANSFER TAX PURPOSES UNDER THE INTERNAL REVENUE CODE.

(O) AN AUTHORIZED TRUSTEE SHALL CONSIDER THE TAX IMPLICATIONS OF THE EXERCISE OF THE POWER UNDER PARAGRAPH (B) OR (C) OF THIS SECTION.

(P) AN AUTHORIZED TRUSTEE MAY NOT EXERCISE A POWER DESCRIBED IN PARAGRAPH (B) OR (C) OF THIS SECTION IN VIOLATION OF THE LIMITATIONS UNDER SECTIONS 9-1.1, 10-8.1 AND 10-8.2 OF THIS CHAPTER, AND ANY SUCH EXERCISE SHALL VOID THE ENTIRE EXERCISE OF SUCH POWER.

(Q)(1) UNLESS A COURT OTHERWISE DIRECTS, AN AUTHORIZED TRUSTEE MAY NOT EXERCISE A POWER AUTHORIZED BY PARAGRAPH (B) OR (C) OF THIS SECTION TO CHANGE THE PROVISIONS REGARDING THE DETERMINATION OF THE COMPENSATION OF ANY TRUSTEE; THE COMMISSIONS OR OTHER COMPENSATION PAYABLE TO THE TRUSTEES OF THE INVADED TRUST MAY CONTINUE TO BE PAID TO THE TRUSTEES OF THE APPOINTED TRUST DURING THE TERM OF THE APPOINTED TRUST AND SHALL BE DETERMINED IN THE SAME MANNER AS IN THE INVADED TRUST.

(2) NO TRUSTEE SHALL RECEIVE ANY PAYING COMMISSION OR OTHER COMPENSATION FOR APPOINTING OF PROPERTY FROM THE INVADED TRUST TO AN APPOINTED TRUST PURSUANT TO PARAGRAPH (B) OR (C) OF THIS SECTION.

(R) UNLESS THE INVADED TRUST EXPRESSLY PROVIDES OTHERWISE, THIS SECTION APPLIES TO:

(1) ANY TRUST GOVERNED BY THE LAWS OF THIS STATE, INCLUDING A TRUST WHOSE GOVERNING LAW HAS BEEN CHANGED TO THE LAWS OF THIS STATE; AND

(2) ANY TRUST THAT HAS A TRUSTEE WHO IS AN INDIVIDUAL DOMICILED IN THIS STATE OR A TRUSTEE WHICH IS AN ENTITY HAVING AN OFFICE IN THIS STATE, PROVIDED THAT A MAJORITY OF THE TRUSTEES SELECT THIS STATE AS THE LOCATION FOR THE PRIMARY ADMINISTRATION OF THE TRUST BY AN INSTRUMENT IN WRITING, SIGNED AND ACKNOWLEDGED BY A MAJORITY OF THE TRUSTEES. THE INSTRUMENT EXERCISING THIS SELECTION SHALL BE KEPT WITH THE RECORDS OF THE INVADED TRUST.

(S) FOR PURPOSES OF THIS SECTION:

(1) THE TERM "APPOINTED TRUST" MEANS AN IRREVOCABLE TRUST WHICH RECEIVES PRINCIPAL FROM AN INVADED TRUST UNDER PARAGRAPH (B) OR (C) OF THIS SECTION INCLUDING A NEW TRUST CREATED BY THE CREATOR OF THE INVADED TRUST OR BY THE TRUSTEES, IN THAT CAPACITY, OF THE INVADED TRUST. FOR PURPOSES OF CREATING THE NEW TRUST, THE REQUIREMENT OF SECTION 7-1.17 OF THIS CHAPTER THAT THE INSTRUMENT BE SIGNED BY THE CREATOR SHALL BE DEEMED SATISFIED BY THE SIGNATURE OF THE TRUSTEE OF THE APPOINTED TRUST.

(2) THE TERM "AUTHORIZED TRUSTEE" MEANS, AS TO AN INVADED TRUST, ANY TRUSTEE OR TRUSTEES WITH AUTHORITY TO PAY TRUST PRINCIPAL TO OR FOR ONE OR MORE CURRENT BENEFICIARIES OTHER THAN (I) THE CREATOR, OR (II) A BENEFICIARY TO WHOM INCOME OR PRINCIPAL MUST BE PAID CURRENTLY OR IN THE FUTURE, OR WHO IS OR WILL BECOME ELIGIBLE TO RECEIVE A DISTRIBUTION OF INCOME OR PRINCIPAL IN THE DISCRETION OF THE TRUSTEE (OTHER THAN BY THE EXERCISE OF A POWER OF APPOINTMENT HELD IN A NON-FIDUCIARY CAPACITY).

(3) REFERENCES TO SECTIONS OF THE "INTERNAL REVENUE CODE" REFER TO THE UNITED STATES INTERNAL REVENUE CODE OF 1986, AS AMENDED FROM TIME TO TIME, OR TO CORRESPONDING PROVISIONS OF SUBSEQUENT INTERNAL REVENUE LAWS, AND ALSO REFER TO CORRESPONDING PROVISIONS OF STATE LAW.

(4) THE TERM "CURRENT BENEFICIARY OR BENEFICIARIES" MEANS THE PERSON OR PERSONS (OR AS TO A CLASS, ANY PERSON OR PERSONS WHO ARE OR WILL BECOME MEMBERS OF SUCH CLASS) TO WHOM THE TRUSTEES MAY DISTRIBUTE PRINCIPAL AT THE TIME OF THE EXERCISE OF THE POWER.

(5) THE TERM "INVADE" SHALL MEAN THE POWER TO PAY DIRECTLY TO THE BENEFICIARY OF A TRUST OR MAKE APPLICATION FOR THE BENEFIT OF THE BENEFICIARY.

(6) THE TERM "INVADED TRUST" MEANS ANY EXISTING IRREVOCABLE INTER VIVOS OR TESTAMENTARY TRUST WHOSE PRINCIPAL IS APPOINTED UNDER PARAGRAPH (B) OR (C) OF THIS SECTION.

(7) THE TERM "PERSON OR PERSONS INTERESTED IN THE INVADED TRUST" SHALL MEAN ANY PERSON OR PERSONS UPON WHOM SERVICE OF PROCESS WOULD BE REQUIRED IN A PROCEEDING FOR THE JUDICIAL SETTLEMENT OF THE ACCOUNT OF THE TRUSTEE, TAKING INTO ACCOUNT SECTION THREE HUNDRED FIFTEEN OF THE SURROGATE'S COURT PROCEDURE ACT.

(8) THE TERM "PRINCIPAL" SHALL INCLUDE THE INCOME OF THE TRUST AT THE TIME OF THE EXERCISE OF THE POWER THAT IS NOT CURRENTLY REQUIRED TO BE DISTRIBUTED, INCLUDING ACCRUED AND ACCUMULATED INCOME.

(9) THE TERM "UNLIMITED DISCRETION" MEANS THE UNLIMITED RIGHT TO DISTRIBUTE PRINCIPAL THAT IS NOT MODIFIED IN ANY MANNER. A POWER TO PAY PRINCIPAL THAT INCLUDES WORDS SUCH AS BEST INTERESTS, WELFARE, COMFORT, OR HAPPINESS SHALL NOT BE CONSIDERED A LIMITATION OR MODIFICATION OF THE RIGHT TO DISTRIBUTE PRINCIPAL.

S 3. This act shall take effect immediately and shall apply to trusts whether created prior to or after such effective date.