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

6838--A

Cal. No. 234

2011-2012 Regular Sessions

I N A S S E M B L Y

April 5, 2011

Introduced by M. of A. TITONE, WEINSTEIN, LANCMAN, WEPRIN, ZEBROWSKI, BRONSON, COLTON, COOK, JAFFEE, MARKEY, STEVENSON -- Multi-Sponsored by -- M. of A. ABINANTI, WRIGHT -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Judiciary -- passed by Assembly and delivered to the Senate, recalled from the Senate, vote reconsidered, bill amended, ordered reprinted, retaining its place on the order of third reading

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:

Section 1. Item (D) of subparagraph 3 of paragraph (b) of section 3-3.5 of the estates, powers and trusts law, as amended by chapter 514 of the laws of 1993, is amended to read as follows:

(D) The preliminary examination, under SCPA 1404, of a proponent's witnesses, the person who prepared the will, the nominated executors and the proponents in a probate proceeding AND, UPON APPLICATION TO THE COURT BASED UPON SPECIAL CIRCUMSTANCES, ANY PERSON WHOSE EXAMINATION THE COURT DETERMINES MAY PROVIDE INFORMATION WITH RESPECT TO THE VALIDITY OF THE WILL THAT IS OF SUBSTANTIAL IMPORTANCE OR RELEVANCE TO A DECISION TO FILE OBJECTIONS TO THE WILL.

S 2. Subdivision 4 of section 1404 of the surrogate's court procedure act, as amended by chapter 576 of the laws of 1996, is amended to read as follows:

4. In all cases the proofs must be reduced to writing. Any party to the proceeding, before or after filing objections to the probate of the will, may examine any or all of the attesting witnesses, the person who prepared the will, and if the will contains a provision designed to prevent a disposition or distribution from taking effect in case the

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

LBD09323-02-1

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

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