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I N   A S S E M B L Y

April 22, 2016

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Introduced by M. of A. BUCHWALD, WEINSTEIN -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Judiciary

AN ACT to amend the surrogate's court procedure act, in relation to the commissions of donees of a power in trust, including donees of a power during minority

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

1     Section 1. Section 2306 of the surrogate's court procedure act is  
2     amended to read as follows:  
3     S 2306. Annual statements to be furnished to beneficiaries  
4     Any trustee, DONEE OF A POWER DURING MINORITY OR DONEE OF A POWER IN  
5     TRUST who is not required to furnish annual statements under either 2308  
6     or 2309 because he OR SHE has not retained annual commissions shall  
7     nevertheless be required to furnish the annual statements referred to in  
8     those sections to any beneficiary receiving income or any person inter-  
9     ested in the principal of the trust who shall request such statements,  
10    OR IN THE CASE OF A POWER DURING MINORITY OR OF A POWER IN TRUST, TO THE  
11    BENEFICIARY OF THE POWER IN TRUST, OR TO A PERSON TO WHOM A PAYMENT NOT  
12    EXCEEDING \$10,000 COULD BE MADE UNDER SUBDIVISION 1 OF SECTION 2220 OF  
13    THIS CHAPTER.  
14    S 2. The opening paragraph of subdivision 1 of section 2307 of the  
15    surrogate's court procedure act, as amended by chapter 474 of the laws  
16    of 1994, is amended to read as follows:  
17    Except as otherwise provided in paragraph (f) of this subdivision on  
18    the settlement of the account of any fiduciary other than a trustee, A  
19    DONEE OF A POWER DURING MINORITY OR A DONEE OF A POWER IN TRUST, the  
20    court must allow to him OR HER the reasonable and necessary expenses  
21    actually paid by him OR HER and if he OR SHE be an attorney of this  
22    state and shall have rendered legal services in connection with his OR  
23    HER official duties, such compensation for his OR HER legal services as  
24    appear to the court to be just and reasonable and in addition thereto it  
25    must allow to the fiduciary for his OR HER services as fiduciary, and if

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

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there be more than one, apportion among them according to the services rendered by them respectively the following commissions:

S 3. Section 2308 of the surrogate's court procedure act, the section heading and subdivision 1, as amended by chapter 503 of the laws of 1980, paragraph (c) of subdivision 1 as added by chapter 376 of the laws of 2001, subdivision 2 as amended by chapter 654 of the laws of 1993, subdivision 3 as amended by chapter 243 of the laws of 2001, subdivisions 4, 6, 7 and paragraph (d) of subdivision 9, as amended and subdivision 12 as added by chapter 237 of the laws of 1978, paragraph (a) of subdivision 5 as amended and subdivision 13 as added by chapter 936 of the laws of 1984, paragraphs (a) and (b) of subdivision 6, as amended by chapter 245 of the laws of 1991, and subdivision 8 as amended by chapter 685 of the laws of 1967, is amended to read as follows:

S 2308. Commissions of trustees, DONEES OF POWER DURING MINORITY AND DONEES OF POWERS IN TRUST under wills of persons dying, or under lifetime trusts created, on or before August 31, 1956

1. On the settlement of the account of any trustee OR DONEE OF POWER IN TRUST under the will of a person dying on or before August 31, 1956, or under a lifetime trust established on or before August 31, 1956, the court must allow him OR HER his OR HER reasonable and necessary expenses actually paid by him OR HER and if he OR SHE be an attorney of this state and shall have rendered legal services in connection with his OR HER official duties, such compensation for his OR HER legal services as shall appear to the court to be just and reasonable and in addition thereto it must allow to the trustee OR TO THE DONEE OF THE POWER IN TRUST for his OR HER services as trustee OR DONEE OF THE POWER IN TRUST the following commissions from TRUST principal OR PROPERTY SUBJECT TO THE POWER IN TRUST:

(a) For receiving principal OR PROPERTY SUBJECT TO THE POWER IN TRUST

(1) all sums of money constituting principal OR PROPERTY SUBJECT TO THE POWER IN TRUST not exceeding \$2,000 at the rate of 3 per cent;

(2) all additional sums of principal OR PROPERTY SUBJECT TO THE POWER IN TRUST not exceeding \$10,000 at the rate of 1 1/2 per cent;

(3) all sums of principal OR PROPERTY SUBJECT TO THE POWER IN TRUST above \$12,000 at the rate of 1 1/4 per cent; and

(b) For paying out principal OR PROPERTY SUBJECT TO THE POWER IN TRUST at the rate of 1 per cent.

(c) Notwithstanding the provisions of section 8 of chapter 237 of the laws of 1978, commissions provided by paragraph (a) of this subdivision for receiving principal OR PROPERTY SUBJECT TO THE POWER IN TRUST shall not be allowed to a trustee OR DONEE OF A POWER IN TRUST who qualifies to act as such on or after June 5, 1978, and shall not be allowed on additions of property received on or after June 5, 1978; such commissions on any increments in property that are payable by reason of any sale, exchange or liquidation of such property shall be allowed on the lesser of (1) the amount of such increments on the date of sale, exchange or liquidation of such property and (2) the amount of such increments on June 5, 1978; and such commissions on any increments in property that are payable by reason of any distribution of such property shall be allowed on the lesser of (1) the amount of such increments on the date of distribution of such property and (2) the amount of such increments on the effective date of this paragraph.

2. In addition to the commission allowed by subdivision one a trustee OR A DONEE OF A POWER IN TRUST shall be entitled to annual commissions at the following rates:

1 (a) \$10.50 per \$1,000 or major fraction thereof on the first \$400,000  
2 of principal OR PROPERTY TO THE POWER IN TRUST;

3 (b) \$4.50 per \$1,000 or major fraction thereof on the next \$600,000 of  
4 principal OR PROPERTY SUBJECT TO THE POWER IN TRUST; and

5 (c) \$3.00 per \$1,000 or major fraction thereof on all additional prin-  
6 cipal OR PROPERTY SUBJECT TO THE POWER IN TRUST.

7 Such annual commissions shall be computed either on the value of the  
8 principal of the trust OR OF THE PROPERTY SUBJECT TO THE POWER IN TRUST  
9 at the end of the period for which the commissions are payable or, at  
10 the option of the trustee OR OF THE DONEE OF THE POWER IN TRUST, on the  
11 value of the principal of the trust OR OF THE PROPERTY SUBJECT TO THE  
12 POWER IN TRUST at the beginning of such period, provided that the option  
13 elected by the trustee OR OF THE DONEE OF THE POWER IN TRUST for the  
14 first period for which such commissions are payable shall be used during  
15 the continuance of the trust OR OF THE POWER IN TRUST and shall be bind-  
16 ing on any successor or substitute trustee or trustees OR SUCCESSOR OR  
17 SUBSTITUTE DONEES OF THE POWER IN TRUST. In the case of a trust OR  
18 POWER IN TRUST which prior to January 1, 1994 computed annual commis-  
19 sions on the basis of a 12 month period (other than a calendar year),  
20 the trustee's OR DONEE'S prior election of such 12 month period shall be  
21 binding unless, prior to January 1, 1995, the trustee OR DONEE makes a  
22 new election to compute annual commissions on the basis of a calendar  
23 year either on the value of the principal of the trust OR OF THE PROPER-  
24 TY SUBJECT TO THE POWER IN TRUST at the end of, or at the option of the  
25 trustee OR DONEE OF THE POWER IN TRUST at the beginning of, the calendar  
26 year for which the commissions were payable, which new election shall be  
27 used during the remaining continuance of the trust OR OF THE POWER IN  
28 TRUST and shall be binding on any successor or substitute trustee or  
29 trustees OR DONEE OR DONEES OF THE POWER IN TRUST. The computation shall  
30 be made on the basis of a 12 month period but the amount so computed  
31 payable to a trustee OR DONEE OF A POWER IN TRUST shall be proportion-  
32 ately reduced or increased for any payments made in partial distribution  
33 of the trust OR OF THE PROPERTY SUBJECT TO THE POWER IN TRUST or receipt  
34 of any additional property into the trust OR BY THE DONEE OF A POWER IN  
35 TRUST within such period and shall be proportionately reduced in any  
36 period for which such commissions are payable to the trustee OR DONEE OF  
37 THE POWER IN TRUST if the period is less than 12 months. For the purpose  
38 of computing the annual commissions the value of any principal asset  
39 when received by the trust OR BY THE DONEE OF A POWER IN TRUST shall be  
40 the presumptive value of the asset at the beginning and end of the peri-  
41 od for which such commissions are payable. In computing the value of the  
42 principal of the trust OR OF THE PROPERTY SUBJECT TO THE POWER IN TRUST  
43 the trustee OR THE DONEE OF THE POWER IN TRUST may use the presumptive  
44 value in respect of any principal asset or may use the actual value of  
45 the asset. On the settlement of the account of the trustee OR OF THE  
46 DONEE OF A POWER IN TRUST any person interested may dispute the amount  
47 of any commission claimed or retained. The burden of proving that the  
48 actual value of any principal asset differs from its presumptive value  
49 is upon the trustee, THE DONEE OF THE POWER IN TRUST or other person  
50 claiming the difference.

51 3. Unless the will otherwise explicitly provides, the annual commis-  
52 sions allowed by subdivision two of this section shall be payable one-  
53 third from the income of the trust OR OF THE PROPERTY SUBJECT TO THE  
54 POWER IN TRUST and two-thirds from the principal of the trust OR FROM  
55 THE PROPERTY SUBJECT TO THE POWER IN TRUST. However, in the case of a  
56 trust whose definition of income is governed by 11-2.4 of the estates,

1 powers and trusts law, such annual commissions shall be payable from the  
2 corpus of any such trust after allowance for the unitrust amount and  
3 shall not be payable out of such unitrust amount.

4 4. The commissions allowed by subdivision 2 may be retained by a trust-  
5 tee OR DONEE OF A POWER IN TRUST provided he OR SHE furnishes annually  
6 as of a date not more than 30 days prior to the end of the trust year  
7 selected by the trustee OR THE CALENDAR YEAR, to each beneficiary  
8 currently receiving income, and to any other beneficiary interested in  
9 the income and to any person interested in the principal of the trust  
10 who shall make a demand therefor OR TO THE BENEFICIARY OF THE POWER IN  
11 TRUST WHO SHALL MAKE A DEMAND THEREFOR, a statement showing the princi-  
12 pal assets OR THE PROPERTY SUBJECT TO THE POWER IN TRUST on hand on that  
13 date, and at least annually or more frequently if the trustee OR DONEE  
14 OF A POWER IN TRUST so elects, a statement showing all his OR HER  
15 receipts of income and principal OR PROPERTY SUBJECT TO THE POWER IN  
16 TRUST during the period with respect to which the statement is rendered  
17 including the amount of any commissions retained and the basis upon  
18 which the commissions were computed. A trustee OR DONEE OF A POWER IN  
19 TRUST shall not be deemed to have waived any commissions by reason of  
20 his OR HER failure to retain them at the time when he OR SHE becomes  
21 entitled thereto; provided however that commissions from income for any  
22 given trust OR CALENDAR year shall be allowed and retained only from  
23 income derived from the trust OR FROM THE PROPERTY SUBJECT TO THE POWER  
24 IN TRUST during that year and shall not be supplied from income on hand  
25 in respect of any other trust OR CALENDAR year. If a beneficiary receiv-  
26 ing income does not desire to be furnished with any such statement his  
27 OR HER advice to the trustee OR TO THE DONEE OF THE POWER IN TRUST to  
28 that effect in writing shall thereafter excuse the trustee OR DONEE OF  
29 THE POWER IN TRUST from furnishing such statement to the beneficiary  
30 unless and until the beneficiary requests such annual statements from  
31 the trustee OR DONEE OF THE POWER IN TRUST.

32 5. (a) During the continuance of a trust created solely for public,  
33 religious, charitable, scientific, literary, educational or fraternal  
34 uses and during the period of continuance of such a trust after the  
35 termination of a life use or uses the trustee shall be entitled to and  
36 may retain commissions from income in an amount annually equal to 6 per  
37 cent of income collected in each year.

38 (b) In the case of a trust created solely for public, religious, char-  
39 itable, scientific, literary, educational or fraternal uses the trustee  
40 shall not be entitled to any commission from principal.

41 (c) In the case of such a trust which continues after the termination  
42 of a life use or uses the trustee for the period of the measuring life  
43 or lives shall be entitled to commissions from income and principal at  
44 the rates and according to the terms otherwise provided in this section,  
45 except that he OR SHE shall not be entitled to any commissions for  
46 paying out any amount of principal.

47 6. (a) If the gross value of the principal of the trust OR OF THE  
48 PROPERTY SUBJECT TO THE POWER IN TRUST accounted for amounts to \$400,000  
49 or more and there is more than 1 trustee OR DONEE OF THE POWER IN TRUST,  
50 each trustee OR DONEE OF THE POWER IN TRUST is entitled to the full  
51 compensation for receiving and paying out principal OR PROPERTY SUBJECT  
52 TO THE POWER IN TRUST allowed herein to a sole trustee OR DONEES OF THE  
53 POWER IN TRUST unless there are more than 3, in which case the compen-  
54 sation to which 3 would be entitled must be apportioned among the trust-  
55 ees OR DONEES OF THE POWER IN TRUST according to the services rendered  
56 by them respectively, unless the trustees OR DONEES OF THE POWER IN

1 TRUST shall have agreed in writing among themselves to a different  
2 apportionment which, however, shall not provide for more than one full  
3 commission for any one of them. If the gross value of the principal of  
4 the trust OR OF THE PROPERTY SUBJECT TO THE POWER IN TRUST accounted for  
5 is:

6 (i) less than \$100,000 and there is more than 1 trustee OR DONEE OF  
7 THE POWER IN TRUST the full compensation for receiving and paying out  
8 principal OR PROPERTY SUBJECT TO THE POWER IN TRUST allowed herein to a  
9 sole trustee OR DONEE OF THE POWER IN TRUST must be apportioned among  
10 them according to the services rendered by them respectively, or

11 (ii) \$100,000 or more but less than \$400,000, each trustee OR DONEE OF  
12 THE POWER IN TRUST is entitled to the full compensation for receiving  
13 and paying out principal OR PROPERTY SUBJECT TO THE POWER IN TRUST  
14 allowed pursuant to this subdivision to a sole trustee OR DONEE OF THE  
15 POWER IN TRUST unless there are more than 2 trustees OR DONEES OF THE  
16 POWER IN TRUST in which case the full compensation for paying out prin-  
17 cipal OR PROPERTY SUBJECT TO THE POWER IN TRUST allowed pursuant to this  
18 subdivision to 2 trustees OR DONEES OF THE POWER IN TRUST must be appor-  
19 tioned among them according to the services rendered by them respective-  
20 ly,

21 unless the trustees OR DONEES OF THE POWER IN TRUST shall have agreed in  
22 writing between or among themselves to a different apportionment which,  
23 however, shall not provide for more than one full commission for any one  
24 of them.

25 (b) If the value of the principal of the trust OR OF THE PROPERTY  
26 SUBJECT TO THE POWER IN TRUST for the purpose of computing the annual  
27 commissions allowed by subdivision 2 amounts to \$400,000 or more and  
28 there is more than one trustee OR DONEE OF THE POWER IN TRUST, each  
29 trustee OR DONEE OF THE POWER IN TRUST is entitled to the full annual  
30 commission allowed herein to a sole trustee OR DONEE OF THE POWER IN  
31 TRUST unless there are more than 3, in which case the annual commissions  
32 to which 3 would be entitled must be apportioned among the trustees OR  
33 DONEES OF THE POWER IN TRUST according to the services rendered by them  
34 respectively, unless the trustees OR DONEES OF THE POWER IN TRUST shall  
35 have agreed in writing among themselves to a different apportionment  
36 which, however, shall not provide for more than one full annual commis-  
37 sion for any one of them. If the value of the principal OR OF THE PROP-  
38 ERTY SUBJECT TO THE POWER IN TRUST for the purpose of computing the  
39 annual commission allowed by subdivision 2 amounts to:

40 (i) less than \$100,000 and there is more than 1 trustee OR DONEE OF  
41 THE POWER IN TRUST, the annual commissions from income and the annual  
42 commission allowed herein to a sole trustee OR DONEE OF THE POWER IN  
43 TRUST must be apportioned among the trustees OR DONEE OF THE POWER IN  
44 TRUST according to the services rendered by them respectively, or

45 (ii) \$100,000 or more but less than \$400,000, each trustee OR DONEE OF  
46 THE POWER IN TRUST is entitled to the full annual commission allowed  
47 pursuant to this subdivision to a sole trustee OR DONEE OF THE POWER IN  
48 TRUST unless there are more than 2 trustees OR DONEES OF THE POWER IN  
49 TRUST in which case the full annual commissions allowed pursuant to this  
50 subdivision to 2 trustees OR DONEES OF THE POWER IN TRUST must be appor-  
51 tioned among them according to the services rendered by them respective-  
52 ly,

53 unless the trustees OR DONEES OF THE POWER IN TRUST shall have agreed in  
54 writing between or among themselves to a different apportionment which,  
55 however, shall not provide for more than one full annual commission for  
56 any one of them. However, if from a trust OR FROM PROPERTY SUBJECT TO A

1 POWER IN TRUST having a value of \$400,000 or more, or if from a trust OR  
2 FROM PROPERTY SUBJECT TO A POWER IN TRUST having a value of \$100,000 or  
3 more but less than \$400,000, as the case may be, at the beginning of a  
4 trust year OR OF THE CALENDAR YEAR IN THE CASE OF A POWER IN TRUST, any  
5 payments in partial distribution of the trust OR OF THE PROPERTY SUBJECT  
6 TO THE POWER IN TRUST shall be made during the trust OR CALENDAR year so  
7 as to reduce the trust OR OF THE PROPERTY SUBJECT TO THE POWER IN TRUST  
8 to a value of less than \$400,000 or \$100,000, as the case may be, at the  
9 end of the trust OR CALENDAR year, then the annual commission allowed  
10 herein shall, on a proportionate basis, be those allowed to a trustee of  
11 a trust OR TO THE DONEES OF A POWER IN TRUST OVER PROPERTY having a  
12 value of \$400,000 or more, of a trust OR TO THE DONEES OF A POWER IN  
13 TRUST OVER PROPERTY having a value of \$100,000 or more but less than  
14 \$400,000, as the case may be, for the period from the beginning of the  
15 trust OR CALENDAR year to the date of the distribution and shall, on a  
16 proportionate basis, be those allowed to trustees of a trust OR TO THE  
17 DONEES OF A POWER IN TRUST OVER PROPERTY having a value of either  
18 \$100,000 or more but less than \$400,000 or less than \$100,000, as the  
19 case may be, for the remainder of the trust OR CALENDAR year and the  
20 part of such commissions payable from principal and computed from the  
21 beginning of the trust OR CALENDAR year to the date of distribution  
22 shall be charged ratably to the property remaining in the trust and to  
23 the property distributed from the trust on the basis of their respective  
24 values. Further, if during a trust year OR A CALENDAR YEAR IN THE CASE  
25 OF POWER IN TRUST additional property shall be received into a trust  
26 which had a value of less than \$100,000 OR BY A DONEE OF A POWER IN  
27 TRUST THE PROPERTY SUBJECT TO WHICH HAD A VALUE OF LESS THAN \$100,000,  
28 or into a trust which had a value of \$100,000 or more but less than  
29 \$400,000 OR BY A DONEE OF A POWER IN TRUST THE PROPERTY SUBJECT TO WHICH  
30 HAD A VALUE OF \$100,000 OR MORE BUT LESS THAN \$400,000, as the case may  
31 be, at the beginning of the trust OR CALENDAR year so that because of  
32 the additional property the trust OR THE PROPERTY SUBJECT TO THE POWER  
33 IN TRUST shall have a value of \$100,000 or more or of \$400,000 or more,  
34 as the case may be, at the end of the trust OR CALENDAR year, then the  
35 annual commission allowed herein TO THE TRUSTEE OR TO THE DONEE OF THE  
36 POWER IN TRUST shall, on a proportionate basis, be those allowed to  
37 trustees of a trust OR TO DONEES OF A POWER IN TRUST OVER PROPERTY  
38 having a value of less than \$100,000, or to trustees of a trust OR TO  
39 THE DONEES OF THE POWER IN TRUST having a value of \$100,000 or more but  
40 less than \$400,000, as the case may be, for the period from the begin-  
41 ning of the trust OR CALENDAR year to the date of the receipt of the  
42 additional property and shall, on a proportionate basis, be those  
43 allowed to trustees of a trust OR TO DONEES OF A POWER IN TRUST OVER  
44 PROPERTY having a value of \$100,000 or more but less than \$400,000, or  
45 TO TRUSTEES of a trust OR TO DONEES OF A POWER IN TRUST OVER PROPERTY  
46 having \$400,000 or more, as the case may be, for the remainder of the  
47 trust OR CALENDAR year.

48 (c) Notwithstanding any provisions of paragraphs (a) and (b) of this  
49 subdivision to the contrary, if during the continuance of a trust  
50 created solely for public, religious, charitable, scientific, literary,  
51 educational or fraternal uses or during the continuance of such a trust  
52 after the termination of a life use or uses, the annual income of the  
53 trust amounts to \$4,000 or more and there is more than 1 trustee, each  
54 trustee is entitled to the full commission allowed under subdivision 5  
55 to a sole trustee unless there are more than 2, in which case the  
56 commissions to which 2 trustees would be entitled must be apportioned

1 among the trustees according to the services rendered by them respec-  
2 tively, unless they shall have agreed in writing among themselves to a  
3 different apportionment which, however, shall not provide for more than  
4 one full commission to any one of them; provided however, if during the  
5 continuance of a trust created solely for public, religious, charitable,  
6 scientific, literary, educational or fraternal uses created prior to  
7 April 1, 1948, the annual income of the trust amounts to \$4,000 or more  
8 and there is more than 1 trustee each trustee is entitled to the full  
9 commission allowed under subdivision 5 to a sole trustee unless there  
10 are more than 3, in which case the commission to which 3 trustees would  
11 be entitled must be apportioned among the trustees according to the  
12 services rendered by them respectively, unless they shall have agreed in  
13 writing among themselves to a different apportionment which, however,  
14 shall not provide for more than one full commission to any one of them.  
15 If the annual income of the trust amounts to less than \$4,000 and there  
16 is more than 1 trustee the commissions to which a sole trustee would be  
17 entitled under subdivision 5 must be apportioned among the trustees  
18 according to the services rendered by them respectively unless they  
19 shall have agreed in writing among themselves to a different apportion-  
20 ment.

21 7. Where a trustee OR DONEE OF A POWER IN TRUST is for any reason  
22 entitled or required to collect the rents of and manage real property  
23 the net amount of rents collected and not the gross amount shall be used  
24 in making computation of commissions allowed by subdivision 5 hereof and  
25 in addition to the commissions herein provided he OR SHE shall be  
26 allowed and may retain for such services 6 per cent of the gross rents  
27 collected, but there shall be only 1 such additional commission regard-  
28 less of the number of trustees OR DONEES OF THE POWER IN TRUST. If there  
29 are 2 or more trustees OR DONEES OF THE POWER IN TRUST the additional  
30 commission herein provided must be apportioned among them according to  
31 the services rendered by them respectively unless they shall have agreed  
32 in writing among themselves to a different apportionment.

33 8. A trustee who prior to September 1, 1966 shall have received the  
34 maximum amount of commissions on principal permitted by subdivision 8 of  
35 section 285-a of the surrogate's court act as that subdivision existed  
36 prior to that date, shall not be entitled to annual principal commis-  
37 sions for the period from the date when he OR SHE shall receive such  
38 maximum and September 1, 1966, but shall be entitled to receive commis-  
39 sions from and after September 1, 1966 at the rates and in the manner  
40 provided in this section. A trustee who has become entitled to annual  
41 principal commissions pursuant to section 285-a of the surrogate's court  
42 act as it existed prior to September 1, 1966, but has not received them,  
43 may receive an amount of commissions not in excess of the amount he OR  
44 SHE would have been entitled to if he OR SHE had taken such commissions,  
45 and be entitled to receive in addition commissions from and after  
46 September 1, 1966 at the rates and in the manner provided in that  
47 section.

48 9. A trustee who has been acting prior to July 1, 1956 shall be enti-  
49 tled to have commissions on principal and income theretofore received by  
50 him OR HER computed, allowed and paid under the methods and at the rates  
51 set forth herein, except as follows:

52 (a) If prior to July 1, 1956 a trustee has been allowed or has  
53 retained commissions for receiving and paying out or for distributing  
54 any item of principal he OR SHE shall be entitled to no further commis-  
55 sions on the item.

1 (b) If prior to July 1, 1956 a trustee has been allowed or retained  
2 commissions on any item of principal received but not paid out or  
3 distributed by him OR HER he OR SHE shall be entitled to no further  
4 commissions for receiving the item.

5 (c) Any trustee who became entitled to an annual principal commission  
6 under subdivision 1 (b) of section 285-a of the surrogate's court act as  
7 it existed prior to April 1, 1948 and who has not retained such commis-  
8 sion may retain an amount equal to one-half of such annual principal  
9 commission. A trustee who because of the provisions of subdivision 2 of  
10 section 285-a of the surrogate's court act as it existed prior to April  
11 1, 1948 either was not entitled to retain an annual principal commission  
12 under subdivision 1 (b) thereof or was required to credit such annual  
13 principal commission against his OR HER commission for receiving princi-  
14 pal, may retain an amount equal to 1/2 of such annual principal commis-  
15 sion. If a trustee has been allowed by decree or has retained any such  
16 annual principal commission one-half the amount thereof shall be  
17 deducted from the amount of commissions to which the trustee would  
18 otherwise be entitled under the provisions of subdivision 1.

19 (d) The annual principal commissions allowed by subdivision 3 of this  
20 section as it existed on September 1, 1967 shall not be allowed or  
21 retained in respect of any trust year ending prior to April 1, 1948, but  
22 for any trust year ending on or after April 1, 1948 and prior to July 1,  
23 1956, the annual principal commission which may be allowed or retained  
24 shall be computed at the rates in effect on the date such trust year  
25 ended.

26 (e) If prior to July 1, 1956 a trustee has been allowed or has  
27 retained commissions on any item of income received and paid out by him  
28 OR HER prior to September 1, 1943 or on any item of income collected by  
29 him OR HER subsequent to September 1, 1943 he OR SHE shall be entitled  
30 to no further commission on the item.

31 10. The value of any property to be determined in such manner as  
32 directed by the court and the increment thereof received, distributed or  
33 delivered shall be considered as money in making computation of commis-  
34 sions. Whenever any portion of the dividends, interests or rents payable  
35 to a trustee OR DONEE OF A POWER IN TRUST is required by any law of the  
36 United States or other governmental unit to be withheld by the person  
37 paying it for income tax purposes, the amount so withheld shall be  
38 deemed to have been collected.

39 11. Where the will provides a specific compensation to a trustee OR  
40 DONEE OF A POWER IN TRUST he OR SHE is not entitled to any other allow-  
41 ances for his OR HER services.

42 12. If a trustee of a trust OR DONEE OF A POWER IN TRUST is authorized  
43 or required by the terms of the will to accumulate income for any  
44 purpose permitted by law, any income so accumulated which is not added  
45 to principal of the trust OR TO THE PRINCIPAL OF THE PROPERTY SUBJECT TO  
46 THE POWER IN TRUST shall be deemed a separate trust OR SEPARATE FUND  
47 SUBJECT TO THE POWER IN TRUST for purposes of this subdivision and the  
48 trustee OR DONEE OF THE POWER IN TRUST shall be entitled to commissions  
49 in respect thereof at the rates and according to the terms and  
50 provisions of subdivisions 1 and 2 of this section as though, for  
51 purposes of computing commissions of the trustee, income so accumulated  
52 was principal.

53 13. For the purposes of this section, the term "trustee" shall mean  
54 any trustee who is not a corporate trustee AND THE TERM "DONEE OF A  
55 POWER IN TRUST" SHALL MEAN ANY SUCH DONEE INCLUDING A DONEE OF A POWER  
56 DURING MINORITY WHO IS NOT A CORPORATE FIDUCIARY provided, however, that



as used in subdivision 6 of this section, the term trustee shall include a corporate trustee, AND FURTHER PROVIDED THAT THE TERM "PROPERTY SUBJECT TO THE POWER IN TRUST" SHALL INCLUDE PROPERTY SUBJECT TO A POWER DURING MINORITY.

S 4. Section 2309 of the surrogate's court procedure act, the section heading and subdivision 1 as amended by chapter 503 of the laws of 1980, subdivision 2 as amended by chapter 654 of the laws of 1993, subdivision 3 as amended by chapter 243 of the laws of 2001, paragraph (a) of subdivision 5 as amended and subdivision 11 as added by chapter 936 of the laws of 1984, subdivisions 6 and 7 as amended by chapter 303 of the law of 1976, paragraphs (a) and (b) of subdivision 6 as amended by chapter 245 of the laws of 1991, and the opening paragraphs of paragraphs (a) and (b) of subdivision 6 as amended by chapter 514 of the laws of 1993, is amended to read as follows:

S 2309. Commissions of trustees, OF DONEES OF POWERS DURING MINORITY AND OF DONEES OF POWERS IN TRUST under wills of persons dying, or lifetime trusts established, after August 31, 1956

1. On the settlement of the account of any trustee OR DONEE OF A POWER IN TRUST under the will of a person dying after August 31, 1956, or under a lifetime [inter] trust established after August 31, 1956, the court must allow to him OR HER his OR HER reasonable and necessary expenses actually paid by him OR HER and if he OR SHE be an attorney of this state and shall have rendered legal services in connection with his OR HER official duties, such compensation for his OR HER legal services as shall appear to the court to be just and reasonable and in addition thereto it must allow to the trustee OR DONEE OF A POWER IN TRUST for his OR HER services as trustee OR DONEE OF A POWER IN TRUST a commission from principal OR FROM THE PROPERTY SUBJECT TO THE POWER IN TRUST, for paying out all sums of money constituting principal OR PROPERTY SUBJECT TO THE POWER IN TRUST at the rate of 1 per cent.

2. In addition to the commission allowed by subdivision 1 hereof a trustee OR DONEE OF A POWER IN TRUST shall be entitled to annual commissions at the following rates:

(a) \$10.50 per \$1,000 or major fraction thereof on the first \$400,000 of principal OR PROPERTY SUBJECT TO THE POWER IN TRUST.

(b) \$4.50 per \$1,000 or major fraction thereof on the next \$600,000 of principal OR PROPERTY SUBJECT TO THE POWER IN TRUST.

(c) \$3.00 per \$1,000 or major fraction thereof on all additional principal OR PROPERTY SUBJECT TO THE POWER IN TRUST.

Such annual commissions shall be computed either on the value of the principal of the trust OR OF THE PROPERTY SUBJECT TO THE POWER IN TRUST at the end of the period for which the commissions are payable or, at the option of the trustee OR DONEE OF THE POWER IN TRUST, on the value of the principal of the trust OR OF THE PROPERTY SUBJECT TO THE POWER IN TRUST at the beginning of such period, provided that the option elected by the trustee OR DONEE OF THE POWER IN TRUST for the first period for which such commissions are payable shall be used during the continuance of the trust OR OF THE POWER IN TRUST and shall be binding on any successor or substitute trustee or trustees, DONEE OR DONEES. In the case of a trust which prior to January 1, 1994 computed annual commissions on the basis of a 12 month period (other than a calendar year), the trustee's prior election of such 12 month period shall be binding unless, prior to January 1, 1995, the trustee makes a new election to compute annual commissions on the basis of a calendar year either on the value of the principal of the trust at the end of, or at the option of the trustee at the beginning of, the calendar year for which the commis-

sions were payable, which new election shall be used during the remaining continuance of the trust and shall be binding on any successor or substitute trustee or trustees. The computation shall be made on the basis of a 12-month period but the amount so computed payable to a trustee shall be proportionately reduced or increased for any payments made in partial distribution of the trust or the receipt of any additional property into the trust within such period and shall be proportionately reduced in any period for which such commissions are payable to the trustee if the period is less than 12 months. For the purpose of computing the annual commissions the value of any principal asset when received by the trust OR DONEE OF A POWER IN TRUST shall be the presumptive value of the asset at the beginning and end of the period for which such commissions are payable. In computing the value of the principal of the trust OR OF THE PROPERTY SUBJECT TO THE POWER IN TRUST the trustee OR DONEE OF THE POWER IN TRUST may use the presumptive value in respect of any principal asset or may use the actual value of the asset. On the settlement of the account of the trustee OR DONEE OF A POWER IN TRUST any person interested may dispute the amount of any commission claimed or retained. The burden of proving that the actual value of any principal asset OR ASSET SUBJECT TO THE POWER IN TRUST differs from its presumptive value is upon the trustee OR DONEE OF A POWER IN TRUST or other person claiming the difference.

3. Unless the will or lifetime trust instrument otherwise explicitly provides the annual commissions allowed by subdivision 2 shall be payable one-third from the income of the trust OR PROPERTY SUBJECT TO THE POWER IN TRUST and two-thirds from the principal of the trust OR PROPERTY SUBJECT TO THE POWER IN TRUST. However, in the case of a trust whose definition of income is governed by SECTION 11-2.4 of the estates, powers and trusts law or a charitable remainder annuity trust or a charitable remainder unitrust, as defined in section six hundred sixty-four of the Internal Revenue Code of nineteen hundred eighty-six, as amended, such annual commissions shall be payable from the corpus of any such trust after allowance for the annuity or unitrust amounts and shall not be payable out of such annuity or unitrust amounts.

4. The commissions allowed by subdivision 2 may be retained by a trustee provided he OR SHE furnishes annually as of a date no more than 30 days prior to the end of the trust year selected by the trustee, to each beneficiary currently receiving income, and to any other beneficiary interested in the income and to any person interested in the principal of the trust who shall make a demand therefor AND BY A DONEE OF A POWER IN TRUST IF HE OR SHE FURNISHES ANNUALLY AS OF A DATE NO MORE THAN 30 DAYS PRIOR TO THE END OF THE CALENDAR YEAR TO THE BENEFICIARY OF THE POWER IN TRUST, a statement showing the principal assets on hand on that date, and at least annually or more frequently if the trustee OR DONEE OF THE POWER IN TRUST so elects, a statement showing all his OR HER receipts of income and principal OR PROPERTY SUBJECT TO THE POWER IN TRUST during the period with respect to which the statement is rendered including the amount of any commissions retained and the basis upon which the commissions were computed. A trustee OR DONEE OF A POWER IN TRUST shall not be deemed to have waived any commissions by reason of his OR HER failure to retain them at the time when he OR SHE becomes entitled thereto; provided however that IN THE CASE OF A TRUST commissions payable from income for any given trust year shall be allowed and retained only from income derived from the trust during that year and shall not be supplied from income on hand in respect of any other trust year AND IN THE CASE OF PROPERTY SUBJECT TO A POWER IN TRUST COMMISSIONS

1 PAYABLE FROM INCOME FOR ANY GIVEN CALENDAR YEAR SHALL BE ALLOWED AND  
2 RETAINED ONLY FROM INCOME DERIVED FROM THE PROPERTY DURING THAT YEAR AND  
3 SHALL NOT BE SUPPLIED FROM INCOME ON HAND IN RESPECT OF ANY OTHER CALEN-  
4 DAR YEAR. If a beneficiary receiving income does not desire to be  
5 furnished with any such statements his OR HER advice to the trustee OR  
6 TO THE DONEE OF THE POWER IN TRUST to that effect in writing shall ther-  
7 eafter excuse the trustee OR DONEE OF THE POWER IN TRUST from furnishing  
8 such statement to the beneficiary unless and until the beneficiary  
9 requests such annual statements from the trustee OR DONEE OF THE POWER  
10 IN TRUST.

11 5. (a) During the continuance of a trust created solely for public,  
12 religious, charitable, scientific, literary, educational or fraternal  
13 uses and during the period of continuance of such a trust after the  
14 termination of a life use or uses the trustee shall be entitled to and  
15 may retain commissions from income in an amount annually equal to 6 per  
16 cent of income collected in each year.

17 (b) In the case of a trust created solely for public, religious, char-  
18 itable, scientific, literary, educational or fraternal uses the trustee  
19 shall not be entitled to any commission from principal.

20 (c) In the case of such a trust which continues after the termination  
21 of the measuring life use or uses the trustee for the period of the  
22 measuring life use or uses shall be entitled to commissions from income  
23 and principal at the rates and according to the terms specified in  
24 subdivision 2 and except in respect of principal paid out to a charity  
25 or for charitable uses shall be entitled to a commission for distribut-  
26 ing all sums of principal at the rate specified in subdivision 1.

27 6. (a) Subject to SECTION 2313 regarding multiple commissions of exec-  
28 utors [or], trustees, OR DONEES OF A POWER IN TRUST CREATED under wills  
29 of persons dying, or lifetime trusts established, after August 31, 1993,  
30 if the gross value of the principal of the trust OR OF THE PROPERTY  
31 SUBJECT TO THE POWER IN TRUST accounted for amounts to \$400,000 or more  
32 and there is more than 1 trustee OR DONEE each trustee OR DONEE is enti-  
33 tled to the full compensation for paying out principal allowed herein to  
34 a sole trustee OR DONEE unless there are more than 3, in which case the  
35 compensation to which 3 would be entitled must be apportioned among the  
36 trustees OR DONEES OF THE POWER IN TRUST according to the services  
37 rendered by them respectively unless [the trustees] THEY shall have  
38 agreed in writing among themselves to a different apportionment which,  
39 however, shall not provide for more than one full commission for any one  
40 of them. If the gross value of the principal of the trust OR OF THE  
41 PROPERTY SUBJECT TO THE POWER IN TRUST accounted for is:

42 (i) less than \$100,000 and there is more than 1 trustee OR DONEE OF  
43 THE POWER IN TRUST, the full compensation for paying out principal  
44 allowed herein to a sole trustee OR DONEE OF THE POWER IN TRUST must be  
45 apportioned among them according to the services rendered by them  
46 respectively, or

47 (ii) \$100,000 or more but less than \$400,000, each trustee OR DONEE OF  
48 THE POWER IN TRUST is entitled to the full compensation for paying out  
49 principal allowed herein to a sole trustee OR DONEE OF THE POWER IN  
50 TRUST unless there are more than 2 trustees OR DONEES OF THE POWER IN  
51 TRUST in which case the full compensation for paying out principal  
52 allowed herein to 2 trustees OR DONEES OF A POWER OF TRUST must be  
53 apportioned among them according to the services rendered by them  
54 respectively, unless the trustees OR DONEES OF THE POWER IN TRUST shall  
55 have agreed in writing between or among themselves to a different appor-

tionment which, however, shall not provide for more than one full commission for any one of them.

(b) Subject to SECTION 2313 regarding multiple commissions of executors [or], trustees, OR DONEES OF A POWER IN TRUST CREATED under wills of persons dying, or lifetime trusts established, after August 31, 1993, if the value of the principal of the trust OR OF THE PROPERTY SUBJECT TO THE POWER IN TRUST for the purpose of computing the annual commissions allowed by subdivision 2 amounts to \$400,000 or more and there is more than one trustee OR DONEE OF A POWER IN TRUST each trustee OR DONEE OF A POWER IN TRUST is entitled to the full annual commission allowed herein to a sole trustee OR DONEE OF A POWER IN TRUST unless there are more than 3, in which case the annual commissions to which 3 would be entitled must be apportioned among the trustees OR DONEES OF THE POWER IN TRUST according to the services rendered by them respectively unless the trustees OR DONEES OF THE POWER IN TRUST shall have agreed in writing among themselves to a different apportionment which, however, shall not provide for more than one full annual commission for any one of them. If the value of the principal OF THE TRUST OR OF THE PROPERTY SUBJECT TO THE POWER IN TRUST for the purpose of computing the annual commission allowed by subdivision 2 amounts to:

(i) less than \$100,000 and there is more than 1 trustee OR DONEE OF THE POWER IN TRUST, the annual commission allowed herein to a sole trustee OR DONEE OF A POWER IN TRUST must be apportioned among the trustees OR DONEES OF THE POWER IN TRUST according to the services rendered by them respectively, or

(ii) \$100,000 or more but less than \$400,000, each trustee OR DONEE OF THE POWER IN TRUST is entitled to the full annual commission allowed herein to a sole trustee OR DONEE OF A POWER IN TRUST unless there are more than 2 trustees OR DONEES OF THE POWER IN TRUST in which case the full annual commissions allowed herein to 2 trustees OR DONEES OF A POWER IN TRUST must be apportioned among them according to the services rendered by them respectively, unless the trustees OR DONEES OF THE POWER IN TRUST shall have agreed in writing between or among themselves to a different apportionment which, however, shall not provide for more than one full annual commission for any one of them. However, if from a trust OR FROM PROPERTY SUBJECT TO A POWER IN TRUST having a value of \$400,000 or more, or if from a trust OR FROM PROPERTY SUBJECT TO A POWER IN TRUST having a value of \$100,000, or more but less than \$400,000, as the case may be, at the beginning of a trust year OR OF THE CALENDAR YEAR any payments in partial distribution of the trust OR OF THE PROPERTY SUBJECT TO THE POWER IN TRUST shall be made during the trust OR CALENDAR year so as to reduce the trust OR THE PROPERTY SUBJECT TO THE POWER IN TRUST to a value of less than \$400,000 or \$100,000, as the case may be, at the end of the trust OR CALENDAR year, then the annual commissions allowed herein shall, on a proportionate basis, be those allowed to trustees of a trust OR TO THE DONEES OF A POWER IN TRUST OVER PROPERTY having a value of \$400,000 or more, or of a trust OR TO THE DONEES OF A POWER IN TRUST OVER PROPERTY having a value of \$100,000 or more but less than \$400,000, as the case may be, for the period from the beginning of the trust OR CALENDAR year to the date of the distribution and shall, on a proportionate basis, be those allowed to trustees of a trust OR TO THE DONEES OF A POWER IN TRUST OVER PROPERTY having a value of either \$100,000 or more but less than \$400,000 or less than \$100,000, as the case may be, for the remainder of the trust OR CALENDAR year and the part of such commissions payable from principal and computed from the beginning of the trust OR CALENDAR year to the date of distribution

1 shall be charged ratably to the property remaining in the trust OR STILL  
2 SUBJECT TO THE POWER IN TRUST AFTER SUCH DISTRIBUTION and to the proper-  
3 ty distributed from the trust OR TO THE BENEFICIARY OF THE POWER IN  
4 TRUST on the basis of their respective values. Further, if during a  
5 trust OR CALENDAR year additional property shall be received into a  
6 trust which had a value of less than \$100,000 OR BY A DONEE OF A POWER  
7 IN TRUST THE PROPERTY SUBJECT TO WHICH HAD A VALUE OF LESS THAN  
8 \$100,000, or into a trust which had a value of \$100,000 or more but less  
9 than \$400,000 OR BY A DONEE OF A POWER IN TRUST THE PROPERTY SUBJECT TO  
10 WHICH HAD A VALUE OF \$100,000 OR MORE BUT LESS THAN \$400,000, as the  
11 case may be, at the beginning of the trust year OR CALENDAR YEAR, so  
12 that because of the additional property the trust OR THE PROPERTY  
13 SUBJECT TO THE POWER IN TRUST has a value of \$100,000 or more but less  
14 than \$400,000, or of \$400,000 or more, as the case may be, at the end of  
15 the trust OR CALENDAR year, then the annual commissions allowed herein  
16 TO THE TRUSTEE OR TO THE DONEE OF THE POWER IN TRUST shall, on a propor-  
17 tionate basis, be those allowed to trustees of a trust OR TO DONEES OF A  
18 POWER IN TRUST OVER PROPERTY having a value of less than \$100,000, or to  
19 trustees of a trust OR TO DONEES OF A POWER IN TRUST OVER PROPERTY  
20 having a value of \$100,000 or more but less than \$400,000, as the case  
21 may be, for the period from the beginning of the trust OR CALENDAR year  
22 to the date of the receipt of the additional property and shall, on a  
23 proportionate basis, be those allowed to trustees of a trust OR TO  
24 DONEES OF A POWER IN TRUST OVER PROPERTY having a value of \$100,000 or  
25 more but less than \$400,000, or TO TRUSTEES of a trust OR TO DONEES OF A  
26 POWER IN TRUST OVER PROPERTY having \$400,000 or more, as the case may  
27 be, for the remainder of the trust OR CALENDAR year.

28 (c) Notwithstanding any provision of paragraphs (a) and (b) of this  
29 subdivision to the contrary, if during the continuance of a trust not  
30 measured at any time directly or indirectly by a life or lives or during  
31 the continuance of a trust after the termination of the measuring life  
32 or lives, the annual income of the trust amounts to \$4,000 or more and  
33 there is more than 1 trustee, each trustee is entitled to the full  
34 commissions allowed under subdivision 5 to a sole trustee unless there  
35 are more than 2, in which case the commissions to which 2 trustees would  
36 be entitled must be apportioned among the trustees according to the  
37 services rendered by them respectively unless they shall have agreed in  
38 writing among themselves to a different apportionment which, however,  
39 shall not provide for more than one full commission to any one of them.  
40 If the annual income of the trust amounts to less than \$4,000 and there  
41 is more than 1 trustee the commissions to which a sole trustee would be  
42 entitled under subdivision 5 must be apportioned among the trustees  
43 according to the services rendered by them respectively unless they  
44 shall have agreed in writing among themselves to a different apportion-  
45 ment.

46 7. Where a trustee OR DONEE OF A POWER IN TRUST is for any reason  
47 entitled or required to collect the rents of and manage real property  
48 the net amount of rents collected and not the gross amount shall be used  
49 in making computation of commissions allowed by subdivision 5 and in  
50 addition to the commissions herein provided he OR SHE shall be allowed  
51 and may retain for such services 6 per cent of the gross rents  
52 collected, but there shall be only one such additional commission  
53 regardless of the number of trustees OR DONEES OF THE POWER IN TRUST. If  
54 there are 2 or more trustees OR DONEES OF THE POWER IN TRUST the addi-  
55 tional commission herein provided for must be apportioned among them  
56 according to the services rendered by them respectively unless they

1 shall have agreed in writing among themselves to a different apportion-  
2 ment.

3 8. If a trustee OR DONEE OF A POWER IN TRUST is either authorized or  
4 required by the terms of the will to accumulate income for any purpose  
5 permitted by law he OR SHE shall be entitled to commissions from the  
6 income so accumulated, including income derived from the investment of  
7 such accumulated income, at the rate of 2 [per cent] PERCENT of the  
8 first \$2,500 of such income distributed during the administration of the  
9 trust and 1 [per cent] PERCENT of all such income distributed in excess  
10 of \$2,500 and he OR SHE may retain such commissions at the time or times  
11 such income is distributed.

12 9. The value of any property to be determined in such manner as  
13 directed by the court and the increment thereof received, distributed or  
14 delivered, shall be considered as money in making computation of commis-  
15 sions. Whenever any portion of the dividends, interests or rents payable  
16 to a trustee OR TO A DONEE OF A POWER IN TRUST is required by any law of  
17 the United States or other governmental unit to be withheld by the  
18 person paying it for income tax purposes, the amount so withheld shall  
19 be deemed to have been collected.

20 10. Where the will provides a specific compensation for a trustee OR A  
21 DONEE OF A POWER IN TRUST he OR SHE is not entitled to any other allow-  
22 ances for his OR HER services.

23 11. For the purposes of this section, the term "trustee" shall mean  
24 any trustee who is not a corporate trustee AND THE TERM "DONEE OF A  
25 POWER IN TRUST" SHALL MEAN ANY SUCH DONEE INCLUDING A DONEE OF A POWER  
26 DURING MINORITY WHO IS NOT A CORPORATE FIDUCIARY provided, however, that  
27 as used in subdivision 6 of this section, the term trustee shall include  
28 a corporate trustee AND FURTHER PROVIDED THAT THE TERM "PROPERTY SUBJECT  
29 TO THE POWER IN TRUST" SHALL INCLUDE PROPERTY SUBJECT TO A POWER DURING  
30 MINORITY.

31 S 5. Section 2312 of the surrogate's court procedure act as added by  
32 chapter 936 of the laws of 1984, subdivision 2, 3, 7, 9 and paragraphs  
33 (d) and (e) of subdivision 10 as amended by chapter 511 of the laws of  
34 1987, paragraph (b) of subdivision 4 as amended by chapter 245 of the  
35 laws of 1991, and subdivision 5 as amended by chapter 243 of the laws of  
36 2001, is amended to read as follows:

37 S 2312. Commissions of corporate trustees, INCLUDING WHEN ACTING AS  
38 DONEES OF POWERS DURING MINORITY OR DONEES OF POWER IN TRUST

39 1. If the will or lifetime trust instrument makes provisions for  
40 specific rates or amounts of commissions (other than a general reference  
41 to commissions allowed by law or words of like import) for a corporate  
42 trustee, or, if a corporate trustee has agreed to accept specific rates  
43 or amounts of commissions, a corporate trustee, WHETHER AS TRUSTEE OR AS  
44 DONEE OF A POWER IN TRUST, INCLUDING FOR PURPOSES OF THIS SECTION AS  
45 DONEE OF A POWER DURING MINORITY, CREATED UNDER THE PROVISIONS OF THE  
46 WILL OR LIFETIME TRUST INSTRUMENT, shall be entitled to be compensated  
47 in accordance with such provisions or agreement, as the case may be.

48 2. For trusts having a principal value of more than four hundred thou-  
49 sand dollars AND AS DONEE OF A POWER IN TRUST WHERE THE PROPERTY SUBJECT  
50 TO THE POWER, INCLUDING FOR PURPOSES OF THIS SECTION THE PROPERTY  
51 SUBJECT TO A POWER DURING MINORITY, HAS A PRINCIPAL VALUE OF MORE THAN  
52 FOUR HUNDRED THOUSAND DOLLARS and subject to the provisions of subdivi-  
53 sion 4 of this section, if the will or lifetime trust instrument does  
54 not make provisions for specific rates or amounts of commissions, or,  
55 contains only a general reference to commissions allowed by law or words  
56 of like import, a corporate trustee shall be entitled to such commis-

sions as may be reasonable, and the court, upon application of a person interested in the trust OR IN THE FUND HELD BY THE CORPORATE TRUSTEE AS DONEE OF A POWER IN TRUST, may review the reasonableness of the commission of such corporate trustee.

3. Subject to the provisions of paragraph (a) of subdivision 4 of this section and regardless of the principal value of the trust: (a) during the continuance of a trust created solely for public, religious, charitable, scientific, literary, educational or fraternal uses and during the period of continuance of such a trust after the termination of a life use or uses a corporate trustee shall be entitled to and may retain commissions from income in accordance with the provisions of subdivision 1 or 2 hereof, as the case may be.

(b) In the case of a trust created solely for public, religious, charitable, scientific, literary, educational or fraternal uses a corporate trustee shall not be entitled to any commission from principal.

(c) In the case of such a trust which continues after the termination of the measuring life use or uses a corporate trustee for the period of the measuring life use or uses shall be entitled to commissions from income and principal according to the provisions of subdivision 1 or 2 hereof, as the case may be, and except in respect of principal paid out to a charity or for charitable uses shall be entitled to a commission for distributing all sums of principal in accordance with the provisions of subdivision 1 or 2 hereof, as the case may be.

4. Notwithstanding anything contained in this chapter, the estates, powers and trusts law or any other provision of law to the contrary,

(a) Except as otherwise provided by paragraph (b) of this subdivision and subdivision three of this section, a corporate trustee of any trust created under will or lifetime trust instrument, OR AS DONEE OF A POWER IN TRUST CREATED UNDER WILL OR LIFETIME INSTRUMENT, whether in existence on or after the effective date of this section, shall be entitled to receive at least the compensation provided for an individual trustee under subdivisions 1, 2, 5 (BUT ONLY AS TRUSTEE), 6, 7 and 12 of section 2308 and subdivisions 1, 2, 5 (BUT ONLY AS TRUSTEE), 6, 7 and 8 of section 2309, as the case may be, in effect after the effective date of this section, at the time and in the manner provided by such sections, unless the will or lifetime trust instrument or an agreement between the trustee and the testator or grantor or by the trustee shall provide otherwise.

(b) A corporate trustee shall, in addition to the compensation permitted by the provisions of paragraph (a) of this subdivision, be entitled to annual commissions at the rate of not more than \$12.35 per thousand or major fraction thereof, in lieu of the annual commissions provided under paragraph (a) of this subdivision, on trusts having a principal value of not more than four hundred thousand dollars AND SHALL BE ENTITLED TO ANNUAL COMMISSIONS AT THE SAME RATE AS DONEE OF A POWER IN TRUST WHERE THE PROPERTY SUBJECT TO THE POWER HAS A PRINCIPAL VALUE OF NOT MORE THAN FOUR HUNDRED THOUSAND DOLLARS, and such annual commissions shall be deemed reasonable compensation, unless the will or lifetime trust instrument or an agreement between the corporate trustee and the testator or grantor or by the corporate trustee shall provide otherwise. A corporate trustee shall be entitled to receive such commissions from time to time during the trust OR CALENDAR year and shall otherwise be governed by the provisions of sections 2308 and 2309, as the case may be, in effect from time to time.

5. Unless the will or lifetime trust instrument expressly provides otherwise, the commissions allowable by subdivision 1, 2 or 4 hereof, as

1 the case may be, shall be payable one-third from the income of the trust  
2 OR FROM THE INCOME OF THE PROPERTY SUBJECT TO THE POWER IN TRUST and  
3 two-thirds from the principal of the trust OR FROM THE PROPERTY SUBJECT  
4 TO THE POWER IN TRUST. However, in the case of a trust whose definition  
5 of income is governed by SECTION 11-2.4 of the estates, powers and  
6 trusts law or a charitable remainder annuity trust or a charitable  
7 remainder unitrust, as defined in section six hundred sixty-four of the  
8 Internal Revenue Code of nineteen hundred eighty-six, as amended, such  
9 commissions shall be payable from the principal of any such trust after  
10 allowance for the annuity or unitrust amounts and shall not be payable  
11 out of such annuity or unitrust amounts.

12 6. The commissions allowed by subdivision 1, 2 or 4 thereof, as the  
13 case may be, may be retained, at any time or from time to time during  
14 the year in which such commissions are earned, by a corporate trustee,  
15 provided it furnishes annually as of a date no more than 30 days prior  
16 to the end of the year selected by the corporate trustee, to each bene-  
17 ficiary currently receiving income, and to any other beneficiary inter-  
18 ested in the income and to any person interested in the principal of the  
19 trust who shall make a demand therefor, AND, WHEN ACTING AS DONEE OF A  
20 POWER IN TRUST, TO THE BENEFICIARY OF THE POWER IN TRUST, a statement  
21 showing the principal assets OR ASSETS SUBJECT TO THE POWER IN TRUST on  
22 hand on that date, and at least annually or more frequently if the trus-  
23 tee so elects, a statement showing all his OR HER receipts of income and  
24 principal OR OF PROPERTY SUBJECT TO THE POWER IN TRUST during the period  
25 with respect to which the statement is rendered including the amount of  
26 any commissions retained and the basis upon which the commissions were  
27 computed. A corporate trustee shall not be deemed to have waived any  
28 commissions by reason of its failure to retain them at the time when it  
29 becomes entitled thereto; provided however that commissions payable from  
30 income for any such year shall be allowed and retained only from income  
31 derived from the trust during such year and shall not be supplied from  
32 income on hand in respect of any other year. If a beneficiary receiving  
33 income OR A BENEFICIARY OF A POWER IN TRUST OF WHICH THE CORPORATE TRUS-  
34 TEE IS DONEE does not desire to be furnished with any such statements  
35 his OR HER advice to the trustee to that effect in writing shall there-  
36 after excuse the corporate trustee from furnishing such statements to  
37 the beneficiary unless and until the beneficiary requests such annual  
38 statements from the trustee. Upon enactment of, and subject to subdivi-  
39 sion 1 of this section, a corporate trustee shall continue to receive  
40 commissions in the manner provided for a trustee OR WHEN ACTING AS DONEE  
41 OF A POWER IN TRUST IN THE MANNER PROVIDED FOR A DONEE OF A POWER IN  
42 TRUST under sections 2308 and 2309, as the case may be, in effect imme-  
43 diately before the effective date of this section until the end of the  
44 then current trust OR CALENDAR year, and thereafter, a corporate trustee  
45 may receive commissions in accordance with the provisions of subdivision  
46 2 or 4 of this section. A corporate trustee shall not change from the  
47 commissions provided for by subdivision 2 or 4 of this section, as the  
48 case may be, during a trust's calendar or fiscal year OR THE CALENDAR  
49 YEAR IN THE CASE OF A POWER IN TRUST but a corporate trustee may change  
50 from the commissions provided for by subdivision 2 to the commissions  
51 provided for by subdivision 4 of this section, or vice versa, only at  
52 the beginning of a calendar or fiscal year of a trust OR A CALENDAR YEAR  
53 IN THE CASE OF A POWER IN TRUST, as the case may be.

54 7. On the settlement of the account of any trustee OR DONEE OF A POWER  
55 IN TRUST under a will or lifetime trust instrument, in addition to the  
56 commissions provided for by this section, the court must allow to the



1 corporate trustee INCLUDING A CORPORATE TRUSTEE ACTING AS DONEE OF A  
2 POWER IN TRUST corporate trustee's reasonable and necessary expenses  
3 actually paid by the trustee.

4 8. The value of any property to be determined in such manner as  
5 directed by the court and the increment thereof received, distributed or  
6 delivered, shall be considered as money in making computation of commis-  
7 sions. Whenever any portion of the dividends, interests, rents or other  
8 income payable to a trustee OR DONEE OF A POWER IN TRUST is required by  
9 any law of the United States or other governmental unit to be withheld  
10 by the person paying it for income tax purposes, the amount so withheld  
11 shall be deemed to have been collected.

12 9. A trustee who prior to September 1, 1966 shall have received the  
13 maximum amount of commissions on principal permitted by subdivision 8 of  
14 section 285-a of the surrogate's court act as that subdivision existed  
15 prior to that date, shall not be entitled to annual principal commis-  
16 sions for the period from the date when he OR SHE shall have received  
17 such maximum to September 1, 1966, but shall be entitled to receive  
18 commissions from and after September 1, 1966 at the rates and in the  
19 manner provided in section 2308 as in effect immediately before enact-  
20 ment of this section. A trustee who is entitled to annual principal  
21 commissions pursuant to section 285-a of the surrogate's court act as it  
22 existed prior to September 1, 1966, but has not received them, may  
23 receive an amount of commissions not in excess of the amount he OR SHE  
24 would have been entitled to if he OR SHE had taken such commissions, and  
25 be entitled to receive in addition commissions from and after September  
26 1, 1966 at the rates and in the manner provided in section 285-a of this  
27 act.

28 10. A trustee who has been acting prior to July 1, 1956 shall be enti-  
29 tled to have commissions on principal and income theretofore received by  
30 him OR HER computed, allowed and paid under the methods and at the rates  
31 set forth herein, except as follows:

32 (a) If prior to July 1, 1956 a trustee has been allowed or has  
33 retained commissions for receiving and paying out or for distributing  
34 any item of principal he OR SHE shall be entitled to no further commis-  
35 sions on the item.

36 (b) If prior to July 1, 1956 a trustee has been allowed or retained  
37 commissions on any item of principal received but not paid out or  
38 distributed by him OR HER he OR SHE shall be entitled to no further  
39 commissions for receiving the item.

40 (c) Any trustee who became entitled to an annual principal commission  
41 under subdivision 1 (b) of section 285-a of the surrogate's court act as  
42 it existed prior to April 1, 1948 and who has not retained such commis-  
43 sion may retain an amount equal to one-half of such annual principal  
44 commission. A trustee who because of the provisions of subdivision 2 of  
45 section 285-a of the surrogate's court act as it existed prior to April  
46 1, 1948 either was not entitled to retain an annual principal commission  
47 under subdivision 1 (b) thereof or was required to credit such annual  
48 principal commission against his OR HER commission for receiving princi-  
49 pal, may retain an amount equal to one-half of such annual principal  
50 commission. If a trustee has been allowed by decree or has retained any  
51 such annual principal commission one-half the amount thereof shall be  
52 deducted from the amount of commissions to which the trustee would  
53 otherwise be entitled under the provisions of subdivision 1 of surro-  
54 gate's court procedure act section 2308.

55 (d) The annual principal commissions allowed by subdivision 3 of  
56 surrogate's court procedure act section 2308 as it existed on September

1 1, 1967 shall not be allowed by decree or retained in respect of any  
2 trust year ending prior to April 1, 1948, but for any trust year ending  
3 on or after April 1, 1948 and prior to July 1, 1956, the annual princi-  
4 pal commission which may be allowed by decree or retained shall be  
5 computed at the rates in effect on the date such trust year ended.

6 (e) If prior to July 1, 1956 a trustee has been allowed by decree or  
7 has retained commissions on any item of income received and paid out by  
8 him OR HER prior to September 1, 1943 or on any item of income received  
9 by him OR HER subsequent to September 1, 1943 he OR SHE shall be enti-  
10 tled to no further commission on the item.

11 (F) FOR PURPOSES OF THIS SECTION, THE TERM "DONEE OF A POWER IN TRUST"  
12 SHALL MEAN ANY SUCH DONEE INCLUDING A DONEE OF A POWER DURING MINORITY  
13 WHO IS A CORPORATE FIDUCIARY AND THE TERM "PROPERTY SUBJECT TO THE POWER  
14 IN TRUST" SHALL INCLUDE PROPERTY SUBJECT TO A POWER DURING MINORITY.

15 S 6. Section 2313 of the surrogate's court procedure act, as amended  
16 by chapter 471 of the laws of 1995, is amended to read as follows:

17 S 2313. Multiple commissions of executors or trustees, DONEES OF POWERS  
18 DURING MINORITY, OR DONEES OF POWER IN TRUST under wills of  
19 persons dying, or lifetime trusts established, after August  
20 31, 1993

21 With respect to wills of persons dying, or lifetime trusts estab-  
22 lished, after August 31, 1993, if there are more than two executors or  
23 trustees, DONEES OF A POWER DURING MINORITY, OR DONEES OF A POWER IN  
24 TRUST, no more than two commissions shall be allowed unless the decedent  
25 OR CREATOR has specifically provided otherwise in a signed writing, and  
26 the compensation thus allowable must be apportioned among the fiduciar-  
27 ies OR DONEES OF THE POWER IN TRUST according to the services rendered  
28 by them respectively unless they shall have agreed in writing among  
29 themselves to a different apportionment which, however, shall not  
30 provide for more than one full commission for any one of them.

31 S 7. This act shall take effect on the first of January next succeed-  
32 ing the date on which it shall have become a law.