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MEMORANDUM IN SUPPORT

June 23, 2011

**A. 8297-A Weinstein (Passed Assembly)
S. 5801 Bonacic (Senate Rules 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

This memorandum in *support* is written on behalf of our client, the New York Bankers Association. The Association is comprised of the community, regional and money center commercial banks and thrift institutions doing business in New York State. In aggregate, members of the Association employ approximately 250,000 New Yorkers and hold more than \$9 trillion in assets.

The New York Bankers Association supports this legislation that would authorize trustees with certain amounts of discretion, but not necessarily unlimited discretion, to invade trust principal to create additional trusts with trust assets. The bill will provide additional flexibility to trustees and is an innovative concept, but contains carefully thought-out protections for existing beneficiaries and for mandatory distributions. For these reasons, we urge that the legislation be enacted.

This legislation would replace current provisions of the Estates, Powers and Trusts Law (EPTL) that provide fiduciaries with the authority to invade the principal of a trust by exercising a power of appointment and creating additional trusts. It makes a number of important changes in the EPTL, including permitting trustees that do not have unlimited discretion to invade principal, reducing administrative requirements with regard to appointments out of inter vivos trusts, making express protections for beneficiaries, particularly in the context of multi-beneficiary trusts, protecting certain tax outcomes and, importantly prescribing the trustee's fiduciary duty and standard of care.

In recent years, New York's status as the leading situs for trusts in the United States has been lost, as the trust law in other states has provided grantors, trustees and beneficiaries with greater flexibility, more authority, additional earnings opportunities and more modern administrative techniques. This legislation would begin to modernize New York trust law by updating the power of appointment and power to invade principal which the State pioneered many years ago. Unlike some other states, however, this legislation would provide more protection for existing beneficiaries and would go further in ensuring mandatory distributions than many other statutes. It has been vetted through several committees of the Office of Court Administration, of the New York State and New York City bar associations and of our Association.

The New York Bankers Association believes that this legislation would begin to restore the competitiveness of New York trustees, allowing them to actively seek out areas of trust business which they currently cannot offer. It allows trustees to cure problems that may exist with current trusts, but does not compel trustee action. It is a tool that will benefit trustees, grantors and beneficiaries without harming existing parties to trusts.

For these reasons, the New York Bankers Association **supports** this legislation and urges that it be **approved**.

Respectfully Submitted,

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP