3B:19B-4

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2007 **CHAPTER:** 93

NJSA: 3B:19B-4 (Revises trustee's power to adjust principal and income under "Uniform Principal and Income Act of 2001.")

BILL NO: A2867 (Substituted for S2091)

SPONSOR(S) Cohen and Others

DATE INTRODUCED: March 16, 2006

COMMITTEE: **ASSEMBLY:** Financial Institutions and Insurance

SENATE: Judiciary

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: **ASSEMBLY:** June 8, 2006

SENATE: March 12, 2007

DATE OF APPROVAL: May 9, 2007

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Original version of bill enacted)

A2867

SPONSOR'S STATEMENT: (Begins on page 4 of original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY**: Yes

SENATE: Yes

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL NOTE: No

S2091

SPONSOR'S STATEMENT: (Begins on page 4 of original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY**: No

SENATE: Yes

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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REPORTS:	No
HEARINGS:	No
NEWSPAPER ARTICLES:	No

RWH 4/30/08

P.L. 2007, CHAPTER 93, ***approved May 9, 2007***

Assembly, No. 2867

AN ACT concerning principal and income guidelines for trusts and estates and amending P.L.2001, c.212.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 4 of P.L.2001, c.212 (C.3B:19B-4) is amended to read as follows:

4. Trustee's Power to Adjust.

a. A trustee may adjust between principal and income if the terms of the trust describe the amount that may or shall be distributed to a beneficiary by referring to the trust's income and the trustee determines, after applying the rules in subsection a. of section 3 of this act, that the trustee is unable to comply with subsection b. of section 3 of this act. A decision by a trustee to **[**increase**]** adjust the distribution to the income beneficiary or beneficiaries in any accounting period to an amount **[**not in excess of four**]** not less than three percent **[**, or to decrease that period's distributions to not less**]** nor more than **[**six**]** five percent, or in accordance with such other percentages as may be approved for trust distribution adjustment purposes from time to time by the United States Department of Treasury or the Internal Revenue Service, of the net fair market value of the trust assets on the first business day of that accounting period shall be presumed to be fair and reasonable to all of the beneficiaries. Any adjustment by a trustee between income and principal with respect to any accounting period shall be made during that accounting period or within 65 days after the end of that period.

This subsection shall apply to a trust that is administered in New Jersey under New Jersey law unless contrary to the provisions of the governing instrument.

b. In deciding whether and to what extent to exercise the power conferred by subsection a. of this section, a trustee shall consider all factors relevant to the trust and its beneficiaries, including the following factors to the extent they are relevant:

(1) the nature, purpose and expected duration of the trust;

(2) the intent of the settlor;

(3) the identity and circumstances of the beneficiaries;

(4) the needs for liquidity, regularity of income and preservation and appreciation of capital;

(5) the assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property or real property; the extent to which an asset is used by a beneficiary; and whether an asset was purchased by the trustee or received from the settlor;

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

(6) the net amount allocated to income under the other sections of this act and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;

(7) whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;

(8) the actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation;

(9) the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries that arise from elections and decisions regarding tax matters, the imposition of an income or other tax on the fiduciary or a beneficiary as a result of a transaction involving a distribution from the estate or trust, or the ownership of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, trust or a beneficiary; and

(10) the anticipated tax consequences of an adjustment.

c. A trustee shall not make an adjustment:

(1) that diminishes the income interest in a trust that requires all of the income to be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the trustee did not have the power to make the adjustment;

(2) that reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;

(3) that changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;

(4) from any amount that is permanently set aside for charitable purposes under a will or the terms of a trust unless both income and principal are so set aside;

(5) if possessing or exercising the power to make an adjustment causes an individual to be treated as the owner of all or part of the trust for income tax purposes, and the individual would not be treated as the owner if the trustee did not possess the power to make an adjustment;

(6) if possessing or exercising the power to make an adjustment causes all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make an adjustment;

(7) if the trustee is a beneficiary of the trust; or

(8) **[**if the trustee is not a beneficiary, but the adjustment would benefit the trustee directly or indirectly**]** <u>that satisfies the trustee's</u>

obligation of support or other legal obligation .

d. If paragraph (5), (6), (7) or (8) of subsection c. of this section applies to a trustee and there is more than one trustee, a co-trustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is not permitted by the terms of the trust.

e. A trustee may release the entire power conferred by subsection a. of this section or may release only the power to adjust from income to principal or the power to adjust from principal to income if the trustee is uncertain about whether possessing or exercising the power will cause a result described in paragraphs (1) through (6) or (8) of subsection c. of this section, or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection c. of this section. The release may be permanent or for a specified period, including a period measured by the life of an individual.

f. Terms of a trust that limit the power of a trustee to make an adjustment between principal and income do not affect the application of this section unless it is clear from the terms of the trust that the terms are intended to deny the trustee the power of adjustment conferred by subsection a. of this section.

(cf: P.L.2001, c.212, s.4)

2. This act shall take effect immediately.

STATEMENT

This bill amends the "Uniform Principal and Income Act of 2001" (the "act") to revise the extent to which a trustee may adjust between principal and income in making distributions from a trust to an income beneficiary and still retain a presumption that the distribution is fair and reasonable to the remainder beneficiaries of the trust.

Currently, the act creates a "safe harbor" for a trustee by providing that a decision to increase distributions to an income beneficiary to 4% of the principal of the trust (or to decrease distributions to 6%) is presumed to be fair and reasonable. Recently, however, the Department of the Treasury adopted changes to Internal Revenue Code regulations to provide that a distribution of 3% to 5% of trust assets is reasonable. Accordingly, to achieve consistency for trusts administered under New Jersey law with the tax treatment accorded to trusts under federal regulations, this bill provides that a distribution of 3% to 5% is presumed to be fair and reasonable to all of the beneficiaries of the trust. Further, the bill provides additional flexibility to trustees by allowing an option to adjust between principal and income in accordance with

other percentages as may be approved from time to time by the Department of Treasury or the Internal Revenue Service.

The bill also provides that the act's provisions relating to a trustee's power to adjust principal and income shall apply to all trusts administered in New Jersey under New Jersey law unless contrary to the provisions of the trust's governing instrument.

Finally, the bill revises the act's "savings clause" to avoid unintended tax consequences that may occur if the clause is read more broadly than intended, and interpreted to prohibit a trustee from exercising the power to adjust principal and income if, as a result of its exercise, more trust property is considered principal. Accordingly, the bill revises the savings clause to provide that a trustee cannot make an adjustment between principal and income that satisfies the trustee's obligation of support or other legal obligation.

Revises trustee's power to adjust principal and income under "Uniform Principal and Income Act of 2001."

ASSEMBLY, No. 2867

STATE OF NEW JERSEY

212th LEGISLATURE

INTRODUCED MARCH 16, 2006

Sponsored by:
Assemblyman NEIL M. COHEN
District 20 (Union)
Assemblyman UPENDRA J. CHIVUKULA
District 17 (Middlesex and Somerset)

Co-Sponsored by:
Senator Gill

SYNOPSIS

Revises trustee's power to adjust principal and income under "Uniform Principal and Income Act of 2001."

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 3/13/2007)

AN ACT concerning principal and income guidelines for trusts and estates and amending P.L.2001, c.212.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 4 of P.L.2001, c.212 (C.3B:19B-4) is amended to read as follows:

4. Trustee's Power to Adjust.

a. A trustee may adjust between principal and income if the terms of the trust describe the amount that may or shall be distributed to a beneficiary by referring to the trust's income and the trustee determines, after applying the rules in subsection a. of section 3 of this act, that the trustee is unable to comply with subsection b. of section 3 of this act. A decision by a trustee to **[**increase**]** adjust the distribution to the income beneficiary or beneficiaries in any accounting period to an amount **[**not in excess of four**]** not less than three percent **[**, or to decrease that period's distributions to not less**]** nor more than **[**six**]** five percent, or in accordance with such other percentages as may be approved for trust distribution adjustment purposes from time to time by the United States Department of Treasury or the Internal Revenue Service, of the net fair market value of the trust assets on the first business day of that accounting period shall be presumed to be fair and reasonable to all of the beneficiaries. Any adjustment by a trustee between income and principal with respect to any accounting period shall be made during that accounting period or within 65 days after the end of that period.

This subsection shall apply to a trust that is administered in New Jersey under New Jersey law unless contrary to the provisions of the governing instrument.

b. In deciding whether and to what extent to exercise the power conferred by subsection a. of this section, a trustee shall consider all factors relevant to the trust and its beneficiaries, including the following factors to the extent they are relevant:

(1) the nature, purpose and expected duration of the trust;

(2) the intent of the settlor;

(3) the identity and circumstances of the beneficiaries;

(4) the needs for liquidity, regularity of income and preservation and appreciation of capital;

(5) the assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property or real property; the extent to which an asset is used by a beneficiary; and whether an asset was purchased by the trustee or received from the settlor;

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

(6) the net amount allocated to income under the other sections of this act and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;

(7) whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;

(8) the actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation;

(9) the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries that arise from elections and decisions regarding tax matters, the imposition of an income or other tax on the fiduciary or a beneficiary as a result of a transaction involving a distribution from the estate or trust, or the ownership of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, trust or a beneficiary; and

(10) the anticipated tax consequences of an adjustment.

c. A trustee shall not make an adjustment:

(1) that diminishes the income interest in a trust that requires all of the income to be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the trustee did not have the power to make the adjustment;

(2) that reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;

(3) that changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;

(4) from any amount that is permanently set aside for charitable purposes under a will or the terms of a trust unless both income and principal are so set aside;

(5) if possessing or exercising the power to make an adjustment causes an individual to be treated as the owner of all or part of the trust for income tax purposes, and the individual would not be treated as the owner if the trustee did not possess the power to make an adjustment;

(6) if possessing or exercising the power to make an adjustment causes all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make an adjustment;

(7) if the trustee is a beneficiary of the trust; or

(8) **[**if the trustee is not a beneficiary, but the adjustment would benefit the trustee directly or indirectly**]** <u>that satisfies the trustee's</u>

<u>obligation of support or other legal obligation</u> .

d. If paragraph (5), (6), (7) or (8) of subsection c. of this section applies to a trustee and there is more than one trustee, a co-trustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is not permitted by the terms of the trust.

e. A trustee may release the entire power conferred by subsection a. of this section or may release only the power to adjust from income to principal or the power to adjust from principal to income if the trustee is uncertain about whether possessing or exercising the power will cause a result described in paragraphs (1) through (6) or (8) of subsection c. of this section, or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection c. of this section. The release may be permanent or for a specified period, including a period measured by the life of an individual.

f. Terms of a trust that limit the power of a trustee to make an adjustment between principal and income do not affect the application of this section unless it is clear from the terms of the trust that the terms are intended to deny the trustee the power of adjustment conferred by subsection a. of this section.

(cf: P.L.2001, c.212, s.4)

2. This act shall take effect immediately.

STATEMENT

This bill amends the "Uniform Principal and Income Act of 2001" (the "act") to revise the extent to which a trustee may adjust between principal and income in making distributions from a trust to an income beneficiary and still retain a presumption that the distribution is fair and reasonable to the remainder beneficiaries of the trust.

Currently, the act creates a "safe harbor" for a trustee by providing that a decision to increase distributions to an income beneficiary to 4% of the principal of the trust (or to decrease distributions to 6%) is presumed to be fair and reasonable. Recently, however, the Department of the Treasury adopted changes to Internal Revenue Code regulations to provide that a distribution of 3% to 5% of trust assets is reasonable. Accordingly, to achieve consistency for trusts administered under New Jersey law with the tax treatment accorded to trusts under federal regulations, this bill provides that a distribution of 3% to 5% is presumed to be fair and reasonable to all of the beneficiaries of the trust. Further, the bill provides additional flexibility to trustees by allowing an option to adjust between principal and income in accordance with

other percentages as may be approved from time to time by the Department of Treasury or the Internal Revenue Service.

The bill also provides that the act's provisions relating to a trustee's power to adjust principal and income shall apply to all trusts administered in New Jersey under New Jersey law unless contrary to the provisions of the trust's governing instrument.

Finally, the bill revises the act's "savings clause" to avoid unintended tax consequences that may occur if the clause is read more broadly than intended, and interpreted to prohibit a trustee from exercising the power to adjust principal and income if, as a result of its exercise, more trust property is considered principal. Accordingly, the bill revises the savings clause to provide that a trustee cannot make an adjustment between principal and income that satisfies the trustee's obligation of support or other legal obligation.

ASSEMBLY FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2867

STATE OF NEW JERSEY

DATED: MAY 18, 2006

The Assembly Financial Institutions and Insurance Committee reports favorably Assembly Bill No. 2867.

This bill amends the "Uniform Principal and Income Act of 2001" (the "act") to revise the extent to which a trustee may adjust between principal and income in making distributions from a trust to an income beneficiary and still retain a presumption that the distribution is fair and reasonable to the remainder beneficiaries of the trust.

Currently, the act creates a "safe harbor" for a trustee by providing that a decision to increase distributions to an income beneficiary to 4% of the principal of the trust (or to decrease distributions to 6%) is presumed to be fair and reasonable. Recently, however, the Department of the Treasury adopted changes to Internal Revenue Code regulations to provide that a distribution of 3% to 5% of trust assets is reasonable. Accordingly, to achieve consistency for trusts administered under New Jersey law with the tax treatment accorded to trusts under federal regulations, this bill provides that a distribution of 3% to 5% is presumed to be fair and reasonable to all of the beneficiaries of the trust. Further, the bill provides additional flexibility to trustees by allowing an option to adjust between principal and income in accordance with other percentages as may be approved from time to time by the Department of Treasury or the Internal Revenue Service.

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SENATE JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2867

STATE OF NEW JERSEY

DATED: FEBRUARY 26, 2007

The Senate Judiciary Committee reports favorably Assembly Bill No. 2867.

This bill amends the "Uniform Principal and Income Act of 2001" (the "act") to revise the extent to which a trustee may adjust between principal and income in making distributions from a trust to an income beneficiary and still retain a presumption that the distribution is fair and reasonable to the remainder beneficiaries of the trust.

Currently, the act creates a "safe harbor" for a trustee by providing that a decision to increase distributions to an income beneficiary to 4% of the principal of the trust (or to decrease distributions to 6%) is presumed to be fair and reasonable. Recently, however, the Department of the Treasury adopted changes to Internal Revenue Code regulations to provide that a distribution of 3% to 5% of trust assets is reasonable. To achieve consistency for trusts administered under New Jersey law with the tax treatment accorded to trusts under federal regulations, this bill provides that a distribution of 3% to 5% is presumed to be fair and reasonable to all of the beneficiaries of the trust. The bill provides additional flexibility to trustees by allowing an option to adjust between principal and income in accordance with other percentages as may be approved from time to time by the Department of Treasury or the Internal Revenue Service. See section 1 of the bill amending subsection a. of N.J.S.A. 3B:19B-4.

The bill also provides that the act's provisions relating to a trustee's power to adjust principal and income shall apply to all trusts administered in New Jersey under New Jersey law unless contrary to the provisions of the trust's governing instrument. See language added at the end of subsection a. of N.J.S.A. 3B:19B-4.

Finally, the bill revises the act's "savings clause" to avoid unintended tax consequences that may occur if the clause is read more broadly than intended, and interpreted to prohibit a trustee from exercising the power to adjust principal and income if, as a result of its exercise, more trust property is considered principal. Accordingly, the bill revises the savings clause to provide that a trustee cannot make an adjustment between principal and income that satisfies the trustee's obligation of support or other legal obligation.

This bill is identical to Senate. No. 2091.

SENATE, No. 2091

STATE OF NEW JERSEY

212th LEGISLATURE

INTRODUCED JUNE 26, 2006

Sponsored by:
Senator NIA H. GILL
District 34 (Essex and Passaic)

SYNOPSIS

Revises trustee's power to adjust principal and income under "Uniform Principal and Income Act of 2001."

CURRENT VERSION OF TEXT

As introduced.

AN ACT concerning principal and income guidelines for trusts and estates and amending P.L.2001, c.212.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 4 of P.L.2001, c.212 (C.3B:19B-4) is amended to read as follows:

4. Trustee's Power to Adjust.

a. A trustee may adjust between principal and income if the terms of the trust describe the amount that may or shall be distributed to a beneficiary by referring to the trust's income and the trustee determines, after applying the rules in subsection a. of section 3 of this act, that the trustee is unable to comply with subsection b. of section 3 of this act. A decision by a trustee to **[**increase**]** adjust the distribution to the income beneficiary or beneficiaries in any accounting period to an amount **[**not in excess of four**]** not less than three percent **[**, or to decrease that period's distributions to not less**]** nor more than **[**six**]** five percent, or in accordance with such other percentages as may be approved for trust distribution adjustment purposes from time to time by the United States Department of Treasury or the Internal Revenue Service, of the net fair market value of the trust assets on the first business day of that accounting period shall be presumed to be fair and reasonable to all of the beneficiaries. Any adjustment by a trustee between income and principal with respect to any accounting period shall be made during that accounting period or within 65 days after the end of that period.

This subsection shall apply to a trust that is administered in New Jersey under New Jersey law unless contrary to the provisions of the governing instrument.

b. In deciding whether and to what extent to exercise the power conferred by subsection a. of this section, a trustee shall consider all factors relevant to the trust and its beneficiaries, including the following factors to the extent they are relevant:

(1) the nature, purpose and expected duration of the trust;

(2) the intent of the settlor;

(3) the identity and circumstances of the beneficiaries;

(4) the needs for liquidity, regularity of income and preservation and appreciation of capital;

(5) the assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property or real property; the extent to which an asset is used by a beneficiary; and whether an asset was purchased by the trustee or received from the settlor;

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

(6) the net amount allocated to income under the other sections of this act and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;

(7) whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;

(8) the actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation;

(9) the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries that arise from elections and decisions regarding tax matters, the imposition of an income or other tax on the fiduciary or a beneficiary as a result of a transaction involving a distribution from the estate or trust, or the ownership of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, trust or a beneficiary; and

(10) the anticipated tax consequences of an adjustment.

c. A trustee shall not make an adjustment:

(1) that diminishes the income interest in a trust that requires all of the income to be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the trustee did not have the power to make the adjustment;

(2) that reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;

(3) that changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;

(4) from any amount that is permanently set aside for charitable purposes under a will or the terms of a trust unless both income and principal are so set aside;

(5) if possessing or exercising the power to make an adjustment causes an individual to be treated as the owner of all or part of the trust for income tax purposes, and the individual would not be treated as the owner if the trustee did not possess the power to make an adjustment;

(6) if possessing or exercising the power to make an adjustment causes all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make an adjustment;

(7) if the trustee is a beneficiary of the trust; or

(8) **[**if the trustee is not a beneficiary, but the adjustment would benefit the trustee directly or indirectly**]** <u>that satisfies the trustee's</u>

obligation of support or other legal obligation .

d. If paragraph (5), (6), (7) or (8) of subsection c. of this section applies to a trustee and there is more than one trustee, a co-trustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is not permitted by the terms of the trust.

e. A trustee may release the entire power conferred by subsection a. of this section or may release only the power to adjust from income to principal or the power to adjust from principal to income if the trustee is uncertain about whether possessing or exercising the power will cause a result described in paragraphs (1) through (6) or (8) of subsection c. of this section, or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection c. of this section. The release may be permanent or for a specified period, including a period measured by the life of an individual.

f. Terms of a trust that limit the power of a trustee to make an adjustment between principal and income do not affect the application of this section unless it is clear from the terms of the trust that the terms are intended to deny the trustee the power of adjustment conferred by subsection a. of this section.

(cf: P.L.2001, c.212, s.4)

2. This act shall take effect immediately.

STATEMENT

This bill amends the "Uniform Principal and Income Act of 2001" (the "act") to revise the extent to which a trustee may adjust between principal and income in making distributions from a trust to an income beneficiary and still retain a presumption that the distribution is fair and reasonable to the remainder beneficiaries of the trust.

Currently, the act creates a "safe harbor" for a trustee by providing that a decision to increase distributions to an income beneficiary to 4% of the principal of the trust (or to decrease distributions to 6%) is presumed to be fair and reasonable. Recently, however, the Department of the Treasury adopted changes to Internal Revenue Code regulations to provide that a distribution of 3% to 5% of trust assets is reasonable. Accordingly, to achieve consistency for trusts administered under New Jersey law with the tax treatment accorded to trusts under federal regulations, this bill provides that a distribution of 3% to 5% is presumed to be fair and reasonable to all of the beneficiaries of the trust. Further, the bill provides additional flexibility to trustees by allowing an option to adjust between principal and income in accordance with

other percentages as may be approved from time to time by the Department of Treasury or the Internal Revenue Service.

The bill also provides that the act's provisions relating to a trustee's power to adjust principal and income shall apply to all trusts administered in New Jersey under New Jersey law unless contrary to the provisions of the trust's governing instrument.

Finally, the bill revises the act's "savings clause" to avoid unintended tax consequences that may occur if the clause is read more broadly than intended, and interpreted to prohibit a trustee from exercising the power to adjust principal and income if, as a result of its exercise, more trust property is considered principal. Accordingly, the bill revises the savings clause to provide that a trustee cannot make an adjustment between principal and income that satisfies the trustee's obligation of support or other legal obligation.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 2091

STATE OF NEW JERSEY

DATED: FEBRUARY 26, 2007

The Senate Judiciary Committee reports favorably Senate Bill No. 2091.

This bill amends the "Uniform Principal and Income Act of 2001" (the "act") to revise the extent to which a trustee may adjust between principal and income in making distributions from a trust to an income beneficiary and still retain a presumption that the distribution is fair and reasonable to the remainder beneficiaries of the trust.

Currently, the act creates a "safe harbor" for a trustee by providing that a decision to increase distributions to an income beneficiary to 4% of the principal of the trust (or to decrease distributions to 6%) is presumed to be fair and reasonable. Recently, however, the Department of the Treasury adopted changes to Internal Revenue Code regulations to provide that a distribution of 3% to 5% of trust assets is reasonable. To achieve consistency for trusts administered under New Jersey law with the tax treatment accorded to trusts under federal regulations, this bill provides that a distribution of 3% to 5% is presumed to be fair and reasonable to all of the beneficiaries of the trust. The bill provides additional flexibility to trustees by allowing an option to adjust between principal and income in accordance with other percentages as may be approved from time to time by the Department of Treasury or the Internal Revenue Service. See section 1 of the bill amending subsection a. of N.J.S.A. 3B:19B-4.

The bill also provides that the act's provisions relating to a trustee's power to adjust principal and income shall apply to all trusts administered in New Jersey under New Jersey law unless contrary to the provisions of the trust's governing instrument. See language added at the end of subsection a. of N.J.S.A. 3B:19B-4.

Finally, the bill revises the act's "savings clause" to avoid unintended tax consequences that may occur if the clause is read more broadly than intended, and interpreted to prohibit a trustee from exercising the power to adjust principal and income if, as a result of its exercise, more trust property is considered principal. Accordingly, the bill revises the savings clause to provide that a trustee cannot make an adjustment between principal and income that satisfies the trustee's obligation of support or other legal obligation.

This bill is identical to Assembly, No. 2867.