

**A 2762-A** Weinstein Same as [S 4030](#)  
SAMPSON  
Estates, Powers and Trusts Law  
TITLE....Relates to the disposition of property  
when persons die simultaneously; repealer  
01/21/09 referred to judiciary  
04/02/09 amend and recommit to judiciary  
04/02/09 print number 2762a  
04/20/09 reported  
04/23/09 advanced to third reading cal.371  
05/04/09 passed assembly  
05/04/09 delivered to senate  
05/04/09 REFERRED TO JUDICIARY  
05/26/09 SUBSTITUTED FOR S4030  
05/26/09 3RD READING CAL.359  
06/02/09 PASSED SENATE  
06/02/09 RETURNED TO ASSEMBLY  
07/10/09 delivered to governor  
07/11/09 signed chap.92

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**S4030** SAMPSON Same as [A 2762-A](#) Weinstein  
ON FILE: 04/09/09 Estates, Powers and Trusts Law  
TITLE....Relates to the disposition of property when  
persons die simultaneously; repealer  
04/07/09 REFERRED TO JUDICIARY  
05/19/09 1ST REPORT CAL.359  
05/20/09 2ND REPORT CAL.  
05/26/09 ADVANCED TO THIRD READING  
05/26/09 SUBSTITUTED BY A2762A  
.....  
**A02762 Weinstein AMEND=A**  
01/21/09 referred to judiciary  
04/02/09 amend and recommit to judiciary  
04/02/09 print number 2762a  
04/20/09 reported  
04/23/09 advanced to third reading cal.371  
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**STATE OF NEW YORK**

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2762--A

2009-2010 Regular Sessions

**IN ASSEMBLY**

January 21, 2009

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Introduced by M. of A. WEINSTEIN -- read once and referred to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the estates, powers and trusts law, in relation to the disposition of property when persons die simultaneously and to repeal section 2-1.6 of such law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 2-1.6 of the estates, powers and trusts law is  
2 REPEALED and a new section 2-1.6 is added to read as follows:

3 § 2-1.6 Disposition of property where a person dies within one hundred  
4 twenty hours of another person or any other event

5 (a) Except as provided in paragraph (b) of this section:

6 (1) Where, under articles 4 and 5 of this chapter, the title to prop-  
7 erty or the devolution of property depends upon an individual's survi-  
8 vorship of the death of another individual, an individual who is not  
9 established by clear and convincing evidence to have survived the other  
10 individual by one hundred twenty hours is deemed to have predeceased the  
11 other individual.

12 (2) For purposes of a provision of a governing instrument that relates  
13 to an individual surviving an event, including the death of another  
14 individual, an individual who is not established by clear and convincing  
15 evidence to have survived the event by one hundred twenty hours is  
16 deemed to have predeceased the event.

17 (3) Where a disposition of property under a governing instrument (i)  
18 depends upon the time of death of two or more beneficiaries designated  
19 to take alternatively by reason of surviving an event, including the  
20 death of another individual, and (ii) it is not established by clear and  
21 convincing evidence that such beneficiaries have survived the event by  
22 one hundred twenty hours, the property thus disposed of shall be divided  
23 into as many equal portions as there are alternative beneficiaries and

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

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1 such portions shall be distributed respectively to those who would have  
2 taken the whole property in the event that the designated beneficiary

3 through whom they take had survived.

4 (4) Where it is not established by clear and convincing evidence that  
5 one of two co-owners with right of survivorship survived the other  
6 co-owner by one hundred twenty hours, one-half of the property passes as  
7 if one had survived by one hundred twenty hours and one-half as if the  
8 other had survived by one hundred twenty hours. Where there are more  
9 than two co-owners and it is not established by clear and convincing  
10 evidence that at least one of them survived the others by one hundred  
11 twenty hours, the property passes in the proportion that one bears to  
12 the whole number of co-owners.

13 (b) The survival requirements of paragraph (a) of this section shall  
14 not apply if:

15 (1) The governing instrument contains language dealing explicitly with  
16 simultaneous deaths or deaths in a common disaster and that language is  
17 operable under the facts of the case.

18 (2) The governing instrument expressly indicates that an individual is  
19 not required to survive an event, including the death of another indi-  
20 vidual, by any specified period or expressly requires the individual to  
21 survive the event for a specified period. However, survival of the event  
22 or the specified period must be established by clear and convincing  
23 evidence.

24 (3) The imposition of a one hundred twenty-hour requirement of  
25 survival would cause a nonvested property interest or a power of  
26 appointment to be invalid under section 9-1.1 of this chapter. However,  
27 survival must be established by clear and convincing evidence.

28 (4) The application of a one hundred twenty-hour requirement of  
29 survival to multiple governing instruments would result in an unintended  
30 failure or duplication of a disposition. However, survival must be  
31 established by clear and convincing evidence.

32 (5) Its application would result in a taking of the intestate estate  
33 by the state.

34 (6) The surviving spouse exercised the right of election under section  
35 5-1.1-A of this chapter, but died less than one hundred twenty hours  
36 after the death of the deceased spouse.

37 (c) For purposes of this section, "governing instrument" means a deed,  
38 will, trust, insurance or annuity policy, bank account in trust form,  
39 security registration in beneficiary form (TOD), pension, profit-shar-  
40 ing, retirement, or similar benefit plan, instrument creating or exer-  
41 cising a power of appointment or a power of attorney, or a dispositive,  
42 appointive, or nominative instrument of any similar type.

43 § 2. This act shall take effect on the tenth day after it shall have  
44 become a law, provided that:

45 (1) any action or proceeding commenced prior to the effective date of  
46 this act shall not be impaired by this act. If a right is acquired,  
47 extinguished, or barred upon the expiration of a prescribed period of  
48 time that has commenced pursuant to the provisions of any statute prior  
49 to the effective date of this act, such provisions shall remain in force  
50 with respect to such right; and

51 (2) any rule of construction or presumption provided by this act shall  
52 apply to governing instruments executed, including bank accounts opened,  
53 before the effective date of this act unless there is a clear indication  
54 of a contrary intent.

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**NEW YORK STATE ASSEMBLY**  
**MEMORANDUM IN SUPPORT OF LEGISLATION**  
**submitted in accordance with Assembly Rule III, Sec 1(f)**

**BILL NUMBER:** A2762A

**SPONSOR:** Weinstein

**TITLE OF BILL:** An act to amend the estates, powers and trusts law, in relation to the disposition of property when persons die simultaneously and to repeal section 2-1.6 of such law relating thereto

**PURPOSE OF BILL:** This bill repeals the Estates Powers and Trusts Law (the "EPTL") section 2-1.6, which is presently based upon actual simultaneous death, and replaces it with language which treats the death of a relevant person within 120 hours of the decedent as predeceasing the decedent.

**JUSTIFICATION:** Presently, EPTL Section 2-1.6 sets forth certain rules for the disposition of property when there is no evidence that persons died otherwise than simultaneously. If it appears that persons have died simultaneously, then the property of each person is disposed of as if he had survived, with certain exceptions. For instance, when a provision in a will depends on the time of death of two or more beneficiaries, and there is no evidence that they died otherwise than simultaneously, the property is divided into equal portions for each of them. When two joint tenants or tenants by the entirety die simultaneously, the property is divided into two parts, to be shared equally by each of the decedent's heirs.

This bill enacts the 1993 version of the Uniform Simultaneous Death Act. Unless it is established by clear and convincing evidence that an individual survived the death of another by 120 hours, that individual is determined to have predeceased the other decedent.

**LEGISLATIVE HISTORY 2008; A. 11503/S.788 - PA/S. RULES**

**FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENTS:** None.

**EFFECTIVE DATE:** This act shall take effect on the tenth day after it shall have become a law with certain enumerated exceptions relating to actions and proceedings which have already commenced at the time of the effective date.

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CHAPTER 92

AN ACT to amend the estates, powers and trusts law, in relation to the disposition of property when persons die simultaneously and to repeal section 2-1.6 of such law relating thereto

Became a law July 11, 2009, with the approval of the Governor.

Passed by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 2-1.6 of the estates, powers and trusts law is REPEALED and a new section 2-1.6 is added to read as follows:

§ 2-1.6 Disposition of property where a person dies within one hundred twenty hours of another person or any other event

(a) Except as provided in paragraph (b) of this section:

(1) Where, under articles 4 and 5 of this chapter, the title to property or the devolution of property depends upon an individual's survivorship of the death of another individual, an individual who is not established by clear and convincing evidence to have survived the other individual by one hundred twenty hours is deemed to have predeceased the other individual.

(2) For purposes of a provision of a governing instrument that relates to an individual surviving an event, including the death of another individual, an individual who is not established by clear and convincing evidence to have survived the event by one hundred twenty hours is deemed to have predeceased the event.

(3) Where a disposition of property under a governing instrument (i) depends upon the time of death of two or more beneficiaries designated to take alternatively by reason of surviving an event, including the death of another individual, and (ii) it is not established by clear and convincing evidence that such beneficiaries have survived the event by one hundred twenty hours, the property thus disposed of shall be divided into as many equal portions as there are alternative beneficiaries and such portions shall be distributed respectively to those who would have taken the whole property in the event that the designated beneficiary through whom they take had survived.

(4) Where it is not established by clear and convincing evidence that one of two co-owners with right of survivorship survived the other co-owner by one hundred twenty hours, one-half of the property passes as if one had survived by one hundred twenty hours and one-half as if the other had survived by one hundred twenty hours. Where there are more than two co-owners and it is not established by clear and convincing evidence that at least one of them survived the others by one hundred twenty hours, the property passes in the proportion that one bears to the whole number of co-owners.

(b) The survival requirements of paragraph (a) of this section shall not apply if:

EXPLANATION--Matter in italics is new; matter in brackets [-] is old law to be omitted.

(1) The governing instrument contains language dealing explicitly with simultaneous deaths or deaths in a common disaster and that language is

operable under the facts of the case.

(2) The governing instrument expressly indicates that an individual is not required to survive an event, including the death of another individual, by any specified period or expressly requires the individual to survive the event for a specified period. However, survival of the event or the specified period must be established by clear and convincing evidence.

(3) The imposition of a one hundred twenty-hour requirement of survival would cause a nonvested property interest or a power of appointment to be invalid under section 9-1.1 of this chapter. However, survival must be established by clear and convincing evidence.

(4) The application of a one hundred twenty-hour requirement of survival to multiple governing instruments would result in an unintended failure or duplication of a disposition. However, survival must be established by clear and convincing evidence.

(5) Its application would result in a taking of the intestate estate by the state.

(6) The surviving spouse exercised the right of election under section 5-1.1-A of this chapter, but died less than one hundred twenty hours after the death of the deceased spouse.

(c) For purposes of this section, "governing instrument" means a deed, will, trust, insurance or annuity policy, bank account in trust form, security registration in beneficiary form (TOD), pension, profit-sharing, retirement, or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of any similar type.

§ 2. This act shall take effect on the tenth day after it shall have become a law, provided that:

(1) any action or proceeding commenced prior to the effective date of this act shall not be impaired by this act. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period of time that has commenced pursuant to the provisions of any statute prior to the effective date of this act, such provisions shall remain in force with respect to such right; and

(2) any rule of construction or presumption provided by this act shall apply to governing instruments executed, including bank accounts opened, before the effective date of this act unless there is a clear indication of a contrary intent.

The Legislature of the STATE OF NEW YORK ss:

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

MALCOLM A. SMITH  
Temporary President of the Senate

SHELDON SILVER  
Speaker of the Assembly

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