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**AB-1866 Irrevocable trusts: limitations.** (2021-2022)

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**Assembly Bill No. 1866**

**CHAPTER 32**

An act to amend Section 15304 of the Probate Code, relating to trusts.

[ Approved by Governor June 21, 2022. Filed with Secretary of State June 21, 2022. ]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 1866, Chen. Irrevocable trusts: limitations.

Existing law provides for the creation and administration of trusts, including irrevocable trusts. Existing law makes invalid provisions of a trust that restrict the transfer of the settlor's interest if the settlor of the trust is a beneficiary. Existing law also authorizes the creditors of a settlor who is also a beneficiary of the trust to reach the amount of income or principal of the trust that the trustee could, at their discretion, pay to or for the benefit of the settlor under the trust instrument, as specified.

This bill would prohibit a settlor from being considered a beneficiary of an irrevocable trust created by the settlor solely by reason of a discretionary authority vested in the trustee to pay directly or reimburse the settlor for any federal or state income tax on trust income or principal that is payable by the settlor, and would prohibit a transferee or creditor of the settlor from being entitled to reach any amount solely by a reason of that discretionary authority.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

**THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:**

**SECTION 1.** Section 15304 of the Probate Code is amended to read:

**15304.** (a) If the settlor is a beneficiary of a trust created by the settlor and the settlor's interest is subject to a provision restraining the voluntary or involuntary transfer of the settlor's interest, the restraint is invalid against transferees or creditors of the settlor. The invalidity of the restraint on transfer does not affect the validity of the trust.

(b) If the settlor is the beneficiary of a trust created by the settlor and the trust instrument provides that the trustee shall pay income or principal or both for the education or support of the beneficiary or gives the trustee discretion to determine the amount of income or principal or both to be paid to or for the benefit of the settlor, a transferee or creditor of the settlor may reach the maximum amount that the trustee could pay to or for the benefit of the settlor under the trust instrument, not exceeding the amount of the settlor's proportionate contribution to the trust.

(c) For purposes of this chapter, the settlor shall not be considered to be a beneficiary of an irrevocable trust created by the settlor solely by reason of a discretionary authority vested in the trustee to pay directly or reimburse the settlor for any federal or state income tax on trust income or principal that is payable by the settlor, and a transferee or creditor of the settlor shall not be entitled to reach any amount solely by a reason of that discretionary authority.

