

Memorandum in Support

NYSBA # 17

February 17, 2016

S. 6712

By: Sen. Hannon
Senate Committee: Judiciary

**THE NEW YORK STATE BAR ASSOCIATION SUPPORTS THIS
LEGISLATION, WHICH WAS DEVELOPED BY ITS
ELDER LAW AND SPECIAL NEEDS SECTION**

This proposal would amend the Estates, Powers, and Trusts Law (EPTL) to provide a surviving spouse's elective share may be held in a Qualifying Supplemental Needs Trust.

BACKGROUND

Under current law, a surviving spouse is entitled to an elective share amount from his or her deceased spouse's estate. An individual under age sixty-five (65) can place his or her elective share received from a deceased spouse into a self-funded, pay-back supplemental needs trust without affecting his or her eligibility for Medicaid. In contrast, someone who is age sixty-five (65) or over does not have that same option.

DISCUSSION

This bill would permit a testator or testatrix to place a surviving spouse's elective share into a pay-back supplemental needs trust for the benefit of the surviving spouse, without affecting the surviving spouse's eligibility for Medicaid. The bill would preserve the right of a surviving spouse to benefit from an elective share of a predeceased spouse's estate, while being able to obtain or continue to receive governmental benefits. The proposed amendment does not affect the surviving spouse's right to receive the elective share outright as opposed to being placed into a Qualifying Supplemental Needs Trust.

CONCLUSION

Based on the foregoing, the New York State Bar Association **SUPPORTS** this bill, which was developed by its Elder Law and Special Needs Section, to amend the EPTL to permit a testator or testatrix to place a surviving spouse's elective share in a Qualifying Supplemental Needs Trust, without affecting such spouse's eligibility for Medicaid.