S T A T E O F N E W Y O R K

6712

I N S E N A T E

February 8, 2016

Introduced by Sen. HANNON -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the estates, powers and trusts law, in relation to elective share qualifying supplemental needs trusts

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 5-1.1-A of the estates, powers and trusts law is amended by adding a new paragraph (f) to read as follows:

(F) ELECTIVE SHARE QUALIFYING SUPPLEMENTAL NEEDS TRUSTS.

(1) AN "ELECTIVE SHARE QUALIFYING SUPPLEMENTAL NEEDS TRUST" IS A TRUST ESTABLISHED BY THE DECEDENT'S WILL FOR A SPOUSE WHO, AT THE TIME OF DECEDENT'S DEATH, HAS A MENTAL ILLNESS, AS DEFINED IN SUBPARAGRAPH 3 OR A SEVERE AND CHRONIC OR PERSISTENT DISABILITY, AS DEFINED IN SUBPARAGRAPH 4 OF PARAGRAPH (A) OF SECTION 7-1.12 OF THIS CHAPTER, OR IS A BLIND OR DISABLED INDIVIDUAL AS DEFINED IN 42 U.S.C. SECTION 1382C(A)(2) OR (3), OR WHO IS SUFFERING FROM A DEGENERATIVE CONDITION OR WHO IS RESIDING IN AN ASSISTED LIVING FACILITY OR A NURSING HOME; AND

(2) WHICH PROVIDES THAT:

(A) (I) THE NET INCOME SHALL BE DISTRIBUTED TO OR FOR THE BENEFIT OF THE SURVIVING SPOUSE AT LEAST QUARTER ANNUALLY; AND

(II) DURING THE SURVIVING SPOUSE'S LIFE, OTHER THAN THE PAYMENT OF ALL LAWFUL TRUST EXPENSES, CHARGES, TAXES AND (IF THE TRUST DIRECTS PREPAYMENT OF THE SPOUSE'S FUNERAL EXPENSES) PREPAID FUNERAL EXPENSES FOR THE SURVIVING SPOUSE, NO DISTRIBUTIONS OF PRINCIPAL MAY BE MADE FOR ANYONE OTHER THAN THE SURVIVING SPOUSE;

(B) ANY DISTRIBUTION OF THE PRINCIPAL OF THE TRUST TO OR FOR THE BENEFIT OF THE SURVIVING SPOUSE DURING THE SURVIVING SPOUSE'S LIFE MAY BE MADE FOR THE SUPPLEMENTAL NEEDS OF THE SURVIVING SPOUSE ONLY IN THE DISCRETION OF ONE OR MORE TRUSTEES, LESS THAN HALF OF WHOM ARE INELIGIBLE FAMILY TRUSTEES. "INELIGIBLE FAMILY TRUSTEES" INCLUDE THE DECEDENT'S GRANDPARENTS AND ANY DESCENDANTS OF THE DECEDENT'S GRANDPARENTS WHO ARE NOT ALSO DESCENDANTS OF THE SURVIVING SPOUSE. INELIGIBLE FAMILY TRUSTEES ALSO INCLUDE SPOUSES OF ANY DESCENDANTS OF THE DECEDENT'S GRANDPARENTS WHO ARE NOT ALSO DESCENDANTS OF THE SURVIVING SPOUSE;

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

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(C) PRINCIPAL SHALL NOT BE USED TO PAY FOR ANY EXPENSES WHICH WOULD OTHERWISE BE PAID BY GOVERNMENT BENEFITS OR ASSISTANCE FOR WHICH THE SURVIVING SPOUSE MAY OTHERWISE BE ELIGIBLE, EXCEPT THAT THE TESTATOR OR TESTATRIX HAS THE OPTION OF GIVING THE TRUSTEE THE AUTHORITY TO MAKE DISTRIBUTIONS OF PRINCIPAL FOR FOOD OR SHELTER AS LONG AS THE PROVISION OF CLAUSES (I) AND (II) OF SUBPARAGRAPH 5 OF PARAGRAPH (B) OF SECTION 7-1.12 OF THIS CHAPTER ARE INCORPORATED INTO THE TRUST; AND

(D) AT THE DEATH OF THE SURVIVING SPOUSE, AFTER THE PAYMENT OF PREPAID FUNERAL EXPENSES (IF DIRECTED IN THE TRUST), TRUST ADMINISTRATION EXPENSES, TAXES, AND ESTATE TAXES, THE DEPARTMENT OF HEALTH SHALL BE REPAID FOR ANY MEDICAL ASSISTANCE GRANTED PURSUANT TO TITLE 11 OF ARTICLE 5 OF THE SOCIAL SERVICES LAW TO THE SURVIVING SPOUSE AFTER THE DATE OF DEATH OF THE DESCENDANT, AND THAT THE BALANCE, IF ANY, SHALL BE DISTRIBUTED AS PROVIDED IN THE TRUST.

(3) THE PROVISIONS OF SUBPARAGRAPHS 1, 2, 3 AND 4 OF PARAGRAPH (B) OF SECTION 7-1.12 OF THIS CHAPTER SHALL BE APPLICABLE TO THE ELECTIVE SHARE QUALIFYING SUPPLEMENTAL NEEDS TRUST, WITH THE EXCEPTION THAT THOSE PROVISIONS SHALL NOT BE APPLICABLE TO THE INCOME (OR THE UNITRUST AMOUNT) DISTRIBUTABLE TO THE SURVIVING SPOUSE.

(4) THE ELECTIVE SHARE QUALIFYING SUPPLEMENTAL NEEDS TRUST SHALL NOT REDUCE THE NET ELECTIVE SHARE AS DEFINED IN SUBPARAGRAPH 4 OF PARAGRAPH (A) OF THIS SECTION IF THE SURVIVING SPOUSE (OR ANY PERSON WHO MAY LAWFULLY MAKE THE ELECTION UNDER THIS SECTION ON BEHALF OF THE SURVIVING SPOUSE) SHALL SERVE AN OBJECTION TO HAVING THE ELECTIVE SHARE QUALIFYING SUPPLEMENTAL NEEDS TRUST REDUCE THE SURVIVING SPOUSE'S ELECTIVE SHARE. SUCH OBJECTION SHALL BE MADE IN ACCORDANCE WITH THE PROCEDURE FOR EXERCISE OF RIGHT OF ELECTION UNDER PARAGRAPH (D) OF THIS SECTION AS MAY BE AMENDED.

(A) THE FAILURE OF THE SURVIVING SPOUSE OR HIS OR HER GUARDIAN TO INTERPOSE SUCH AN OBJECTION SHALL NOT BE DEEMED A TRANSFER FOR MEDICAL ASSISTANCE PURPOSES.

(B) UNLESS THE DECEDENT HAS PROVIDED OTHERWISE, IF A SURVIVING SPOUSE OBJECTS PURSUANT TO THIS PARAGRAPH, SUCH OBJECTION SHALL HAVE THE SAME EFFECT WITH RESPECT TO THE ELECTIVE SHARE QUALIFYING SUPPLEMENTAL NEEDS TRUST AS THOUGH THE SPOUSE DIED ON THE SAME DATE BUT IMMEDIATELY BEFORE THE DEATH OF THE DECEDENT.

S 2. This act shall take effect on the thirtieth day after it shall have become a law.