

HOUSE BILL 1277

N2

(11r2868)

ENROLLED BILL

— *Judiciary/Judicial Proceedings* —

Introduced by **Delegates Smigiel and McDermott**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Trusts – Special Needs, Supplemental Needs, or Pooled Asset Special Needs**
3 **Trusts – Public Benefits**

4 FOR the purpose of stating that the policy of this State is to encourage the use of
5 certain special needs trusts or supplemental needs trusts by individuals with
6 disabilities of all ages for certain reasons; requiring certain State agencies to
7 adopt regulations that are not more restrictive than existing federal law,
8 regulations, or policies with regard to the treatment of special needs trusts or
9 supplemental needs trusts; requiring the regulations to allow certain funding
10 and use of special needs trusts; establishing that a certain determination of the
11 Internal Revenue Service ~~or the Maryland Department of Assessments and~~
12 ~~Taxation~~ regarding the nonprofit status of organizations that operate a pooled
13 asset special needs trust is sufficient to satisfy a certain requirement of federal
14 law; prohibiting State agencies from imposing additional requirements on
15 organizations that operate a pooled asset special needs trust for a certain

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber/conference committee amendments.



1 purpose; defining certain terms; and generally relating to special needs and
2 supplemental needs trusts.

3 BY adding to
4 Article – Estates and Trusts
5 Section 14–114
6 Annotated Code of Maryland
7 (2001 Replacement Volume and 2010 Supplement)

8 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
9 MARYLAND, That the Laws of Maryland read as follows:

10 **Article – Estates and Trusts**

11 **14–114.**

12 (A) IN THIS SECTION, “SPECIAL NEEDS TRUST” AND “SUPPLEMENTAL
13 NEEDS TRUST” INCLUDE A TRUST FUNDED BY A TRUST BENEFICIARY OR BY A
14 THIRD PARTY.

15 (B) IT IS THE POLICY OF THE STATE TO ENCOURAGE THE USE OF A
16 SPECIAL NEEDS TRUST OR SUPPLEMENTAL NEEDS TRUST BY AN INDIVIDUAL OF
17 ANY AGE WITH DISABILITIES TO PRESERVE FUNDS TO PROVIDE FOR THE NEEDS
18 OF THE INDIVIDUAL NOT MET BY PUBLIC BENEFITS AND TO ENHANCE QUALITY
19 OF LIFE.

20 (C) (1) EACH STATE AGENCY THAT PROVIDES PUBLIC BENEFITS TO
21 INDIVIDUALS WITH DISABILITIES OF ALL AGES THROUGH MEANS-TESTED
22 PROGRAMS, INCLUDING THE MEDICAL ASSISTANCE PROGRAM, SHALL ADOPT
23 REGULATIONS THAT ARE NOT MORE RESTRICTIVE THAN EXISTING FEDERAL
24 LAW, REGULATIONS, OR POLICIES WITH REGARD TO THE TREATMENT OF A
25 SPECIAL NEEDS TRUST OR SUPPLEMENTAL NEEDS TRUST, INCLUDING A TRUST
26 DEFINED IN 42 U.S.C. § 1396P(C)(2) AND (D)(4).

27 (2) THE REGULATIONS DESCRIBED IN PARAGRAPH (1) OF THIS
28 SUBSECTION SHALL ALLOW:

29 (I) ~~A POOLED ASSET SPECIAL NEEDS TRUST, AUTHORIZED~~
30 ~~IN 42 U.S.C. § 1396P(D)(4)(C), TO RETAIN FUNDS REMAINING IN AN INDIVIDUAL~~
31 ~~BENEFICIARY’S ACCOUNT AFTER THE DEATH OF THE BENEFICIARY, WITHOUT~~
32 ~~LIMIT;~~

33 (H) AN INDIVIDUAL ACCOUNT IN A POOLED ASSET SPECIAL
34 NEEDS TRUST TO BE FUNDED WITHOUT FINANCIAL LIMIT;

1 ~~(II)~~ (II) A FUND IN A SPECIAL NEEDS TRUST,
 2 SUPPLEMENTAL NEEDS TRUST, OR POOLED ASSET SPECIAL NEEDS TRUST TO BE
 3 USED FOR THE SOLE BENEFIT OF THE BENEFICIARY INCLUDING, AT THE
 4 DISCRETION OF THE TRUSTEE, DISTRIBUTIONS FOR FOOD, SHELTER, UTILITIES,
 5 AND TRANSPORTATION;

6 ~~(III)~~ (III) AN INDIVIDUAL TO ESTABLISH OR FUND AN
 7 INDIVIDUAL ACCOUNT IN A POOLED ASSET SPECIAL NEEDS TRUST WITHOUT AN
 8 AGE LIMIT OR A TRANSFER PENALTY;

9 ~~(IV)~~ (IV) AN INDIVIDUAL TO FUND A SPECIAL NEEDS TRUST
 10 OR SUPPLEMENTAL NEEDS TRUST FOR THE INDIVIDUAL'S CHILD WITH
 11 DISABILITIES WITHOUT A TRANSFER PENALTY AND REGARDLESS OF THE
 12 CHILD'S AGE; AND

13 ~~(V)~~ (V) ALL LEGALLY ASSIGNABLE INCOME OR
 14 RESOURCES TO BE ASSIGNED TO A SPECIAL NEEDS TRUST, SUPPLEMENTAL
 15 NEEDS TRUST, OR POOLED ASSET SPECIAL NEEDS TRUST WITHOUT LIMIT.

16 (D) (1) A DETERMINATION OF THE INTERNAL REVENUE SERVICE ~~OR~~
 17 ~~THE DEPARTMENT OF ASSESSMENTS AND TAXATION~~ REGARDING THE
 18 NONPROFIT STATUS OF AN ORGANIZATION OPERATING A POOLED ASSET
 19 SPECIAL NEEDS TRUST SHALL BE SUFFICIENT TO SATISFY THE NONPROFIT
 20 REQUIREMENT OF 42 U.S.C. § 1396P(D)(4)(C).

21 (2) A STATE AGENCY MAY NOT IMPOSE ADDITIONAL
 22 REQUIREMENTS ON AN ORGANIZATION DESCRIBED IN PARAGRAPH (1) OF THIS
 23 SUBSECTION FOR THE PURPOSE OF QUALIFYING OR DISQUALIFYING THE
 24 ORGANIZATION FROM OFFERING A POOLED ASSET SPECIAL NEEDS TRUST.

25 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
 26 October 1, 2011.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.