

HOUSE BILL 1277

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11r2868
CF SB 888

By: **Delegates Smigiel and McDermott**

Introduced and read first time: February 24, 2011

Assigned to: Rules and Executive Nominations

Re-referred to: Judiciary, March 7, 2011

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 22, 2011

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
16 purpose; defining certain terms; and generally relating to special needs and
17 supplemental needs trusts.

18 BY adding to
19 Article – Estates and Trusts
20 Section 14–114
21 Annotated Code of Maryland
22 (2001 Replacement Volume and 2010 Supplement)

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.



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

3 **Article – Estates and Trusts**

4 **14-114.**

5 (A) IN THIS SECTION, “SPECIAL NEEDS TRUST” AND “SUPPLEMENTAL
6 NEEDS TRUST” INCLUDE A TRUST FUNDED BY A TRUST BENEFICIARY OR BY A
7 THIRD PARTY.

8 (B) IT IS THE POLICY OF THE STATE TO ENCOURAGE THE USE OF A
9 SPECIAL NEEDS TRUST OR SUPPLEMENTAL NEEDS TRUST BY AN INDIVIDUAL OF
10 ANY AGE WITH DISABILITIES TO PRESERVE FUNDS TO PROVIDE FOR THE NEEDS
11 OF THE INDIVIDUAL NOT MET BY PUBLIC BENEFITS AND TO ENHANCE QUALITY
12 OF LIFE.

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

20 (2) THE REGULATIONS DESCRIBED IN PARAGRAPH (1) OF THIS
21 SUBSECTION SHALL ALLOW:

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

26 (II) AN INDIVIDUAL ACCOUNT IN A POOLED ASSET SPECIAL
27 NEEDS TRUST TO BE FUNDED WITHOUT FINANCIAL LIMIT;

28 (III) A FUND IN A SPECIAL NEEDS TRUST, SUPPLEMENTAL
29 NEEDS TRUST, OR POOLED ASSET SPECIAL NEEDS TRUST TO BE USED FOR THE
30 SOLE BENEFIT OF THE BENEFICIARY INCLUDING, AT THE DISCRETION OF THE
31 TRUSTEE, DISTRIBUTIONS FOR FOOD, SHELTER, UTILITIES, AND
32 TRANSPORTATION;

1 (IV) AN INDIVIDUAL TO ESTABLISH OR FUND AN INDIVIDUAL
2 ACCOUNT IN A POOLED ASSET SPECIAL NEEDS TRUST WITHOUT AN AGE LIMIT
3 OR A TRANSFER PENALTY;

4 (V) AN INDIVIDUAL TO FUND A SPECIAL NEEDS TRUST OR
5 SUPPLEMENTAL NEEDS TRUST FOR THE INDIVIDUAL'S CHILD WITH
6 DISABILITIES WITHOUT A TRANSFER PENALTY AND REGARDLESS OF THE
7 CHILD'S AGE; AND

8 (VI) ALL LEGALLY ASSIGNABLE INCOME OR RESOURCES TO
9 BE ASSIGNED TO A SPECIAL NEEDS TRUST, SUPPLEMENTAL NEEDS TRUST, OR
10 POOLED ASSET SPECIAL NEEDS TRUST WITHOUT LIMIT.

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

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

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

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.