

Chapter 562

(House Bill 1277)

AN ACT concerning

Trusts – Special Needs, Supplemental Needs, or Pooled Asset Special Needs Trusts – Public Benefits

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

BY adding to

Article – Estates and Trusts

Section 14–114

Annotated Code of Maryland

(2001 Replacement Volume and 2010 Supplement)

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

Article – Estates and Trusts

14–114.

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

(B) IT IS THE POLICY OF THE STATE TO ENCOURAGE THE USE OF A SPECIAL NEEDS TRUST OR SUPPLEMENTAL NEEDS TRUST BY AN INDIVIDUAL OF ANY AGE WITH DISABILITIES TO PRESERVE FUNDS TO PROVIDE FOR THE NEEDS

OF THE INDIVIDUAL NOT MET BY PUBLIC BENEFITS AND TO ENHANCE QUALITY OF LIFE.

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

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

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

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

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

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

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

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

(D) (1) A DETERMINATION OF THE INTERNAL REVENUE SERVICE ~~OR THE DEPARTMENT OF ASSESSMENTS AND TAXATION~~ REGARDING THE

NONPROFIT STATUS OF AN ORGANIZATION OPERATING A POOLED ASSET SPECIAL NEEDS TRUST SHALL BE SUFFICIENT TO SATISFY THE NONPROFIT REQUIREMENT OF 42 U.S.C. § 1396P(D)(4)(C).

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

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

Approved by the Governor, May 19, 2011.