

# HOUSE BILL 553

N2

2lr2305

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By: **Delegates Smigiel and McDermott**

Introduced and read first time: February 3, 2012

Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Estates and Trusts – Special and Supplemental Needs Trusts – Regulations**  
3 **by State Agencies**

4 FOR the purpose of requiring each State agency that provides public benefits to  
5 individuals with disabilities of all ages to adopt certain regulations that are not  
6 more restrictive than State statutes, regulations, or common law regarding  
7 trusts and that do not require disclosure of a beneficiary’s personal or  
8 confidential information without the consent of the beneficiary; requiring  
9 certain regulations to allow a certain pooled asset special needs trust to retain  
10 certain funds under certain circumstances; providing that nothing in a certain  
11 provision of law shall be interpreted to require a court order to authorize a  
12 disbursement from a special or supplemental needs trust; establishing that a  
13 certain regulation enacted by a State agency regarding pooled special needs  
14 trusts shall apply only to certain trust beneficiaries; and generally relating to  
15 special and supplemental needs trusts.

16 BY repealing and reenacting, with amendments,  
17 Article – Estates and Trusts  
18 Section 14–115  
19 Annotated Code of Maryland  
20 (2011 Replacement Volume and 2011 Supplement)

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

23 **Article – Estates and Trusts**

24 14–115.

25 (a) In this section, “special needs trust” and “supplemental needs trust”  
26 include a trust funded by a trust beneficiary or by a third party.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (b) It is the policy of the State to encourage the use of a special needs trust or  
2 supplemental needs trust by an individual of any age with disabilities to preserve  
3 funds to provide for the needs of the individual not met by public benefits and to  
4 enhance quality of life.

5 (c) (1) Each State agency that provides public benefits to individuals with  
6 disabilities of all ages through means-tested programs, including the Medical  
7 Assistance Program, shall adopt regulations that [are]:

8 (I) ARE not more restrictive than existing federal law,  
9 regulations, or policies with regard to the treatment of a special needs trust or  
10 supplemental needs trust, including a trust defined in 42 U.S.C. § 1396p(c)(2) and  
11 (d)(4);

12 (II) ARE NOT MORE RESTRICTIVE THAN STATE STATUTES,  
13 REGULATIONS, OR COMMON LAW REGARDING TRUSTS, INCLUDING THE  
14 REASONABLE EXERCISE OF TRUSTEE DISCRETION, GUARDIANSHIP OF THE  
15 PROPERTY, OR CONSERVATORSHIP OF AN ALLEGED DISABLED ADULT; AND

16 (III) DO NOT REQUIRE DISCLOSURE OF A BENEFICIARY'S  
17 PERSONAL OR CONFIDENTIAL INFORMATION WITHOUT THE CONSENT OF THE  
18 BENEFICIARY.

19 (2) The regulations described in paragraph (1) of this subsection shall  
20 allow:

21 (i) An individual account in a pooled asset special needs trust  
22 to be funded without financial limit;

23 (ii) A fund in a special needs trust, supplemental needs trust, or  
24 pooled asset special needs trust to be used for the sole benefit of the beneficiary  
25 including, at the discretion of the trustee, distributions for food, shelter, utilities, and  
26 transportation;

27 (iii) An individual to establish or fund an individual account in a  
28 pooled asset special needs trust without an age limit or a transfer penalty;

29 (iv) An individual to fund a special needs trust or supplemental  
30 needs trust for the individual's child with disabilities without a transfer penalty and  
31 regardless of the child's age; [and]

32 (v) All legally assignable income or resources to be assigned to a  
33 special needs trust, supplemental needs trust, or pooled asset special needs trust  
34 without limit; AND

1                   **(VI) A POOLED ASSET SPECIAL NEEDS TRUST, AS**  
2 **AUTHORIZED IN 42 U.S.C. § 1396P(D)(4)(C), TO RETAIN FUNDS REMAINING IN**  
3 **AN INDIVIDUAL BENEFICIARY’S ACCOUNT AFTER THE DEATH OF THE**  
4 **BENEFICIARY, WITHOUT LIMIT.**

5                   **(3) NOTHING IN THIS SUBSECTION MAY BE INTERPRETED TO**  
6 **REQUIRE A COURT ORDER TO AUTHORIZE A DISBURSEMENT FROM A SPECIAL**  
7 **OR SUPPLEMENTAL NEEDS TRUST.**

8                   (d) (1) A determination of the Internal Revenue Service regarding the  
9 nonprofit status of an organization operating a pooled asset special needs trust shall  
10 be sufficient to satisfy the nonprofit requirement of 42 U.S.C. § 1396p(d)(4)(C).

11                   (2) A State agency may not impose additional requirements on an  
12 organization described in paragraph (1) of this subsection for the purpose of qualifying  
13 or disqualifying the organization from offering a pooled asset special needs trust.

14                   **(E) A REGULATION ADOPTED BY A STATE AGENCY REGARDING POOLED**  
15 **SPECIAL NEEDS TRUSTS SHALL APPLY ONLY TO THOSE TRUST BENEFICIARIES**  
16 **WHO ARE STATE RESIDENTS OR WHO RECEIVE PUBLIC BENEFITS FUNDED BY**  
17 **THE STATE.**

18                   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
19 October 1, 2012.