

HOUSE BILL 553

N2

2lr2305

By: **Delegates Smigiel and McDermott**

Introduced and read first time: February 3, 2012

Assigned to: Judiciary

Committee Report: Favorable

House action: Adopted

Read second time: February 21, 2012

CHAPTER _____

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:

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 **Article – Estates and Trusts**

2 14–115.

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

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

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

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

16 (II) **ARE NOT MORE RESTRICTIVE THAN STATE STATUTES,**
17 **REGULATIONS, OR COMMON LAW REGARDING TRUSTS, INCLUDING THE**
18 **REASONABLE EXERCISE OF TRUSTEE DISCRETION, GUARDIANSHIP OF THE**
19 **PROPERTY, OR CONSERVATORSHIP OF AN ALLEGED DISABLED ADULT; AND**

20 (III) **DO NOT REQUIRE DISCLOSURE OF A BENEFICIARY’S**
21 **PERSONAL OR CONFIDENTIAL INFORMATION WITHOUT THE CONSENT OF THE**
22 **BENEFICIARY.**

23 (2) The regulations described in paragraph (1) of this subsection shall
24 allow:

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

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

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

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

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

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

11 (3) NOTHING IN THIS SUBSECTION MAY BE INTERPRETED TO
12 REQUIRE A COURT ORDER TO AUTHORIZE A DISBURSEMENT FROM A SPECIAL
13 OR SUPPLEMENTAL NEEDS TRUST.

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

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

20 (E) A REGULATION ADOPTED BY A STATE AGENCY REGARDING POOLED
21 SPECIAL NEEDS TRUSTS SHALL APPLY ONLY TO THOSE TRUST BENEFICIARIES
22 WHO ARE STATE RESIDENTS OR WHO RECEIVE PUBLIC BENEFITS FUNDED BY
23 THE STATE.

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

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.