

HOUSE BILL 1277

N2

11r2868
CF SB 888

By: **Delegates Smigiel and McDermott**

Introduced and read first time: February 24, 2011

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

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)

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

25 **Article – Estates and Trusts**

26 **14–114.**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

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

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

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

24 **(III) A FUND IN A SPECIAL NEEDS TRUST, SUPPLEMENTAL**
25 **NEEDS TRUST, OR POOLED ASSET SPECIAL NEEDS TRUST TO BE USED FOR THE**
26 **SOLE BENEFIT OF THE BENEFICIARY INCLUDING, AT THE DISCRETION OF THE**
27 **TRUSTEE, DISTRIBUTIONS FOR FOOD, SHELTER, UTILITIES, AND**
28 **TRANSPORTATION;**

29 **(IV) AN INDIVIDUAL TO ESTABLISH OR FUND AN INDIVIDUAL**
30 **ACCOUNT IN A POOLED ASSET SPECIAL NEEDS TRUST WITHOUT AN AGE LIMIT**
31 **OR A TRANSFER PENALTY;**

32 **(V) AN INDIVIDUAL TO FUND A SPECIAL NEEDS TRUST OR**
33 **SUPPLEMENTAL NEEDS TRUST FOR THE INDIVIDUAL’S CHILD WITH**
34 **DISABILITIES WITHOUT A TRANSFER PENALTY AND REGARDLESS OF THE**
35 **CHILD’S AGE; AND**

1 **(VI) ALL LEGALLY ASSIGNABLE INCOME OR RESOURCES TO**
2 **BE ASSIGNED TO A SPECIAL NEEDS TRUST, SUPPLEMENTAL NEEDS TRUST, OR**
3 **POOLED ASSET SPECIAL NEEDS TRUST WITHOUT LIMIT.**

4 **(D) (1) A DETERMINATION OF THE INTERNAL REVENUE SERVICE OR**
5 **THE DEPARTMENT OF ASSESSMENTS AND TAXATION REGARDING THE**
6 **NONPROFIT STATUS OF AN ORGANIZATION OPERATING A POOLED ASSET**
7 **SPECIAL NEEDS TRUST SHALL BE SUFFICIENT TO SATISFY THE NONPROFIT**
8 **REQUIREMENT OF 42 U.S.C. § 1396P(D)(4)(C).**

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

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