

# HOUSE BILL 1328

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CF SB 332

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By: **Delegates Smigiel, Glass, Hershey, Jacobs, McDermott, and Parrott**

Introduced and read first time: February 8, 2013

Assigned to: Judiciary

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 16, 2013

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## 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 of any age with disabilities to adopt certain regulations that are not  
6 more restrictive than any 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; providing that  
9 nothing in a certain provision of law shall be interpreted to require a court order  
10 to authorize a disbursement from a special or supplemental needs trust;  
11 establishing that a certain regulation enacted by a State agency regarding  
12 pooled special needs trusts shall apply only to certain trust beneficiaries;  
13 making stylistic changes; and generally relating to special and supplemental  
14 needs trusts.

15 BY repealing and reenacting, with amendments,  
16 Article – Estates and Trusts  
17 Section 14–115  
18 Annotated Code of Maryland  
19 (2011 Replacement Volume and 2012 Supplement)

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

22 **Article – Estates and Trusts**

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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 14–115.

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

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

8 (c) (1) Each State agency that provides public benefits to individuals  
9 [with disabilities of all ages] **OF ANY AGE WITH DISABILITIES** through means–tested  
10 programs, including the Medical Assistance Program, shall adopt regulations that  
11 [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 ANY~~**  
20 **STATE LAW REGARDING TRUSTS, INCLUDING ANY STATE LAW REGARDING THE**  
21 **REASONABLE EXERCISE OF DISCRETION BY A TRUSTEE, GUARDIAN, OR**  
22 **CONSERVATOR IN THE BEST INTERESTS OF THE BENEFICIARY; AND**

23 (III) **DO NOT REQUIRE DISCLOSURE OF A BENEFICIARY’S**  
24 **PERSONAL OR CONFIDENTIAL INFORMATION WITHOUT THE CONSENT OF THE**  
25 **BENEFICIARY.**

26 (2) The regulations described in paragraph (1) of this subsection shall  
27 allow:

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

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

34 (iii) An individual to establish or fund an individual account in a  
35 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.

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

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

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

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

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
21 October 1, 2013.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.