

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1738 Session of
2007

INTRODUCED BY MELIO, BELFANTI, CALTAGIRONE, GEORGE, GRUCELA,
HENNESSEY, JAMES, JOSEPHS, KIRKLAND, KOTIK, LONGIETTI,
MAHONEY, MYERS, M. O'BRIEN, O'NEILL, RAPP, REICHLEY,
K. SMITH, THOMAS, WOJNAROSKI, YOUNGBLOOD AND BRENNAN,
JULY 13, 2007

REFERRED TO COMMITTEE ON HEALTH AND HUMAN SERVICES,
JULY 13, 2007

AN ACT

1 Amending the act of June 13, 1967 (P.L.31, No.21), entitled "An
2 act to consolidate, editorially revise, and codify the public
3 welfare laws of the Commonwealth," providing for supplemental
4 needs trusts.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. The act of June 13, 1967 (P.L.31, No.21), known
8 as the Public Welfare Code, is amended by adding a section to
9 read:

10 Section 1414.1. Supplemental Needs Trusts.--(a)

11 Supplemental needs trusts shall be construed as follows:

12 (1) It shall be presumed that the grantor of the trust
13 intended that neither principal nor income be used to pay for
14 any expense that would otherwise be paid by government benefits
15 or assistance for which the beneficiary might otherwise be
16 eligible or which the beneficiary might be receiving.

17 (2) The trust document may permit the trustee to expend or

distribute trust income or principal to third parties to
supplant, impair or diminish government benefits or assistance
for which the beneficiary may otherwise be eligible or which the
beneficiary may be receiving, including distributions to third
parties to meet the beneficiary's needs for food, shelter or
health care, if the trustee determines that the beneficiary's
basic needs will be better met if the distribution is made and
that it is in the beneficiary's best interest to suffer the
consequent effect, if any, on the beneficiary's eligibility for
receipt of government benefits or assistance.

(3) Neither principal nor income held in trust shall be
deemed an available resource to the beneficiary under any
program of government benefits or assistance, except that actual
distributions from the trust may be considered to be income or
resources of the beneficiary to the extent provided by the terms
of the programs.

(4) If the trust provides the trustee with authority to make
distributions to third parties to meet the beneficiary's needs
for food, shelter or health care and if the mere existence of
that authority would, under the terms of any program of
government benefits or assistance, result in the beneficiary's
loss of government benefits or assistance, regardless of whether
the authority was actually exercised, the following shall apply:

(i) if the trust instrument expressly so provides, the
provision shall be null and void and the trustee's authority to
make distributions shall cease or shall be limited as otherwise
provided in the trust document; or

(ii) at the option of the trustee the trust shall no longer
be treated as a supplemental needs trust under this section and
the trust shall be construed and the trust assets considered,

1 without regard to the provisions of this section.

2 (5) The trustee shall have the discretion to pay or apply
3 the income or principal of the trust to or for the beneficiary's
4 supplemental care and support by providing goods and services,
5 including those for the beneficiary's food and shelter, not
6 otherwise provided, or if the trustee, in the trustee's sole and
7 absolute discretion, determines good and services, including
8 food and shelter, are insufficiently provided by governmental,
9 charitable or private agencies.

10 (b) The provisions of this section shall not apply to a
11 special needs trust established under section 1917(d)(4) of the
12 Social Security Act (49 Stat. 620, 42 U.S.C. § 1396p(d)).

13 (c) As used in this section, the following words and phrases
14 shall have the following meanings:

15 "Disabled person" means a person who is unable to do any
16 substantial, gainful activity by reason of any medically
17 determinable physical or mental impairment that can be expected
18 to result in death or that has lasted or can be expected to last
19 for a continuous period of not less than twelve months, except
20 that for a child under eighteen years of age, disability is
21 defined as a medically determinable physical or mental
22 impairment that results in marked and severe functional
23 limitations.

24 "Government benefits or assistance" means any program of
25 benefits or assistance that is intended to provide or pay for
26 support, education, training, maintenance or health care, which
27 is established or administered, in whole or in part, by any
28 Federal, State, county, city or any other governmental entity.

29 "Grantor" means the individual, other than the disabled
30 person or the spouse of the disabled person, who provides the

1 trust principal or corpus.

2 "Living trust" means a trust established during the lifetime
3 of the grantor, whether or not the trust is funded during the
4 lifetime of the grantor.

5 "Supplemental needs trust" means a testamentary or living
6 trust meeting all of the following conditions:

7 (1) The trust is funded with assets of a person other than
8 the beneficiary.

9 (2) The trust beneficiary is a disabled person.

10 (3) The trustee has full discretion as to the time, purpose
11 and amount of all distributions. The trustee may pay to or for
12 the benefit of the beneficiary all or none of the trust as he or
13 she considers appropriate. The beneficiary has no control over
14 the trust.

15 (4) The beneficiary has no right to revoke the trust and
16 then use funds to meet the beneficiary's food or shelter needs,
17 and the beneficiary has no right to direct the use of the trust
18 principal for the beneficiary's support and maintenance under
19 the terms of the trust.

20 (5) The beneficiary has no right to assign, encumber,
21 direct, distribute or authorize distributions from the trust.

22 "Testamentary trust" means a trust established by a will and
23 does not take effect until after the death of the grantor.

24 "Trust" means an arrangement in which the trustee has full
25 discretion as to the time, purpose and amount of all
26 distributions. The trustee may pay to or for the benefit of the
27 beneficiary all or none of the trust as he or she considers
28 appropriate. The beneficiary has no control over the trust.

29 "Trustee" means a person or entity who holds legal title to
30 property for the benefit of another.

1 Section 2. The addition of section 1414.1 of the act shall
2 apply to all supplemental needs trusts in existence prior to the
3 effective date of this section, whether or not the trusts have
4 been funded.

5 Section 3. This act shall take effect immediately.