

HOUSE BILL No. 5028

May 28, 2009, Introduced by Rep. Young and referred to the Committee on Judiciary.

A bill to provide for pooled trusts for persons with disabilities; and to prescribe the powers and duties of certain state agencies and departments.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "pooled trust act".

3 Sec. 2. As used in this act:

4 (a) "Beneficiary" means an individual with a disability who
5 has the right to receive services and benefits of a pooled trust.

6 (b) "Board" means a group of persons vested with the
7 management of the business affairs of a trustee.

8 (c) "Disability" means a physical or mental impairment as
9 defined in section 1614 of the social security act, 42 USC 1382c.

1 (d) "Pooled trust" means a trust that meets all of the
2 following criteria:

3 (i) Contains assets of more than 1 beneficiary.

4 (ii) Each beneficiary has a disability.

5 (iii) The trust is managed by a nonprofit corporation.

6 (iv) A separate account is maintained for each beneficiary of
7 the trust, but, for purposes of investment and management of funds,
8 the trust pools these accounts. Accounts in the trust may be
9 established by the parent, grandparent, or legal guardian of the
10 individual with a disability, by the individual with a disability,
11 or by a court.

12 (v) Upon the death of a beneficiary, amounts remaining in the
13 beneficiary's accounts are either to be retained by the trust for
14 the benefit of the other beneficiaries or other people with
15 disabilities or to be used to reimburse the state in an amount
16 equal to the total amount of medical assistance paid by the state
17 on behalf of the beneficiary.

18 (e) "Trustee" means a nonprofit organization that manages a
19 pooled trust.

20 Sec. 3. (1) A pooled trust shall be administered by a trustee
21 governed by a board. The trust may employ persons as necessary.

22 (2) The members of a board and employees of a trustee shall
23 stand in a fiduciary relationship to the beneficiaries and the
24 trustee regarding investment of the trust and shall not profit,
25 either directly or indirectly, with respect to that investment.

26 (3) A trustee shall maintain a separate account for each
27 beneficiary of a pooled trust, but for purposes of investment and

1 management of funds, the trustee may pool these accounts. The
2 trustee shall have exclusive control and authority to manage and
3 invest the money in the pooled trust in accordance with this
4 section, subject to the exercise of the degree of judgment, skill,
5 and care under the prevailing circumstances that persons of
6 prudence, discretion, and intelligence, who are familiar with
7 investment matters, exercise in the management of their affairs,
8 considering the probable income to be derived from the investment
9 and the probable safety of their capital. The trustee may charge a
10 trust management fee to cover the costs of administration and
11 management of the pooled trust.

12 (4) A board member shall disclose and abstain from
13 participation in a discussion or voting on an issue when a conflict
14 of interest arises with the board member on a particular issue or
15 vote.

16 (5) No board member may receive compensation for services
17 provided as a board member. No fees or commissions may be paid to a
18 board member. A board member may be reimbursed for necessary
19 expenses incurred that are in the best interest of the
20 beneficiaries of the pooled trust as a board member upon
21 presentation of receipts.

22 (6) The trustee shall disburse money from a beneficiary's
23 account only on behalf of the beneficiary. A disbursement from a
24 beneficiary's account shall only be made if it is in the best
25 interest of the beneficiary.

26 Sec. 4. All money received for pooled trust funds shall be
27 deposited with a court-approved corporate fiduciary or in the state

1 treasury if no court-approved corporate fiduciary is available to
2 the trustee. The funds shall be pooled for investment and
3 management. A separate account shall be maintained for each
4 beneficiary and quarterly accounting statements shall be provided
5 to each beneficiary by the trustee. The court-approved corporate
6 fiduciary or the state treasurer shall provide quarterly accounting
7 statements to the trustee. The court-approved corporate fiduciary
8 or the state treasurer may charge a trust management fee to cover
9 the costs of managing the funds in the pooled trust.

10 Sec. 5. (1) In addition to reports required to be filed under
11 state or federal law relating to partnerships and limited liability
12 companies, the trustee shall file an annual report with the office
13 of attorney general along with an itemized statement that shows the
14 funds collected for the year, income earned, salaries paid, other
15 expenses incurred, and the opening and final trust balances. A copy
16 of this statement shall be available to the beneficiary, trustor,
17 or designee of the trustor, upon request.

18 (2) The trustee shall prepare and provide each trustor or the
19 trustor's designee annually with a detailed individual statement of
20 the services provided to the trustor's beneficiary during the
21 previous 12 months and of the services to be provided during the
22 following 12 months. The trustee shall provide a copy of this
23 statement to the beneficiary, upon request.

24 Sec. 6. (1) In determining eligibility for medical assistance
25 benefits, the interest of any disabled beneficiary in a pooled
26 trust shall not be considered as a resource for purposes of
27 determining the beneficiary's eligibility for medical assistance.

1 (2) No state agency shall reduce the benefits or services
2 available to an individual because he or she is a beneficiary of a
3 pooled trust. The beneficiary's interest in a pooled trust shall
4 not be reachable in satisfaction of a claim for support and
5 maintenance of the beneficiary.

6 Sec. 7. The office of attorney general shall make available
7 information on the treatment of pooled trusts for the persons with
8 disabilities in the medical assistance program.

9 Sec. 8. This act applies to pooled trusts established on or
10 after the effective date of this act and to the accounts of
11 individual beneficiaries established on or after the effective date
12 of this act in pooled trusts created before the effective date of
13 this act.

14 Sec. 9. This act takes effect 90 days after it is enacted into
15 law.