

Chapter 36D.

North Carolina Community Third Party Trusts, Pooled Trusts.

§ 36D-1. Title; findings.

(a) This Chapter shall be known and may be cited as the "North Carolina Community Third Party Trusts, Pooled Trusts Act."

(b) The General Assembly finds that it is in the public interest to encourage activities by voluntary associations and private citizens that will supplement and augment those services provided by local, State, and federal government agencies in discharge of their responsibilities toward individuals with severe chronic disabilities. The General Assembly further finds that, as a result of changing social, economic, and demographic trends, families of persons with severe chronic disabilities are increasingly aware of the need for a vehicle by which they can assure ongoing individualized personal concern for a family member with a disability who may survive his or her parents or other family members, and provide for the efficient management of trust funds to be used for the benefit of that person with a disability. In a number of other states, voluntary associations have established foundations or trusts intended to be responsive to these concerns. Therefore, the General Assembly finds that North Carolina will benefit by the enactment of enabling legislation expressly authorizing the formation of Community Third Party Trusts and Pooled Trusts in accordance with 42 U.S.C. § 1396p(d)(4) and criteria set forth by statute and administered by the Secretary of State under Chapter 55A of the General Statutes.

(c) This Chapter shall be liberally construed and applied to promote its underlying purposes and policies, which are, among others, to:

- (1) Repealed by Session Laws 2010-118, s. 1, effective July 20, 2010.
- (2) Ensure that Community Third Party or Pooled Trusts for the benefit of persons with severe chronic disabilities are established and administered properly and that the managing boards of the trusts are free from conflicts of interest.
- (3) Facilitate sound administration of trust funds for persons with severe chronic disabilities by allowing family members, persons with disabilities, and others to pool resources in order to make professional management investment more efficient.
- (4) Provide parents of persons with severe chronic disabilities peace of mind in knowing that a means exists to ensure that the interests of their children who have severe chronic disabilities are properly looked after and managed after the parents die or become incapacitated.
- (5) Assist in making guardians available for persons with severe chronic disabilities who are incompetent, when no other family member is available for this purpose.
- (6) Encourage the availability of private resources to purchase for persons with severe chronic disabilities goods and services that are not available through any governmental or charitable program and to conserve these resources by limiting purchases to those that are not available from other sources.
- (7) Encourage the inclusion, as beneficiaries of Community Third Party or Pooled Trusts, of persons who lack resources and whose families are indigent, in a way that does not diminish the resources available to other beneficiaries whose families have contributed to the trust.
- (8) Remove the disincentives that discourage parents and others from setting aside funds for the future protection of persons with severe chronic

disabilities by ensuring that the interest of beneficiaries of trusts that meet the rules set forth by the Department are not considered assets or income that would disqualify them from any governmental or charitable entitlement program with an economic means test.

- (9) Require, pursuant to 42 U.S.C. § 1396p(d)(4), the payback of monies from Pooled Trusts up to an amount equal to the total amount of assistance paid for by the Department on behalf of or to the beneficiary from any funds remaining in the beneficiary's individual trust account upon the death of the individual or the termination of the individual trust account.

(d) Nothing in this Chapter shall affect the establishment, interpretation, or construction of Pooled Trust instruments which do not conform with the provisions of this Chapter, nor shall this Chapter impair the State's authority to be paid from or seek reimbursement from any Pooled Trust which does not conform with the provisions of this Chapter or to deem the principal or income of any nonconforming 36D Trust an available resource under any program of government benefits or assistance. (1991 (Reg. Sess., 1992), c. 768, s. 1; 2005-192, s. 3; 2010-118, s. 1.)