

House Bill 646

By: Representatives Walker of the 107th, Oliver of the 83rd, and Benfield of the 85th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 10 of Title 30 of the Official Code of Georgia Annotated, relating to
2 community trusts for handicapped persons, so as to provide for various revisions to prohibit
3 discrimination regarding the use of community trusts based on the age of an impaired person;
4 to revise legislative findings; to revise the definition of "impairment"; to provide for the
5 treatment of contributions to a community trust by a beneficiary over the age of 65; to change
6 certain provisions relating to documents establishing a community trust; to provide for a
7 statutory approved form of community trust joinder agreement; to provide for related
8 matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 style="text-align:center">**SECTION 1.**

11 Chapter 10 of Title 30 of the Official Code of Georgia Annotated, relating to community
12 trusts for handicapped persons, is amended by revising Code Section 30-10-1, relating to
13 legislative findings, as follows:

14 "30-10-1.

15 The General Assembly finds and declares the following:

16 (1) It is an essential function of state government to provide basic support for persons
17 with one or more mental or physical impairments that substantially limit one or more
18 major life activities, whether the impairments are congenital or occur by reason of
19 accident, injury, age, or disease;

20 (2) The cost of providing basic support for persons with mental or physical impairments
21 is difficult for many citizens to afford, and they are forced to rely upon the government
22 to provide that support;

23 (3) The families and friends of persons with mental or physical impairments desire to
24 supplement, but not replace, the basic support provided by state government and other
25 governmental programs;

1 (4) Medical, social, and other supplemental services are often provided by family
 2 members and friends of persons with mental or physical impairments for the lifetime of
 3 the impaired persons; ~~and~~

4 (5) It is necessary and desirable for the public health, safety, and welfare of the citizens
 5 of this state to encourage, enhance, and foster the ability of family members and friends
 6 of those individuals with mental or physical impairments to supplement, but not to
 7 replace, the basic support provided by state government and other governmental
 8 programs and to provide for medical, social, or other supplemental services for those
 9 persons with impairments; and

10 (6) In addressing the supplemental needs of persons with mental and physical
 11 impairments, and in construing this chapter, it is the policy of this state that there shall
 12 be no discrimination based on age, race, gender, religion, nationality, or any other factor."

14 SECTION 2.

15 Said chapter is further amended by revising paragraph (5) of Code Section 30-10-2, relating
 16 to definitions, as follows:

17 "(5) 'Impairment' means a mental or physical disability that substantially limits one or
 18 more major life activities, whether the impairment is congenital or acquired by accident,
 19 injury, age, or disease, and where the impairment is verified by medical findings. Any
 20 finding that an individual is impaired shall be based on medical criteria, which shall
 21 include an inability to perform activities of daily living, and shall not be limited to
 22 persons who are under the age of 65."

23 SECTION 3.

24 Said chapter is further amended by revising Code Section 30-10-3, relating to donors,
 25 benefits, and assets, as follows:

26 "30-10-3.

27 (a) Donors may supplement the care, support, habilitation, rehabilitation, and treatment of
 28 persons with impairments pursuant to this chapter. Neither the contribution to a community
 29 trust for the benefit of a life beneficiary nor the use of community trust income or principal
 30 to provide benefits shall in any way reduce, impair, or diminish the benefits for which a
 31 person is otherwise eligible by law.

32 (b) A beneficiary who funds a community trust for his or her own benefit or who adds his
 33 or her own funds to a community trust after the age of 65 and who applies for medical
 34 assistance shall not be deemed to have made a transfer of assets for less than fair market
 35 value so long as the funds in the trust are used solely for the beneficiary to purchase items
 36 and services for the beneficiary at fair market value that supplement, but do not replace,

1 the basic support provided by state government and other governmental programs and to
 2 provide for medical, social, or other supplemental services. Contributions to a community
 3 trust by a beneficiary over the age of 65 that are inconsistent with this subsection shall not
 4 in any way reduce, impair, or diminish the benefits for which a person is otherwise eligible
 5 by law.

6 ~~(b)~~(c) The assets held by the board of trustees of any community trust and its income and
 7 operations shall be exempt from all state and local taxation."

8 SECTION 4.

9 Said chapter is further amended by revising subsection (b) of Code Section 30-10-6, relating
 10 to qualification of trust, as follows:

11 "(b) The documents establishing a community trust shall include and be limited by the
 12 following:

13 (1) To be eligible to participate in a community trust, a life beneficiary must suffer from
 14 one or more impairments as defined in this chapter;

15 (2) A community trust may accept contributions from any source, so long as basic
 16 eligibility requirements are satisfied, to be held, administered, managed, invested, and
 17 distributed in order to facilitate the coordination and integration of private financing for
 18 individuals who have one or more impairments, while maintaining the eligibility of those
 19 individuals for government funding. All contributions and the earnings of a community
 20 trust shall be administered as one trust for purposes of investment and management of
 21 funds. Notwithstanding the administration as one trust for investment and management,
 22 one or more separate accounts shall be established for each designated life beneficiary.
 23 The net income earned after deducting administrative expenses shall be credited to the
 24 accounts of the life beneficiaries, in proportion to the amount of the contribution made
 25 for each life beneficiary to the total contributions made for all life beneficiaries;

26 (3) Every donor shall designate a specific person as the life beneficiary of the
 27 contribution made by the donor. In addition, each donor shall name a cotrustee and a
 28 successor or successors to the cotrustee to act with the trustees of the community trust on
 29 behalf of the designated life beneficiary. A life beneficiary or the spouse of a life
 30 beneficiary shall not be eligible to be a cotrustee or a successor cotrustee;

31 (4) If a donor designates himself or herself or his or her spouse as the life beneficiary,
 32 then the account of the life beneficiary shall, regardless of any other provision of this
 33 chapter, meet the following additional conditions:

34 (A) The contribution or contributions of the life beneficiary or his or her spouse to the
 35 community trust shall be irrevocable;

1 ~~(B) The funds remaining in the life beneficiary's account upon the death of the life~~
 2 ~~beneficiary shall, to the extent such funds result from contributions made by the life~~
 3 ~~beneficiary or his or her spouse, be subject to the state reimbursement requirements of~~
 4 ~~federal laws governing community trusts, including paragraph (4) of subsection (d) of~~
 5 ~~42 U.S.C. Section 1396p as applied by this state. Any funds remaining after satisfaction~~
 6 ~~of such requirements shall be distributed as the donor has designated in writing, and if~~
 7 ~~there is no such designation or should distribution to those designated by the donor be~~
 8 ~~impossible, then to a successor trust~~ To the extent that amounts remaining in the
 9 beneficiary's community trust upon the death of the beneficiary are not retained by the
 10 community trust for charitable purposes, the community trust shall pay to the state from
 11 such remaining amounts in the account an amount equal to the total amount of medical
 12 assistance paid on behalf of the beneficiary under the state plan. If more than one state
 13 has provided medical assistance on behalf of the beneficiary, then the trust shall pay the
 14 states on a prorated basis. Any funds remaining after satisfaction of such requirements
 15 shall be distributed as the donor has designated in writing, and if there is no such
 16 designation or should such distribution to those designated by the donor be impossible,
 17 then to a successor trust; and

18 (C) Neither the donor nor the donor's spouse shall serve as cotrustee;

19 (5) During his or her lifetime, any donor who has not designated himself or herself or his
 20 or her spouse as the life beneficiary may revoke any contribution made to a community
 21 trust. Notwithstanding the first sentence of this paragraph, any donor may, at any time,
 22 voluntarily waive the right to revoke. Upon revocation, an amount equal to the current
 23 fair market value of the balance of the life beneficiary's account in the community trust
 24 as determined on the date of revocation shall be returned to the donor;

25 (6) The cotrustee and the trustees annually, or more frequently, shall agree on the amount
 26 of income or principal, or both, to be used to provide noncash benefits and the nature and
 27 type of benefits to be provided to the life beneficiary. Such permissible benefits shall
 28 include, but not be limited to: more sophisticated dental, medical, and diagnostic work
 29 or treatment than is otherwise available from public assistance; private rehabilitative
 30 training; supplementary educational aid; entertainment; periodic vacations and outings;
 31 expenditures to foster the interests, talents, and hobbies of the life beneficiary; and
 32 expenditures to purchase personal property and services which will make life more
 33 comfortable and enjoyable for the life beneficiary but which will not defeat the life
 34 beneficiary's eligibility for public assistance. Expenditures may include payment of the
 35 funeral and burial costs of the life beneficiary. The trustees and cotrustee may exercise
 36 discretion to make payments from time to time for a person to accompany the life
 37 beneficiary on vacations and outings and for the transportation of the life beneficiary or

1 of friends and relatives of the life beneficiary to visit the life beneficiary. Expenditures
2 shall not be made for the primary support or maintenance of the life beneficiary,
3 including basic food, shelter, and clothing if, as a result, the life beneficiary would no
4 longer be eligible to receive public benefits or assistance for which the life beneficiary
5 would otherwise be eligible. Any net income which is not used shall be added annually
6 to the principal;

7 (7) Any cotrustee may, for good and sufficient reason upon written notice to the trustees
8 and a determination by the board of trustees that the reason for the transfer is good and
9 sufficient or upon the issuance of a notice of termination by the board of trustees, transfer
10 all of the current fair market value of the balance of the life beneficiary's account in the
11 trust as determined on the date of transfer to another trustee to be held for the sole benefit
12 of the life beneficiary during his or her life; provided, however, that if such a transfer
13 involves funds contributed by the life beneficiary or his or her spouse, any trustee to
14 whom funds are so transferred shall acknowledge in writing the right of the state to
15 reimbursement as provided in 42 U.S.C. Section 1396p(d)(4). In no event shall a
16 cotrustee be entitled to transfer only a portion of the current fair market value of the life
17 beneficiary's account in the trust;

18 (8) If a life beneficiary for whose benefit a contribution has been made to the trust ceases
19 to be eligible to participate in the trust, and neither the donor nor the cotrustee revokes
20 or withdraws the contribution, then the board of trustees may, by written notice to the
21 donor or cotrustee, terminate the trust as to such life beneficiary. Upon termination, the
22 board of trustees shall distribute the fair market value of such life beneficiary's account
23 in the trust to the person or persons the donor has designated; provided, however, that if
24 the donor has failed to designate a person or persons for distribution in this event or if a
25 distribution to the designated person or persons is impossible, the board of trustees shall
26 distribute the fair market value of such life beneficiary's account in the trust to the trustee
27 of the successor trust to be held, administered, and distributed by the successor trustee in
28 accordance with the successor trust described in paragraph (10) of this subsection;

29 ~~Upon the death of the life beneficiary, then an amount equal to the current fair market~~
30 ~~value of the balance of the life beneficiary's account in the trust, as determined on the~~
31 ~~date of death, less payment of funeral and burial costs of the life beneficiary and~~
32 ~~satisfaction of any lien as provided in paragraph (4) of this subsection, shall be distributed~~
33 ~~to the person or persons the donor has designated, provided, however, that if the donor~~
34 ~~has failed to designate a person or persons for distribution in this event or if a distribution~~
35 ~~to the designated person or persons is impossible, the board of trustees shall distribute the~~
36 ~~fair market value of such life beneficiary's account to a successor trust. To the extent this~~
37 ~~provision must be modified for the life beneficiary to remain eligible for government~~

1 ~~benefits, such modifications shall be made~~ Upon the death of the life beneficiary, then to
 2 the extent that amounts remaining in the beneficiary's community trust are not retained
 3 by the community trust for charitable purposes, an amount equal to the current fair
 4 market value of the balance of the life beneficiary's account in the trust, as determined
 5 on the date of the death, less payment of funeral and burial costs of the life beneficiary
 6 and satisfaction of any lien as provided in paragraph (4) of this subsection, shall be
 7 distributed to the person or persons the donor has designated; provided, however, that if
 8 the donor has failed to designate a person or persons for distribution in this event or if a
 9 distribution to the designated person or persons is impossible, the board of trustees shall
 10 distribute the fair market value of such life beneficiary's account to a successor trust. To
 11 the extent this provision must be modified for the life beneficiary to remain eligible for
 12 government benefits, such modifications shall be made; and

13 (10) The trustee of the successor trust shall hold, administer, and distribute the principal
 14 and income of the successor trust, in the discretion of the trustee, for the maintenance,
 15 support, health, education, and general well-being of indigent persons suffering from one
 16 or more impairments, recognizing that it is the purpose of the successor trust to
 17 supplement, not replace, any government benefits for the beneficiary's or beneficiaries'
 18 basic support for which the beneficiary or beneficiaries may be eligible and to improve
 19 the quality of the beneficiary's or beneficiaries' life by providing him, her, or them with
 20 those amenities which cannot otherwise be provided by public assistance or other
 21 available sources. Permissible expenditures include, but are not limited to: more
 22 sophisticated dental, medical, and diagnostic work or treatment than is otherwise
 23 available from public assistance; private rehabilitative training; supplementary
 24 educational aid; entertainment; periodic vacations and outings; expenditures to foster the
 25 interests, talents, and hobbies of the beneficiary or beneficiaries; and expenditures to
 26 purchase personal property and services which will make life more comfortable and
 27 enjoyable for the beneficiary or beneficiaries but which will not defeat his, her, or their
 28 eligibility for public assistance. Expenditures may include payment of the funeral and
 29 burial costs of the beneficiary or beneficiaries. The trustee of the successor trust, in his
 30 or her discretion, may make payments from time to time for a person to accompany a
 31 beneficiary on vacations and outings and for the transportation of a beneficiary or of
 32 friends or relatives of a beneficiary to visit a beneficiary. Any undistributed income of
 33 the successor trust shall be added to the principal from time to time. Expenditures shall
 34 not be made for the primary support or maintenance of a beneficiary, including basic
 35 food, shelter, and clothing, if, as a result, a beneficiary would no longer be eligible to
 36 receive public benefits or assistance for which such beneficiary would otherwise be
 37 eligible."

1 Upon the death of the Grantor/Beneficiary, federal law at 42 U.S.C. Section
 2 1396p(D)(4)(c) requires that any assets remaining in a Trust Subaccount at the death
 3 of the Beneficiary are subject to a State Reimbursement Claim by the State for any
 4 Medicaid benefits made on the Beneficiary’s behalf to the extent that Trust Funds are
 5 not retained by the Community Trust. Unless the Trust Funds are retained by the Trust,
 6 after payment of permitted trust administrative expenses and taxes, a State
 7 Reimbursement Claim shall have first priority.

8 If the Community Trust does not retain Trust Funds and there is no State
 9 Reimbursement Claim or if that claim has been satisfied, upon the death of the
 10 Grantor/Beneficiary, distribution of the Trust Funds shall be made to the following:

11 To Beneficiary’s children in equal shares, by right of representation;

12 OR

13 Percentage of

14 Trust Estate to

15 be Distributed

Name of Distributee

16 % _____

17 % _____

18 % _____

19 % _____

20 H. Fees and Expenses:

21 Grantor agrees to pay the fees set out in Schedule A that is attached and that may be
 22 amended from time to time. If fees are not paid in advance by Grantor, the Trustee is
 23 authorized to charge such fees to a Beneficiary’s Subaccount. Fees are not refundable.

24 I. Acknowledgment by Grantor:

25 Grantor recognizes and acknowledges the uncertainty and changing nature of the
 26 guidelines, laws, and regulations pertaining to governmental benefits, and Grantor
 27 agrees that the Trustee will not in any event be liable for any loss of benefits as long as
 28 the Trustee acts in good faith.

29 Grantor agrees that the Trustee and its agents and employees, as well as their agents’
 30 and employees’ heirs and legal and personal representatives, shall not in any event be
 31 liable to any Grantor or Beneficiary or any other party for its acts as Trustee so long as
 32 the Trustee acts reasonably and in good faith.

33 Grantor acknowledges that upon execution of the Joinder Agreement by Grantor and
 34 the Trustee and the funding of a Subaccount for a Beneficiary, that this Trust, as to the

1 Grantor and the Beneficiary, is irrevocable. Grantor acknowledges that after the funding
 2 of a Subaccount, Grantor shall have no further interest in and does thereby relinquish
 3 and release all rights in, control over, and all incidents of interest of any kind or nature
 4 in and to the contributed assets and all income thereon.

5 J. Federal Taxes:

6 Grantor acknowledges that a trust Subaccount may be treated as a grantor trust for
 7 federal income tax purposes as provided under Section 671 et. seq. of the Internal
 8 Revenue Code and the U. S. Treasury income tax regulations under that section. In
 9 such event, all allocable income, gains, or losses shall be reported on the Grantor's
 10 federal income tax return and taxable to the Grantor.

11 _____

12 Grantor
 13 [COMMUNITY TRUST, Inc.], as Trustee

14 By: _____

15 Title: _____

16 Acknowledgment by Trustee

17 State of Georgia
 18 County of [COUNTY]
 19 On [DATE], personally appeared before me, [TRUST OFFICIAL], who acknowledged he
 20 or she is the President of the maker, [COMMUNITY TRUST], Inc., and is authorized by the
 21 maker to execute this instrument on behalf of the maker.

22 _____

23 Notary Public

24 My commission expires: _____

25 Acknowledgment by Grantor

26 State of Georgia
 27 County of [COUNTY]

1 On [DATE] personally appeared before me, [GRANTOR], Grantor, with whom I am
2 personally acquainted or who proved to me on satisfactory evidence to be the person who
3 executed the foregoing instrument, and who acknowledged that he or she executed the same
4 as his or her free act and deed.

5 _____
6 Notary Public

7 My commission expires: _____

8 Acknowledgment by Grantor’s Attorney-in-Fact

9 State of Georgia

10 County of [COUNTY]

11 On [DATE], personally appeared before me, [ATTORNEY IN FACT], with whom I am
12 personally acquainted or who proved to me on satisfactory evidence to be the person who
13 executed the foregoing instrument as attorney-in-fact for [GRANTOR], Grantor, and who
14 acknowledged that as attorney-in-fact he or she executed the same as the free act and deed
15 of Grantor.

16 _____
17 Notary Public

18 My commission expires: _____

19 Acknowledgment by Grantor’s Conservator

20 State of Georgia

21 County of [COUNTY]

22 On [DATE], personally appeared before me, [CONSERVATOR], with whom I am
23 personally acquainted or who proved to me on satisfactory evidence to be the person who
24 executed the foregoing instrument as Conservator for [GRANTOR], Grantor, and who
25 acknowledged that as Conservator he or she executed the same as the free act and deed of
26 Grantor.

27 _____

Notary Public

My commission expires: _____

Schedule A

Fee Structure and Trust Guidelines

Minimum Trust Size: \$[AMOUNT]. No maximum amount.

Fees:

Set up Fee:

\$ [FEE AMOUNT] at time of creation of the Subaccount and transfer of funds to the Trust.

Annual Fee:

Minimum of \$ [FEE AMOUNT]; or 1.5 percent of the trust corpus on the anniversary date of the transfer of the funds to the Trust.

Not included in the fees above are professional fees charged to the Trust or the Beneficiary's Subaccount or that should be shared among all Trust Subaccounts for services rendered to the Trustee by professionals (attorneys, accountants, and the like). The Annual Fee charged to the Subaccount is intended to cover administrative expenses, overhead, salaries, and other expenses that are reasonable and necessary to provide professional management and operation of the Trust.

The Trust is nonprofit, but it must generate a sufficient amount of income from the Subaccounts in order to discharge its fiduciary obligations owed to the Trust beneficiaries. The Trustee expects that fees will be adjusted periodically (up or down) to make sure that the principal goal of meeting beneficiaries' needs is met.'

SECTION 6.

This Act shall become effective on January 1, 2007.

SECTION 7.

All laws and parts of laws in conflict with this Act are repealed.