

2291

2011-2012 Regular Sessions

I N A S S E M B L Y

January 18, 2011

Introduced by M. of A. CLARK -- read once and referred to the Committee
on Judiciary

AN ACT to amend the estates, powers and trusts law, in relation to
establishing certain trusts as void as against public policy

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Legislative intent. The legislature hereby finds that many
2 citizens are engaging in the creation of trusts containing all or most
3 of their assets for the purpose of enabling them to qualify for medicaid
4 in the event of a protracted hospital stay or their entrance into a
5 nursing home. While the creation of a trust to manage one's assets has
6 long been recognized as being a legitimate means of estate planning, the
7 legislature recognizes and by this act establishes, as a matter of
8 public policy, that the citizens of this state have an obligation to pay
9 for their own health care when able to do so and that the diversion of
10 normal payments from the beneficiary of a trust in order to avoid that
11 responsibility violates such public policy.

12 S 2. Paragraph (b) of section 7-3.1 of the estates, powers and trusts
13 law is amended by adding a new subparagraph 5 to read as follows:

14 (5) A DISPOSITION IN TRUST WHICH PROVIDES FOR THE SUSPENSION, TERMI-
15 NATION OR DIVERSION OF THE TRUST OR THE BENEFICIAL INTEREST OF ANY BENE-
16 FICIARY OF SUCH TRUST IN THE EVENT THAT SUCH BENEFICIARY SHOULD REQUIRE
17 OR IS DIAGNOSED AS REQUIRING MEDICAL, HOSPITAL OR NURSING CARE OR LONG
18 TERM CUSTODIAL, NURSING OR MEDICAL CARE SHALL BE VOID AS AGAINST THE
19 PUBLIC POLICY OF THE STATE OF NEW YORK. THE COMMISSIONER OF HEALTH IS
20 HEREBY AUTHORIZED, UPON THE APPLICATION OF ANY SUCH BENEFICIARY FOR
21 MEDICAL BENEFITS, TO MAINTAIN AN ACTION TO COLLECT FROM SUCH TRUST THE
22 BENEFICIAL INTEREST OF SUCH BENEFICIARY, INCLUDING THE INCOME AND ANY
23 PRINCIPAL AMOUNTS TO WHICH SUCH BENEFICIARY WOULD HAVE BEEN ENTITLED, BY
24 THE TERMS OF SUCH TRUST BY RIGHT OR IN THE DISCRETION OF THE TRUSTEE,
25 HAD SUCH BENEFICIARY NOT REQUIRED OR BEEN DIAGNOSED AS REQUIRING

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 MEDICAL, HOSPITAL OR NURSING CARE OR LONG TERM CUSTODIAL, NURSING OR
2 MEDICAL CARE.
3 S 3. This act shall take effect immediately and shall apply to all
4 trusts created or amended on or after such date.