

## 1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 55-19.5 of the Code of Virginia, relating to certain inter vivos trust*  
3 *exemptions relating to Medicaid assets.*

4 [S 492]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That § 55-19.5 of the Code of Virginia is amended and reenacted as follows:**

8 § 55-19.5. Provision in certain trust void.

9 A. Except as provided in subsection B, a provision in any inter vivos trust created for the benefit of  
10 the grantor which provides directly or indirectly for the suspension, termination or diversion of the  
11 principal, income or other beneficial interest of the grantor in the event that he should apply for medical  
12 assistance or require medical, hospital, or nursing care or long-term custodial, nursing or medical care  
13 shall be against public policy and ineffective as against the Commonwealth. The assets of the trust, both  
14 principal and interest, shall be distributed as though no such application had been made. The provisions  
15 of this subsection shall apply without regard to the irrevocability of the trust or the purpose for which  
16 the trust was created.

17 B. Subsection A shall not apply to any trust with a corpus of \$25,000 or less. If the corpus of any  
18 such trust exceeds \$25,000, \$25,000 of the trust shall be exempt from the provisions of subsection A.  
19 However, if the grantor has created more than one trust as described in subsection A, the \$25,000  
20 exemption shall be prorated among the trusts. Further, if the grantor made uncompensated transfers, as  
21 defined in § 20-88.02, within thirty months of applying for Medicaid benefits and no payments were  
22 ordered pursuant to subsection D of § 20-88.02, the \$25,000 exemption under this subsection shall not  
23 apply.

24 C. *The exemption provided by subsection B shall not apply to any trust created on or after August*  
25 *11, 1993.*

26 D. *To the extent any trust created between August 11, 1993, and July 1, 1994 would but for*  
27 *subsection C be entitled to the exemption provided by subsection B, the grantor may revoke such trust*  
28 *notwithstanding any irrevocability in the terms of such trust. Nothing contained in this subsection shall*  
29 *be construed to authorize the grantor to affect the vested rights of any beneficiary of such trust without*  
30 *the express written consent of such beneficiary.*

31 E. *The provisions of subsection A shall not apply to an irrevocable inter vivos trust to the extent it is*  
32 *created for the purpose of paying the grantor's funeral and burial expenses and is funded in an amount*  
33 *and manner allowable as a resource in determining eligibility for medical assistance benefits. In the*  
34 *event any amount remains in the trust upon payment of the funeral or burial arrangements provided to*  
35 *or on behalf of such individual, the Commonwealth shall receive all amounts remaining in such trust up*  
36 *to an amount equal to the total medical assistance paid on behalf of the individual.*

37 F. *For purposes of this section, medical assistance and medical assistance benefits shall mean*  
38 *benefits payable under the State Plan for Medical Assistance.*

ENROLLED

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