

VIRGINIA ACTS OF ASSEMBLY -- 1998 SESSION

CHAPTER 735

An Act to amend and reenact § 55-19.5 of the Code of Virginia, relating to irrevocable preneed funeral trusts.

[S 54]

Approved April 16, 1998

Be it enacted by the General Assembly of Virginia:

1. That § 55-19.5 of the Code of Virginia is amended and reenacted as follows:

§ 55-19.5. Provision in certain trust void.

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

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

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

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

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

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

2. That the provisions of this act shall expire on July 1, 2001.