

LEGISLATIVE HISTORY CHECKLIST

NJSA: 3B:11-19 et seq. ("New Jersey Community Trust for Persons with Severe Chronic Disabilities")

LAWS OF: 1985 CHAPTER: 424

BILL NO: S3063

Sponsor(s): Feldman

Date Introduced: June 17, 1985

Committee: Assembly: -----

Senate: Institutions, Health and Welfare

Amended during passage: Yes Amendments during passage denoted by asterisks. Substituted for A3677 (not attached since identical to S3063).

Date of Passage: Assembly: December 12, 1985

Senate: December 9, 1985

Date of Approval: January 13, 1986

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: Assembly No

Senate Yes

Fiscal Note: No

Veto Message: No

Message on Signing: No

Following were printed:

Reports: No

Hearings: No

See newspaper clippings--attached:

(OVER)

"Bill seeks fund for care of disabled," 5-13-85 Trenton Times.

"Bill will establish community trust for lifetime oversight of disabled," 5-12-85 Star Ledger.

[OFFICIAL COPY REPRINT]

SENATE, No. 3063

STATE OF NEW JERSEY

INTRODUCED JUNE 17, 1985

By Senator FELDMAN

Referred to Committee on Institutions, Health and Welfare

AN ACT establishing the New Jersey Community Trust for Persons with Severe Chronic Disabilities and supplementing chapter 11 of Title 3B of the New Jersey Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. This act shall be known and may be cited as the "New Jersey
2 Community Trust for Persons with Severe Chronic Disabilities
3 Act."

1 2. The Legislature finds that it is in the public interest to en-
2 courage activities by voluntary associations and private citizens
3 which will supplement and augment those services provided by
4 local, State, and federal government agencies in discharge of their
5 responsibilities toward individuals with severe chronic disabilities.
6 The Legislature further finds that as a result of changing social,
7 economic, and demographic trends, families of persons with severe
8 chronic disabilities are increasingly aware of the need for a vehicle
9 by which they can assure ongoing individualized personal concern
10 for a severely disabled family member who may survive his
11 parents or other family members, and provide for the efficient
12 management of small legacies or trust funds to be used for the
13 benefit of such a disabled person. In a number of other states
14 voluntary associations have established foundations or trusts in-
15 tended to be responsive to these concerns. Therefore, a study of
16 the experience in other states suggests that New Jersey would bene-
17 fit by the enactment of enabling legislation expressly authorizing
18 the formation of community trusts in accordance with criteria set
19 forth by statute and administered by the Secretary of State. These

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.

Matter printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Senate committee amendment adopted November 18, 1985.

20 community trusts permit the pooling of resources contributed by
21 families or persons with philanthropic intent, along with the reser-
22 vation of portions of these funds for the use and benefit of desig-
23 nated beneficiaries.

1 3. This act shall be liberally construed and applied to promote
2 its underlying purposes and policies, which are among others to:

3 a. encourage the orderly establishment of community trusts for
4 the benefit of persons with severe chronic disabilities;

5 b. ensure that community trusts are administered properly and
6 that the managing boards of the trusts are free from conflicts of
7 interest;

8 c. facilitate sound administration of trust funds for persons
9 with severe chronic disabilities by allowing family members and
10 others to pool resources in order to make professional management
11 investment more efficient;

12 d. provide parents of persons with severe chronic disabilities
13 peace of mind in knowing that a means exists to ensure that the
14 interests of their children who have severe chronic disabilities
15 are properly looked after and managed after the parents die or
16 become incapacitated;

17 e. help make guardians available for persons with severe chronic
18 disabilities who are incompetent, when no other family member is
19 available for this purpose;

20 f. encourage the availability of private resources to purchase
21 for persons with severe chronic disabilities goods and services
22 that are not available through any governmental or charitable
23 program and to conserve these resources by limiting purchases to
24 those which are not available from other sources;

25 g. encourage the inclusion, as beneficiaries of community trusts,
26 of persons who lack resources and whose families are indigent, in
27 a way that does not diminish the resources available to other
28 beneficiaries whose families have contributed to the trust; and

29 h. remove the disincentives which discourage parents and others
30 from setting aside funds for the future protection of persons with
31 severe chronic disabilities by ensuring that the interest of bene-
32 ficiaries in community trusts are not considered assets or income
33 which would disqualify them from any governmental or charitable
34 entitlement program with an economic means test.

1 4. As used in this act:

2 a. "Beneficiary" means any person with a severe chronic dis-
3 ability who has qualified as a member of the community trust
4 program and who has the right to receive those services and benefits
5 of the community trust program as provided in this act.

6 b. "Board" means the board of trustees or the group of persons

7 vested with the management of the business and affairs of a corpo-
8 ration, formed for the purpose of managing a community trust,
9 irrespective of the name by which the group is designated.

10 c. "Community Trust" means a nonprofit organization which
11 offers the following services:

12 (1) administration of special trust funds for persons with severe
13 chronic disabilities;

14 (2) follow along services;

15 (3) guardianship for persons with severe chronic disabilities
16 who are incompetent, when no other family member or immediate
17 friend is available for this purpose; and

18 (4) advice and counsel to persons who have been appointed as
19 individual guardians of the persons or estates of persons with
20 severe chronic disabilities.

21 d. "Follow along services" means those services offered by
22 community trusts which are designed to insure that the needs of
23 each beneficiary are being met for as long as may be required and
24 may include periodic visits to the beneficiary and to the places
25 where the beneficiary receives services, participation in the develop-
26 ment of individualized plans being made by service providers for
27 the beneficiary, and other similar services consistent with the
28 purposes of this act.

29 e. "Severe chronic disability" means a physical or mental impair-
30 ment which is expected to give rise to a long-term need for special-
31 ized health, social, and other services, and which makes the person
32 with such a disability dependent upon others for assistance to
33 secure these services.

34 f. "Trustee" mean any member of the board of a corporation,
35 formed for the purpose of managing a community trust, whether
36 that member is designated as a trustee, director, manager, gov-
37 ernor, or by any other title.

38 g. "Surplus trust funds" means funds accumulated in the trust
39 from contributions made on behalf of an individual beneficiary
40 which, after the death of the beneficiary, are determined by the
41 board to be in excess of the actual cost of providing services during
42 the beneficiary's lifetime, including the beneficiary's share of ad-
43 ministrative costs.

1 5. This act shall apply to every community trust established in
2 this State after the effective date of this act. In addition to meeting
3 the other requirements of the act, every board which administers
4 a community trust shall incorporate as a nonprofit corporation
5 in accordance with the provisions of Title 15A of the New Jersey
6 Statutes. Except as otherwise provided herein, the provisions of
7 Title 15A of the New Jersey Statutes shall apply to the community
8 trust.

1 6: Every community trust shall be administered by a board. The
2 board shall be comprised of no less than nine and no more than
3 21 members, at least one-third of whom shall be parents or relatives
4 of persons with severe chronic disabilities. No board member shall
5 be a provider of habilitative, health, social, or educational services
6 to persons with severe chronic disabilities or an employee of such
7 a service provider. The board may, however, allow service pro-
8 viders to serve on the board in an advisory capacity. Board mem-
9 bers shall be selected, to the maximum extent possible, from
10 geographic areas throughout the area served by the trust.

11 The certificate of incorporation filed with the Secretary of State
12 pursuant to Title 15A of the New Jersey Statutes shall, in addition
13 to the requirements set forth in that Title, demonstrate that the
14 requirements of this section have been met.

1 7. Notwithstanding any other provision of law to the contrary,
2 no trustee may be compensated for services provided as a member
3 of the board of a community trust. No fees or commissions shall
4 be paid to these trustees; however, a trustee may be paid for
5 necessary expenses incurred by the trustee and may receive in-
6 demnification as permitted under Title 15A of the New Jersey
7 Statutes.

1 8. The board shall adopt bylaws which shall include a declaration
2 delineating the primary geographic area serviced by the trust and
3 the principal services to be provided and shall file the bylaws with
4 the Secretary of State.

1 9. The board may retain paid staff as it may deem necessary to
2 provide follow along services to the extent required by each bene-
3 ficiary. The board may authorize the expenditure of funds for
4 any goods or services which, in its sole discretion, it determines
5 will promote the well-being of any beneficiary, including recrea-
6 tional services. The board may pay for the burial of any bene-
7 ficiary. The board, however, may not expend funds for any goods
8 or services of comparable quality to those available to any partic-
9 ular beneficiary through any governmental or charitable program,
10 insurance, or other sources. The board may expend funds to meet
11 the reasonable costs of administering the community trust.

12 The board is not required to provide services to a beneficiary
13 who is a competent adult and who has refused to accept the ser-
14 vices. Further, the board shall not provide services of a nature
15 or in a manner that would be contrary to the public policy of this
16 State at the time the services are to be provided. In either case,
17 the board may offer alternate services that are consistent with the
18 purposes of this act and in keeping with the best interests of the
19 beneficiary.

20 The board may accept appointment as guardian of the person,
21 guardian of the estate or guardian of both on behalf of any bene-
22 ficiary. If the board accepts appointment as guardian of the person
23 of an individual, it shall assign a staff member to carry out its
24 responsibilities as the guardian. The board may, on request, offer
25 consultative and professional assistance to an individual, private
26 or public guardian of any of its beneficiaries.

1 10. The board may accept contributions, bequests, and designa-
2 tions under life insurance policies to the community trust on
3 behalf of individuals with severe chronic disabilities for the pur-
4 pose of qualifying them as beneficiaries.

5 At the time a contribution, bequest, or assignment of insurance
6 proceeds is made, the trustor shall receive a written statement
7 of the services to be provided to the beneficiary. The statement
8 shall include a starting date for the delivery of services or the con-
9 dition precedent, such as the death of the trustor, which shall
10 determine the starting date. The statement shall describe the
11 frequency with which services shall be provided and their duration,
12 and the criteria or procedures for modifying the program of
13 services from time to time in the best interests of the beneficiary.

1 11. Along with the annual report filed with the Secretary of
2 State pursuant to Title 15A of the New Jersey Statutes, the board
3 shall file an itemized statement which shows the funds collected
4 for the year, income earned, salaries, other expenses incurred,
5 and the opening and final trust balances. A copy of this statement
6 shall be made available, upon request, to any beneficiary, trustor,
7 or designee of the trustor. In addition, once annually, each trustor
8 or the trustor's designee shall receive a detailed individual state-
9 ment of the services provided to the trustor's beneficiary during
10 the previous 12 months and the services to be provided during the
11 following 12 months. The board shall make a copy of the individual
12 statement available to any beneficiary, upon request.

1 12. The board may accept gifts and use surplus trust funds for
2 the purpose of qualifying as beneficiaries any indigent person
3 whose family members lack the resources to make a full contribu-
4 tion on that person's behalf. The extent and character of the
5 services and selection of beneficiaries are at the discretion of the
6 board. The board may not use surplus trust funds to make any
7 charitable contribution on behalf of any beneficiary or any group
8 or class of beneficiaries. The board may accept gifts to meet
9 start-up costs, reduce the charges to the trust for the cost of
10 administration, and for any other purpose that is consistent with
11 this act. Gifts made to the trust for an unspecified purpose shall
12 be used by the board either to qualify indigent persons whose

13 families lack the means to qualify them as beneficiaries of the trust
14 or to meet any start-up costs that the trust incurs.

1 13. The board may agree to fulfill any special requests made on
2 behalf of a beneficiary as long as the requests are consistent with
3 this act and provided an adequate contribution has been made
4 for this purpose on behalf of a beneficiary. The board may agree
5 to serve as trustee for any individual trust created on behalf of
6 a beneficiary, regardless of whether the trust is revocable or irre-
7 vocable, has one or more remaindermen or contingent beneficiaries,
8 or any other condition, so long as the individual trust is consistent
9 with the purposes of this act.

1 14. A community trust for persons with severe chronic dis-
2 abilities is irrevocable, but the trustees in their sole discretion may
3 provide compensation for any contribution to the trust to any
4 trustor who, upon good cause, withdraws a beneficiary designated
5 by the trustor from the trust, or if it becomes impossible to fulfill
6 the conditions of the trust with regard to an individual beneficiary
7 for reasons other than the death of the beneficiary.

1 15. Notwithstanding any other provision of law to the contrary,
2 the beneficiary's interest in any ***[charitable]*** *community** trust
3 shall not be deemed to be an asset for the purpose of determining
4 income eligibility for any publicly operated program, nor shall
5 that interest be reached in satisfaction of a claim for support and
6 maintenance of the beneficiary. No agency shall reduce the benefits
7 of services available to any individual because that person is the
8 beneficiary of a community trust.

1 16. A community trust shall not be subject to or held to be in
2 violation of any principle of law against perpetuities or restraints
3 on alienation or perpetual accumulations of trusts.

1 17. The board shall settle a community trust by filing a final
2 accounting in the Superior Court. In addition, at any time prior
3 to the settlement of the final account, the board, the Secretary of
4 State, or the Attorney General may bring an action for the dissolu-
5 tion of a nonprofit corporation in the Superior Court for the
6 purpose of terminating the trust or merging it with another charit-
7 able trust.

8 No trustee or any private individual shall be entitled to share
9 in the distribution of any of the trust assets upon dissolution,
10 merger, or settlement of the community trust. Upon dissolution,
11 merger, or settlement, the Superior Court shall distribute all of the
12 remaining net assets of the community trust in a manner that is
13 consistent with the purposes of this act.

1 18. This act shall take effect on the 90th day following enactment.

11 merger, or settlement, the Superior Court shall distribute all of the
12 remaining net assets of the community trust in a manner that is
13 consistent with the purposes of this act.

1 18. This act shall take effect on the 90th day following enactment.

SPONSOR'S STATEMENT

This bill would enable parents and other family members and friends of persons with severe chronic disabilities to pool their resources through a community trust, as a way of insuring that a knowledgeable agent will monitor the lifetime care provided to their children by public and private agencies when they are no longer able to do this themselves. The community trust would also give parents new options with regard to guardianship and other protective arrangements that do not now exist.

There is a great need for legislation to encourage the orderly development of community trusts. Currently, parents of disabled people can make protective arrangements only through individual trust plans or other similar devices. In many cases, the parents' estates are too small to make it economically feasible to retain commercial trustees.

Trusts with some of the characteristics described in the bill have been established in other states without enabling legislation. Experiences with these trusts suggest that a special legislative framework expressly authorizing and enfranchising community trusts can avoid some of the problems that have occurred elsewhere. This bill uses the "New Jersey Nonprofit Corporation Act," Title 15A of the New Jersey Statutes, as a foundation for the establishment of community trusts for persons with severe chronic disabilities.

Additionally, this bill makes clear a beneficiary's interest in a community trust is not to be considered an asset which would disqualify the beneficiary from any governmental or charitable program. Similarly, it would bar parties from attempting to reach the trusts in satisfaction of a claim for support against any beneficiary. These features are needed as incentives to encourage families to contribute to these trusts.

SENATE INSTITUTIONS, HEALTH AND WELFARE
COMMITTEE

STATEMENT TO

SENATE, No. 3063

with Senate committee amendments

STATE OF NEW JERSEY

DATED: SEPTEMBER 30, 1985

As amended, this bill provides for the establishment of a community trust for persons with severe chronic disabilities. Parents, other family members and friends of disabled individuals could pool their resources through the community trust, thus insuring that a knowledgeable agent would monitor the lifetime care provided to these disabled persons by public and private agencies when they are no longer able to do it themselves. New options for guardianship and other protective arrangements would also be available to parents through the community trust. The bill also permits the utilization of surplus trust funds to qualify indigent individuals as beneficiaries.

Under the provisions of this bill, a beneficiary's interest in a community trust will not be considered an asset which would disqualify the beneficiary from any governmental or charitable program. In addition, the bill bars parties from attempting to reach the trusts in satisfaction of a claim for support against any beneficiary. These features are included as incentives to encourage families to contribute to these trusts. This bill uses the "New Jersey Nonprofit Corporation Act," Title 15A of the New Jersey Statutes, as a foundation for the establishment of the community trusts.

This bill addresses the need for enabling legislation which encourages the orderly development of community trusts. At the present time, parents of disabled people can make protective arrangements only through individual trust plans or other similar devices. Oftentimes, the parents' estates are too small to make it economically feasible to retain commercial trustees.

Similar community trusts have been established in other states without enabling legislation. Experiences with these trusts suggest that a special legislative framework expressly authorizing and enfranchising community trusts can avoid some of the problems that have occurred elsewhere.

The committee adopted a technical amendment to the bill at the request of the Department of the Public Advocate to correct a reference to the community trust.