

1 **State of Arkansas**  
2 **79th General Assembly**  
3 **Regular Session, 1993**  
4 **By: Senator Bell**

# A Bill

**ACT 1228 OF 1993**  
**SENATE BILL 482**

## For An Act To Be Entitled

8 "AN ACT TO AMEND TITLE 28, CHAPTER 69, SUBCHAPTER 1 OF THE  
9 ARKANSAS CODE OF 1987, TO PROHIBIT SUSPENSION, TERMINATION  
10 OR DIVERSION OF PRINCIPAL, INCOME, BENEFICIAL INTEREST OR  
11 OTHER INTEREST IN PROPERTY THROUGH THE CREATION OF TRUSTS  
12 OR SIMILAR LEGAL DEVICES FOR THE PURPOSES OF OBTAINING  
13 MEDICAL ASSISTANCE; TO DECLARE CERTAIN PROVISIONS IN SUCH  
14 TRUSTS OR SIMILAR LEGAL DEVICES VOID AS AGAINST PUBLIC  
15 POLICY; *TO ESTABLISH THE SPECIAL NEEDS TRUST FUND*; AND FOR  
16 OTHER PURPOSES."

## Subtitle

18 "TO PROHIBIT THE CREATION OF TRUSTS THAT DIVERT PRINCIPAL,  
19 INCOME OR BENEFICIAL INTERESTS TO OBTAIN MEDICAID."  
20

21  
22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

23  
24 SECTION 1. Title 28, Chapter 69, Subchapter 1 of the Arkansas Code of  
25 1987 is hereby amended by adding the following *sections*:

26 "28-69-102. (a) As used in this section:

27 (1) Trust means a trust, or similar legal device, established  
28 other than by will by an individual or an individual's spouse under which the  
29 individual may be a beneficiary of all or part of the payments from the trust,  
30 and the distribution of such payments is determined by one (1) or more  
31 trustees or other fiduciaries who are permitted to exercise any discretion  
32 with respect to the distribution to the individual, and shall include trusts,  
33 conservatorships, and estates created pursuant to the administration of a  
34 guardianship.

35 (2) Grantor means the individual, institution or entity that  
36 established, created or funded the trust and shall also include fiduciaries as

1 defined by Arkansas Code §28-69-201 and third parties as contemplated by  
2 Arkansas Code §20-77-301, et seq.

3 (3) *\_Co-Trustees of the Special Needs Trust Revolving Fund\_ (hereafter*  
4 *referred to as \_Fund\_) shall mean:*

5 (A) *the Department of Human Services (hereinafter referred to as*  
6 *\_DHS\_) created by §25-10-101, and;*

7 (B) *a federally insured bank, savings bank, safe deposit or trust*  
8 *company authorized by law to do business as such, which shall be selected by*  
9 *DHS. DHS shall have the authority to chose a new co-trustee under this*  
10 *section at its discretion.*

11 (4) *\_Beneficiary\_ means a natural person who has sustained injury, is*  
12 *wholly or partially disabled or suffers from medical conditions and dependent*  
13 *for care or support.*

14 (5) *\_Claimant\_ means any of the following persons applying for*  
15 *reparations under this subchapter:*

16 (A) *a beneficiary;*

17 (B) *a dependent of a beneficiary;*

18 (C) *a person authorized to act on behalf of any of the persons*  
19 *enumerated in subdivisions (3) (A) and (B) of this section.*

20 (6) *\_Economic loss\_ means monetary detriment consisting only of*  
21 *allowable expense and replacement services loss.*

22 (7) *\_Allowable expense\_ means charges incurred for needed products,*  
23 *services, and accommodations including, but not limited to, medical care,*  
24 *rehabilitation, rehabilitative occupational training, and other remedial*  
25 *treatment and care.*

26 (8) *\_Replacement services loss\_ means expenses reasonably incurred in*  
27 *obtaining ordinary and necessary services.*

28 (9) *\_Non-economic detriment\_ means inconvenience, physical impairment,*  
29 *and non-pecuniary damage.*

30 (10) *\_Collateral source\_ means a source of benefits or advantages for*  
31 *economic loss for which the claimant would otherwise be eligible to receive*  
32 *under this subchapter which the claimant has received, or which is readily*  
33 *available to the claimant, from any one or more of the following:*

34 (A) *state required temporary non-occupational disability*  
35 *insurance;*

- 1           (B) workers\_ compensation;
- 2           (C) wage continuation programs of any employer;
- 3           (D) proceeds of a contract of insurance payable to the claimant
- 4 for loss which the beneficiary sustained; or,
- 5           (E) a contract providing services or benefits for disability.

6           (11) Contributing beneficiary means a beneficiary who has contributed

7 funds to the Fund.

8           (b) A provision in a trust, other than a testamentary trust, which

9 limits the availability of, or provides directly or indirectly for the

10 suspension, termination or diversion of the principal, income or beneficial

11 interest of either the grantor or the grantor\_s spouse in the event that the

12 grantor or grantor\_s spouse should apply for medical assistance or require

13 medical, hospital or nursing care or long term custodial, nursing or medical

14 care shall be void as against the public policy of the State of Arkansas,

15 without regard to the irrevocability of the trust or the purpose for which the

16 trust was created and without regard to whether the trust was created pursuant

17 to court order.

18           (c) This section is remedial in nature and is enacted to prevent

19 individuals otherwise ineligible for medical assistance benefits from making

20 themselves eligible by creating trusts in order to preserve their assets.

21           28-69-103. *Legislative intent. It is the intent of the General*

22 *Assembly to provide a method of assisting those persons within the state who,*

23 *as a result of personal injury, disability, or other medical condition, are in*

24 *need of supplemental benefits to improve or maintain reasonable quality of*

25 *life standards. To this end, it is the further intent of the General Assembly*

26 *to provide benefits in the amount of expenses actually incurred to satisfy*

27 *those special needs. Further, the Co-Trustees of the Fund shall have, in*

28 *addition to those powers and duties set forth herein, all powers and duties*

29 *authorized, imposed or conferred by law upon Co-Trustees of the Fund.*

30           28-69-104. *Special Needs Revolving Trust Fund. (a) There is created*

31 *in the State Treasury a revolving fund to be designated the Special Needs*

32 *Trust Revolving Fund\_. The Fund shall be a continuing fund, not subject to*

33 *fiscal year limitations, and shall consist of:*

- 34           (1) all moneys received from those individuals who desire to
- 35 establish or maintain eligibility for benefits under the Medical Assistance

1 Program but who possess income or resources, including funds recovered from  
2 third parties, in excess of the established federal eligibility requirements,  
3 and the consideration for divestiture of income and resources shall be  
4 presumed to be far adequate and fair compensation; and

5           (2) all moneys received by the Co-Trustees of the Fund from any  
6 other source including moneys received from any state, federal, or private  
7 source.

8           (b) All interest earned as a result of investing moneys in the Fund  
9 shall be paid into the Fund and not into the general revenues of this state.  
10 All moneys accruing to the credit of the Fund are appropriated and may be  
11 budgeted and expended by Co-Trustees of the Fund for the purpose of  
12 implementing the provisions of this subchapter. If the Co-Trustees do not  
13 agree about the payment of any benefit or benefits, the determination of DHS  
14 shall be binding.

15           28-69-105. Payment of Trust Funds.

16           (a) The Co-Trustees are hereby given complete discretion as to the  
17 expenditure of principal and income of the Fund for the purposes set forth in  
18 this subchapter not to exceed all of the income earned by the Fund annually,  
19 and no more than ten percent (10%) of the principal of the Fund. All income  
20 not expended annually shall become a part of and be added to the principal of  
21 the Fund. The expenditures from the Fund shall be subject to §28-69-106 and  
22 shall have the following priorities:

23           (1) First, each claimant who is also a contributing beneficiary  
24 shall be deemed to have priority as to distribution of his or her share of the  
25 principal and the income earned by his or her share of the Fund; or

26           (2) Second, any of the share of principal or income of the  
27 contributing beneficiary not expended for the contributing beneficiary plus  
28 all expenditure of principal and income as allowed above which are not  
29 designated for any contributing beneficiary may be expended for any other  
30 claimant.

31           (b) The Co-Trustees shall keep a current account balance for each  
32 contributing beneficiary\_s fund with said balance to be reduced by all  
33 expenditures for that contributing beneficiary whether out of the Fund or from  
34 any collateral source until the balance reaches zero. Should the contributing  
35 beneficiary die prior to his or her balance reaching zero, the balance shall

1 be paid to the estate of the deceased contributing beneficiaries.

2 (c) When a contributing beneficiary's account balance as described in  
3 paragraph (b) above reaches zero, the contributing beneficiary shall be  
4 treated as any other claimant for purposes of receiving benefits from this  
5 Fund. In addition to the annual accounting as required by §28-69-111 the Co-  
6 Trustees shall notify a contributing beneficiary when his or her account  
7 balance reaches zero.

8 (d) A benefit shall not be subject to execution, attachment,  
9 garnishment, or other process, except that benefits for allowable expense  
10 shall not be exempt from a creditor to the extent that the creditor has  
11 provided products, services, or accommodations, the costs of which are  
12 included in the benefit.

13 (e) An assignment by the claimant to any future benefit under the  
14 provisions of this subchapter is unenforceable, except an assignment of any  
15 benefit for allowable expense to the extent that the benefits are for the cost  
16 of products, services, or accommodations necessitated by the injury or  
17 disability on which the claim is based and are provided or are to be provided  
18 by the assignee.

19 28-69-106. Conditions for benefits - Changes in benefits.

20 (a) Benefits shall not be awarded:

21 (1) unless the claim has been filed with the Co-Trustees of the  
22 Fund after the injury, disability, or medical condition exists; or,

23 (2) if any governmental entitlement or insurance program provides  
24 comparable benefits to persons eligible to participate in such programs.

25 (b) Benefits otherwise payable to a beneficiary shall be diminished to  
26 the extent that the economic loss is recouped from collateral sources and  
27 retained by the beneficiary or claimant.

28 (c) In determining eligibility for benefits from the Fund, the trustee  
29 shall apply the same eligibility standards as those then in effect for  
30 assistance under the state medical assistance program.

31 (d) In the event the Fund results in a contributing beneficiary being  
32 declared ineligible for state medical assistance payments, the contributing  
33 beneficiary may elect:

34 (1) to take no action; or

35 (2) to withdraw from the Fund, whereupon the contributing

1 beneficiary shall be entitled to the unexpended portion of his contribution;  
2 or

3           (3) to continue to participate in the Fund and be eligible for  
4 benefits from the fund, but to relinquish any other interest in the fund,  
5 including any right the contributing beneficiary or the contributing  
6 beneficiary\_s estate may have had to any unexpended portion of the  
7 beneficiary\_s contribution. Any such relinquishment shall be deemed to have  
8 been made for adequate consideration.

9           28-69-107. Waiver of physician-patient privilege - Examinations and  
10 reports. (a) Any person filing a claim under the provisions of this  
11 subchapter shall be deemed to have waived any physician-patient privilege as  
12 to communications or records relevant to an issue of the physical, mental or  
13 emotional conditions of the claimant.

14           (b) If the mental, physical, or emotional condition of a claimant is  
15 material to a claim, upon good cause shown, the Co-Trustees of the Fund may  
16 order the claimant to submit to a mental or physical examination. The order  
17 shall specify the time, place, manner, conditions, and scope of the  
18 examination and the person by whom it is to be made. The order shall also  
19 require the person to file a detailed written report of the examination with  
20 the Co-Trustees of the Fund. The report shall set out the findings of the  
21 person making the report, including results of all tests made, diagnoses,  
22 prognoses, and other conclusions and reports of earlier examinations of the  
23 same conditions.

24           (c) The Co-Trustees of the Fund shall furnish to the beneficiary a copy  
25 of any reports examined.

26           (d) The Co-Trustees of the Fund may require the claimant to supply any  
27 additional medical or psychological reports available relating to the injury  
28 or death for which reparations are claimed.

29           28-69-108. Application forms - Cooperation by applicant. Each local  
30 office of DHS in the state shall keep application forms prepared and provided  
31 by the trustee and make them available to any person upon request.

32           28-69-109. Confidential information. The following information, when  
33 submitted to the Co-Trustees of the Fund as part of an application, shall be  
34 confidential:

35           (1) documents submitted by a claimant which relate to medical

1 treatment;

2 (2) investigate reports, if confidential under any other law.

3 28-69-110. Powers of Co-Trustees of the Fund - Logistical support.

4 (a) (1) The Co-Trustees of the Fund shall have the power to award  
5 benefits if satisfied by a preponderance of the evidence that the requirements  
6 for benefits have been met. The Co-Trustees of the Fund shall have authority  
7 to award the benefits either to the claimant or directly to the provider of  
8 services.

9 (2) The Co-Trustees of the Fund shall hear and determine all  
10 matters relating to claims for benefits, including the power to reopen claims  
11 without regard to statutes of limitation.

12 (3) The Co-Trustees of the Fund shall have the power to subpoena  
13 witnesses, compel their attendance, require the production of records and  
14 other evidence, administer oaths or affirmations, conduct hearings, and  
15 receive relevant information regarding any claim.

16 (4) The Co-Trustees of the Fund shall be provided such office,  
17 support staff and secretarial services as deemed necessary and the reasonable  
18 costs of administration of the trust shall be borne by the trust.

19 (b) In addition to any other powers and duties specified elsewhere in  
20 this subchapter, the Co-Trustees of the Fund may:

21 (1) regulate its own procedure except as otherwise provided in  
22 this subchapter;

23 (2) adopt rules and regulations to implement the provisions of  
24 this subchapter;

25 (3) define any term not defined in this subchapter;

26 (4) prescribe forms necessary to carry out the purposes of this  
27 subchapter;

28 (5) request access to any reports of investigations or other data  
29 necessary to assist the Co-Trustees of the Fund in making a determination of  
30 eligibility for benefits under the provisions of this subchapter;

31 (6) take notice of general, technical, and scientific facts  
32 within its specialized knowledge; and

33 (7) publicize the availability of benefits and information  
34 regarding the filing of claims therefor.

35 28-69-111. Annual report of Co-Trustees of the Fund. The Co-Trustees

1 of the Fund shall prepare and transmit annually a report of its activities to  
2 the director of the department. This report shall include the amount of  
3 benefits paid and a statistical summary of claims and benefits made and  
4 denied."

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6 SECTION 2. All provisions of this Act of a general and permanent nature  
7 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
8 Revision Commission shall incorporate the same in the Code.

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10 SECTION 3. If any provision of this Act or the application thereof to  
11 any person or circumstance is held invalid, such invalidity shall not affect  
12 other provisions or applications of the act which can be given effect without  
13 the invalid provision or application, and to this end the provisions of this  
14 act are declared to be severable.

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16 SECTION 4. All laws and parts of laws in conflict with this Act are  
17 hereby repealed.

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19 SECTION 5. EMERGENCY. It is hereby found and determined by the General  
20 Assembly of the State of Arkansas that the Medicaid eligibility laws of this  
21 state are in immediate need of amendment to comply with federal requirements  
22 and assure that otherwise ineligible individuals are prevented from  
23 artificially impoverishing themselves to receive benefits to which they are  
24 not otherwise entitled and to facilitate recovery of improperly obtained  
25 benefits and assure the fiscal integrity of the funds appropriated for  
26 Medicaid and this Act is necessary to accomplish that purpose. Therefore, an  
27 emergency is hereby declared to exist and this Act being immediately necessary  
28 for the immediate preservation of the public peace, health, and safety, shall  
29 be in full force and effect from and after its passage and approval.

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*/s/ Senator Bell*

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APPROVED: 4/20/93

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