

**Fifty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 7, 2003**

SENATE BILL NO. 2047
(Legislative Council)
(Judiciary B Committee)

AN ACT relating to trusts for individuals with disabilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act, unless the context otherwise requires:

1. "Individual with a disability" means an individual who, before creation of a third-party special needs trust or a self-settled special needs trust for that individual's benefit, is considered to be an individual with a disability as defined in 42 U.S.C. 1382c(a)(3).
2. "Self-settled special needs trust" means a trust created by an individual with a disability after August 10, 1993, which qualifies under 42 U.S.C. 1396p(d)(4)(A).
3. "Third-party special needs trust" means a trust that does not make an individual with a disability ineligible for publicly funded benefits while maintaining assets in that trust and which is created for the benefit of an individual with a disability and funded by someone other than the trust beneficiary, the beneficiary's spouse, a parent of a minor beneficiary, or anyone obligated to pay any sum for damages or any other purpose to or for the benefit of the trust beneficiary under the terms of a settlement agreement or judgment.

SECTION 2. Third-party special needs trusts under state law.

1. A third-party special needs trust must provide for the living expenses and other needs of an individual with a disability when publicly funded benefits are not sufficient to provide adequately for those needs. A third-party special needs trust must limit distributions in a manner and for purposes that supplement or complement publicly funded benefits for an individual with a disability. A third-party special needs trust may not have the effect of replacing, reducing, or substituting for publicly funded benefits otherwise available to a beneficiary with a disability or rendering a beneficiary with a disability ineligible for publicly funded benefits.
2. This section applies to any third-party special needs trust that complies with the requirements of this Act, regardless of the date on which the trust was created or funded. Notwithstanding any other provision of the law, this Act does not disqualify any beneficiary of a third-party special needs trust from receiving publicly funded benefits if the trust did not disqualify that individual under previous law.

SECTION 3. Self-settled special needs trusts. The district court may authorize the creation and funding of self-settled special needs trusts.

SECTION 4. Interpretation or enforcement - Reformation - Unenforceable trust provisions.

1. This Act does not require the submission of a third-party special needs trust or a self-settled special needs trust to a court for interpretation or enforcement.
2. A third-party special needs trust may not disqualify a recipient of publicly funded benefits solely because a contingent beneficiary is named to receive the net balance of the trust

estate upon the death of a beneficiary with a disability, or upon other termination of the trust.

3. The trustee or the grantor of any trust intended to be a third-party special needs trust or a self-settled special needs trust may seek court reformation of the trust to accomplish the purpose of a third-party special needs trust or a self-settled special needs trust.
4. Except for self-settled special needs trusts and third-party special needs trusts, a provision in a trust which provides for the suspension, termination, limitation, or diversion of the principal, income, or beneficial interest of a beneficiary if the beneficiary applies for, is determined eligible for, or receives publicly funded benefits is unenforceable as against the public policy of this state, without regard to the irrevocability of the trust or the purpose for which the trust was created.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-eighth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2047.

Senate Vote: Yeas 47 Nays 0 Absent 0

House Vote: Yeas 90 Nays 0 Absent 4

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2003.

Approved at _____ M. on _____, 2003.

Governor

Filed in this office this _____ day of _____, 2003,
at _____ o'clock _____ M.

Secretary of State