

SENATE BILL NO. 2187

Introduced by

Senators T. Mathern, Fischer, Thane

Representatives Kretschmar, Hawken, Mahoney

- 1 A BILL for an Act to create and enact a new chapter to title 59 of the North Dakota Century
2 Code, relating to trusts for individuals with disabilities.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** A new chapter to title 59 of the North Dakota Century Code is created and
5 enacted as follows:

6 **Definitions.** As used in this chapter, unless the context otherwise requires:

- 7 1. "Individual with a disability" means an individual who, before creation of a trust that
8 otherwise qualifies as a supplemental needs trust or a special needs trust for that
9 individual's benefit, is considered to be an individual with a disability under the
10 disability criteria specified for federal social security disability insurance or
11 supplemental security income or has a physical or mental illness or condition that,
12 in the expected natural course of the illness or condition either before or after the
13 creation of the trust, to a reasonable degree of medical certainty, is expected to
14 last for a continuous period of twelve months or more and substantially impairs that
15 individual's ability to provide for that individual's care or custody.
- 16 2. "Special needs trust" means a trust created after August 10, 1993, which qualifies
17 under federal law as a trust that does not make an individual with a disability
18 ineligible for medical assistance while maintaining assets in that trust.
- 19 3. "Supplemental needs trust" means a trust created for the benefit of an individual
20 with a disability and funded by someone other than the trust beneficiary, the
21 beneficiary's spouse, or anyone obligated to pay any sum for damages or any
22 other purpose to or for the benefit of the trust beneficiary under the terms of a
23 settlement agreement or judgement.

1 **Establishment of disability.** For purposes of this chapter, disability may be
2 established conclusively by the written opinion of a licensed professional who is qualified to
3 diagnose the illness or condition, confirmed by the written opinion of a second licensed
4 professional who is qualified to diagnose the illness or condition.

5 **Supplemental needs trusts under state law.**

- 6 1. A supplemental needs trust must provide for the living expenses and other needs
7 of an individual with a disability when benefits from publicly funded benefit
8 programs are not sufficient to provide adequately for those needs. A supplemental
9 needs trust must limit distributions in a manner and for purposes that supplement
10 or complement the benefits available under medical assistance and other publicly
11 funded benefit programs for disabled individuals. A supplemental needs trust may
12 not have the effect of replacing, reducing, or substituting for publicly funded
13 benefits otherwise available to the beneficiary or rendering the beneficiary ineligible
14 for publicly funded benefits.
- 15 2. The trust income and assets of a supplemental needs trust are considered
16 available to the beneficiary for medical assistance purposes to the extent they are
17 considered available to the beneficiary under medical assistance or supplemental
18 security income, whichever is used to determine the beneficiary's eligibility for
19 medical assistance. For other public assistance programs established or
20 administered under state law, assets and income will be considered available to
21 the beneficiary in accordance with the methodology applicable to the program.
- 22 3. This section applies to any supplemental needs trust that complies with the
23 requirements of this chapter, regardless of the date on which the supplemental
24 needs trust was created.

25 **Special needs trusts under federal law.** The courts of this state may authorize the
26 creation and funding of special needs trusts.

27 **Provisions for supplemental needs trusts and special needs trusts.**

- 28 1. This chapter does not require the submission of a supplemental needs trust or a
29 special needs trust to a state agency or to a court for interpretation or enforcement.
- 30 2. Except as allowed by sections 2 and 3 of this chapter, a provision in a trust that
31 provides for the suspension, termination, limitation, or diversion of the principal,

1 income, or beneficial interest of a beneficiary if the beneficiary applies for, is
2 determined eligible for, or receives public assistance or benefits under a public
3 health care program is unenforceable as against the public policy of this state,
4 without regard to the irrevocability of the trust or the purpose for which the trust
5 was created.

6 3. The trustee or the grantor of any trust may amend the trust to conform with state or
7 federal law to accomplish the purpose of a supplemental needs trust or special
8 needs trust without the need for court approval.

9 4. The court is authorized to reform any trust to conform with state or federal law to
10 accomplish the purpose of a supplemental needs trust or special needs trust.