

Fifty-seventh
Legislative Assembly
of North Dakota

ENGROSSED 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:
10 a. Under the disability criteria specified for federal social security disability
11 insurance or supplemental security income; or
12 b. Under the rules of the department of human services.
13 2. "Special needs trust" means a trust created after August 10, 1993, which qualifies
14 under federal law as a trust that does not make an individual with a disability
15 ineligible for medical assistance while maintaining assets in that trust.
16 3. "Supplemental needs trust" means a trust that is otherwise qualified under this
17 chapter created for the benefit of an individual with a disability and funded by
18 someone other than the trust beneficiary, the beneficiary's spouse, a parent of a
19 minor beneficiary, or anyone obligated to pay any sum for damages or any other
20 purpose to or for the benefit of the trust beneficiary under the terms of a settlement
21 agreement or judgement.

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

- 23 1. A supplemental needs trust must provide for the living expenses and other needs
24 of an individual with a disability when benefits from publicly funded benefit

1 programs are not sufficient to provide adequately for those needs. A supplemental
2 needs trust must limit distributions in a manner and for purposes that supplement
3 or complement the benefits available under medical assistance and other publicly
4 funded benefit programs for an individual with a disability. A supplemental needs
5 trust may not have the effect of replacing, reducing, or substituting for publicly
6 funded benefits otherwise available to the beneficiary or rendering the beneficiary
7 ineligible for publicly funded benefits.

- 8 2. This section applies to any supplemental needs trust that complies with the
9 requirements of this chapter, regardless of the date on which the supplemental
10 needs trust was created. Notwithstanding any other provision of the law, this
11 chapter does not disqualify any supplemental needs trust that qualified under
12 previous law.

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

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

- 16 1. This chapter does not require the submission of a supplemental needs trust or a
17 special needs trust to a state agency or to a court for interpretation or enforcement.
- 18 2. Except as allowed by sections 2 and 3 of this chapter, a provision in a trust that
19 provides for the suspension, termination, limitation, or diversion of the principal,
20 income, or beneficial interest of a beneficiary if the beneficiary applies for, is
21 determined eligible for, or receives public assistance or benefits under a public
22 health care program is unenforceable as against the public policy of this state,
23 without regard to the irrevocability of the trust or the purpose for which the trust
24 was created.
- 25 3. The court is authorized to reform any trust to conform with state or federal law if
26 the court determines the reformation to be necessary to accomplish the purpose of
27 a supplemental needs trust or special needs trust.