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Fifty-eighth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2047

Introduced by

Legislative Council

(Judiciary B Committee)

1   A BILL for an Act relating to trusts for individuals with disabilities.

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

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

4   1.   "Individual with a disability" means an individual who, before creation of a

5   third-party special needs trust or a self-settled special needs trust for that

6   individual's benefit, is considered to be an individual with a disability as defined in

7   42 U.S.C. 1382c(a)(3).

8   2.   "Self-settled special needs trust" means a trust created by an individual with a

9   disability after August 10, 1993, which qualifies under 42 U.S.C. 1396p(d)(4)(A).

10   3.   "Third-party special needs trust" means a trust that does not make an individual

11   with a disability ineligible for publicly funded benefits while maintaining assets in

12   that trust and which is created for the benefit of an individual with a disability and

13   funded by someone other than the trust beneficiary, the beneficiary's spouse, a

14   parent of a minor beneficiary, or anyone obligated to pay any sum for damages or

15   any other purpose to or for the benefit of the trust beneficiary under the terms of a

16   settlement agreement or judgment.

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

18   1.   A third-party special needs trust must provide for the living expenses and other

19   needs of an individual with a disability when publicly funded benefits are not

20   sufficient to provide adequately for those needs. A third-party special needs trust

21   must limit distributions in a manner and for purposes that supplement or

22   complement publicly funded benefits for an individual with a disability. A third-party

23   special needs trust may not have the effect of replacing, reducing, or substituting

1   for publicly funded benefits otherwise available to a beneficiary with a disability or

2   rendering a beneficiary with a disability ineligible for publicly funded benefits.

3   2.   This section applies to any third-party special needs trust that complies with the

4   requirements of this Act, regardless of the date on which the trust was created or

5   funded. Notwithstanding any other provision of the law, this Act does not disqualify

6   any beneficiary of a third-party special needs trust from receiving publicly funded

7   benefits if the trust did not disqualify that individual under previous law.

8   **SECTION 3. Self-settled special needs trusts.** The district court may authorize the

9   creation and funding of self-settled special needs trusts.

10   **SECTION 4. Interpretation or enforcement - Reformation - Unenforceable trust**

11   **provisions.**

12   1.   This Act does not require the submission of a third-party special needs trust or a

13   self-settled special needs trust to a court for interpretation or enforcement.

14   2.   A third-party special needs trust may not disqualify a recipient of publicly funded

15   benefits solely because a contingent beneficiary is named to receive the net

16   balance of the trust estate upon the death of a beneficiary with a disability, or upon

17   other termination of the trust.

18   3.   The trustee or the grantor of any trust intended to be a third-party special needs

19   trust or a self-settled special needs trust may seek court reformation of the trust to

20   accomplish the purpose of a third-party special needs trust or a self-settled special

21   needs trust.

22   4.   Except for self-settled special needs trusts and third-party special needs trusts, a

23   provision in a trust which provides for the suspension, termination, limitation, or

24   diversion of the principal, income, or beneficial interest of a beneficiary if the

25   beneficiary applies for, is determined eligible for, or receives publicly funded

26   benefits is unenforceable as against the public policy of this state, without regard to

27   the irrevocability of the trust or the purpose for which the trust was created.