

HOUSE BILL NO. 1458

Introduced by

Representative Klemin

Senator Hogue

1 A BILL for an Act to create and enact a new subsection to section 59-09-03 and a new section
2 to chapter 59-18 of the North Dakota Century Code, relating to the definition of irrevocable in
3 reference to a trust and a presumption against eligibility for assistance programs for certain
4 transactions; and to amend and reenact sections 59-16-13 and 59-17-06 of the North Dakota
5 Century Code, relating to the duty of a trustee to inform beneficiaries and the settlor.

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

7 **SECTION 1.** A new subsection to section 59-09-03 of the North Dakota Century Code
8 is created and enacted as follows:

9 "Irrevocable" means if used in reference to a trust, a trust that is not revocable,
10 including a formerly revocable trust that has become irrevocable, whether by the
11 death of a settlor or otherwise.

12 **SECTION 2. AMENDMENT.** Section 59-16-13 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **59-16-13. (813) Duty to inform and report.**

15 1. Subject to section 59-14-03, while a trust is revocable or to the extent that trust
16 property in a irrevocable trust is subject to a power of withdrawal, the duty of the
17 trustee to inform and report are owed exclusively:

18 a. To the settlor, while a trust is revocable;

19 b. To the holder of the power of withdrawal to the extent the trust property is
20 subject to the power during the period in which the power may be executed;
21 and

22 c. To a qualified beneficiary when the qualified beneficiary is required by law or
23 regulation to provide that information to determine eligibility for benefits or to
24 verify continued eligibility for benefits under title 50.

- 1 2. With respect to trust property in an irrevocable trust which is not subject to a power
2 of withdrawal:
- 3 a. A trustee shall keep the qualified beneficiaries of the trust reasonably
4 informed about the administration of the trust and of the material facts
5 necessary for them to protect their interests. Unless unreasonable under the
6 circumstances, a trustee shall promptly respond to a beneficiary's request for
7 information related to the administration of the trust.
- 8 ~~2.~~ b. A trustee upon written request shall promptly furnish to a qualified beneficiary
9 a copy of the portion of the trust instrument:
- 10 a. ~~To which relates to the interest of~~ a qualified beneficiary ~~of a revocable trust;~~
11 and
- 12 b. ~~To a beneficiary of a trust that is not revocable.~~
- 13 ~~3.~~ c. A trustee within sixty days after accepting a trusteeship shall notify the
14 qualified beneficiaries of the acceptance and of the trustee's name, address,
15 and telephone number.
- 16 4. ~~A trustee within sixty days after the date the trustee acquires knowledge of the~~
17 ~~creation of an irrevocable trust, or the date the trustee acquires knowledge that a~~
18 ~~formerly revocable trust has become irrevocable, whether by the death of the~~
19 ~~settlor or otherwise, shall notify the qualified beneficiaries of the trust's existence,~~
20 ~~of the identity of the settlor or settlors, of the right to request a copy of the trust~~
21 ~~instrument, and of the right to a trustee's report as provided in subsection 6.~~
- 22 d. A trustee shall notify the qualified beneficiaries of the trust existence, of the
23 identity of the settlor, of the right to request a copy of the trust instrument, and
24 of the right of the trustee's report as provided in subdivision f within sixty days
25 after the date the trustee acquires knowledge:
- 26 (1) Of the creation of an irrevocable trust; or
27 (2) That a formerly revocable trust has become irrevocable.
- 28 ~~5.~~ e. A trustee shall notify the qualified beneficiaries ~~in advance~~ of any change in
29 the method or rate of the trustee's compensation.
- 30 ~~6.~~ f. A trustee shall send to the distributees or permissible distributees of trust
31 income or principal, and to other qualified ~~or nonqualified~~ beneficiaries who

1 request it, at least annually and at the termination of the trust, a report of the
2 trust property, liabilities, receipts, and disbursements, including the source
3 and amount of the trustee's compensation, a listing of the trust assets and, if
4 feasible, their respective market values. Upon a vacancy in a trusteeship,
5 unless a cotrustee remains in office, a report must be sent to the qualified
6 beneficiaries by the former trustee. A personal representative, conservator, or
7 guardian may send the qualified beneficiaries a report on behalf of a
8 deceased or incapacitated trustee.

9 ~~7.~~ g. A beneficiary may waive the right to a trustee's report or other information
10 otherwise required to be furnished under this section. A beneficiary, with
11 respect to future reports and other information, may withdraw a waiver
12 previously given.

13 ~~8. The duties of a trustee specified in this section are not subject to section 59-14-03.~~

14 ~~9.~~ h. ~~Subsections 3~~ Subdivisions c and 4 d do not apply to a trustee that accepts a
15 trusteeship before August 1, 2007, to an irrevocable trust created before
16 August 1, 2007, or to a revocable trust that becomes irrevocable before
17 August 1, 2007.

18 **SECTION 3. AMENDMENT.** Section 59-17-06 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **59-17-06. Language invoking standard.** The following terms or comparable language
21 in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or
22 strategy permitted ~~under sections 59-16-02, 59-16-03, 59-16-05, 59-16-06, and 59-16-07 and~~
23 under this chapter: "investments permissible by law for investment of trust funds", "legal
24 investments", "authorized investments", "using the judgment and care under the circumstances
25 then prevailing that persons of prudence, discretion, and intelligence exercise in the
26 management of their own affairs, not in regard to speculation but in regard to the permanent
27 disposition of their funds, considering the probable income as well as the probable safety of
28 their capital", "prudent man rule", "prudent trustee rule", "prudent person rule", and "prudent
29 investor rule".

30 **SECTION 4.** A new section to chapter 59-18 of the North Dakota Century Code is
31 created and enacted as follows:

1 **Presumption against trustee.** A transaction between a trustee and the trust's
2 beneficiary during the existence of the trust or while the influence acquired by the trustee
3 remains by which the trustee or the trustee's spouse, parent, descendant, or sibling, or their
4 spouses obtains any advantage from the trust's beneficiary is presumed to be entered by the
5 trust's beneficiary without sufficient consideration and under undue influence if the transaction
6 contributes to the trust's beneficiary becoming eligible for support under a program of
7 assistance under title 50.