

(P. 500) 3-9-94 House - Human Res.
(P. 545) *[Signature]*
(P. 857) 3-23-94 House - Amend/Do Pass
FILED MAR 3 1994 w/ H-5605

SENATE FILE **2264**
BY COMMITTEE ON HUMAN RESOURCES

(SUCCESSOR TO SSB 2138)

Passed Senate, Date 3/8/94 (p. 564) Passed House, Date 4/13/94 (p. 1510)
Vote: Ayes 41 Nays 0 Vote: Ayes 96 Nays 0
Approved May 5, 1994
Passed 4-14-94
Vote 43-0 (P. 1221)
A BILL FOR

1 An Act relating to the establishment of supplemental needs trusts
2 for persons with disabilities.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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S.F. 2264

1 Section 1. NEW SECTION. 634A.1 DEFINITIONS.

2 As used in this chapter, unless the context otherwise
3 requires:

4 1. "Person with a disability" means a person to whom one
5 of the following applies, prior to creation of a trust which
6 otherwise qualifies as a supplemental needs trust for the
7 person's benefit:

8 a. Is considered to be a person with a disability under
9 the disability criteria specified in Title II or Title XVI of
10 the federal Social Security Act.

11 b. Has a physical or mental illness or condition which, in
12 the expected natural course of the illness or condition, to a
13 reasonable degree of medical certainty, is expected to
14 continue for a continuous period of twelve months or more and
15 substantially impairs the person's ability to provide for the
16 person's care or custody.

17 2. "Supplemental needs trust" means a trust created for
18 the benefit of a person with a disability and funded by a
19 person other than the trust beneficiary, the beneficiary's
20 spouse, or any person obligated to pay any sum for damages or
21 for any other purpose to or for the benefit of the trust
22 beneficiary under the terms of a settlement agreement or
23 judgment.

24 Sec. 2. NEW SECTION. 634A.2 SUPPLEMENTAL NEEDS TRUST --
25 REQUIREMENTS.

26 1. A supplemental needs trust established in compliance
27 with this chapter is in keeping with the public policy of the
28 state and is enforceable.

29 2. A supplemental needs trust established under this
30 chapter shall comply with all of the following:

31 a. Shall be established as a discretionary trust for the
32 purpose of providing a supplemental source for payment of the
33 reasonable living expenses and basic needs of a person with a
34 disability only if benefits from publicly funded benefit
35 programs are not sufficient to provide adequately for those

1 expenses and needs.

2 b. Shall contain provisions which prohibit disbursements
3 that would result in replacement, reduction, or substitution
4 for publicly funded benefits otherwise available to the
5 beneficiary or in rendering the beneficiary ineligible for
6 publicly funded benefits. The supplemental needs trust shall
7 provide for distributions only in a manner and for purposes
8 that supplement or complement the benefits available under
9 medical assistance, state supplementary assistance, and other
10 publicly funded benefit programs for persons with
11 disabilities.

12 3. For the purpose of establishing eligibility of a person
13 as a beneficiary of a supplemental needs trust, disability may
14 be established conclusively by the written opinion of a
15 licensed professional who is qualified to diagnose the illness
16 or condition, if confirmed by the written opinion of a second
17 licensed professional who is also qualified to diagnose the
18 illness or condition.

19 4. A supplemental needs trust is not enforceable if the
20 trust beneficiary becomes a patient or resident after sixty-
21 four years of age in a state institution or nursing facility
22 for six months or more and, due to the beneficiary's medical
23 need for care in an institutional setting, there is no
24 reasonable expectation, as certified by the beneficiary's
25 attending physician, that the beneficiary will be discharged
26 from the facility. For the purposes of this subsection, a
27 beneficiary participating in a group residential program is
28 not a patient or resident of a state institution or nursing
29 facility.

30 5. The trust income and assets of a supplemental needs
31 trust are considered available to the beneficiary for medical
32 assistance or other public assistance program purposes to the
33 extent that income and assets are considered available in
34 accordance with the methodology applicable to a particular
35 program.

1 6. A supplemental needs trust is not subject to
2 administration in the Iowa district court sitting in probate.
3 A trustee of a supplemental needs trust has all powers and
4 shall be subject to all the duties and liabilities as provided
5 in the probate code, except the duty of reporting to or
6 obtaining approval of the court.

7 7. Notwithstanding the prohibition of the funding of a
8 supplemental needs trust by the beneficiary, the beneficiary's
9 spouse, or a person obligated to pay the beneficiary under a
10 settlement agreement or judgment, a supplemental needs trust
11 may be established with the proceeds of backpayments made by
12 the United States social security administration resulting
13 from a judgment regarding the regulatory schemes for
14 determination of child disability.

15 EXPLANATION

16 This bill provides for the establishment of supplemental
17 needs trusts which are established for the benefit of persons
18 with disabilities and which are funded by someone other than
19 the beneficiary or the beneficiary's spouse or a person
20 obligated to pay a sum to or for the beneficiary under a
21 settlement or judgment. The income and assets of the trust
22 are to be used only for supplementing existing funding sources
23 for payment of the needs of the person with a disability and
24 disbursement of the funds is prohibited if the result would be
25 a replacement, reduction, or substitution of public funds or
26 would render the beneficiary ineligible for a publicly funded
27 benefit. A supplemental needs trust is not available to a
28 person who is a patient or resident of a state institution or
29 nursing facility for six months or more after the age of 64 if
30 the person is not reasonably expected to be discharged from
31 the facility. The bill provides that the trust income and
32 assets are considered to be available to the beneficiary for
33 purposes of determining the beneficiary's eligibility for
34 public programs to the extent that a particular program's
35 methodology requires. The bill also provides that

1 backpayments made in Sullivan v. Zebley by the United States
2 social security administration resulting from a judgment
3 regarding the regulatory schemes for determination of child
4 disability may be used for establishing a supplemental needs
5 trust. A supplemental needs trust is not subject to
6 administration by the probate court, although trustees are
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HOUSE AMENDMENT TO
SENATE FILE 2264

S-5634

1 Amend Senate File 2264, as passed by the Senate, as
2 follows:

3 1. Page 1, line 17, by striking the word "a" and
4 inserting the following: "an inter vivos or
5 testamentary".

6 2. Page 1, line 32, by inserting after the words
7 "payment of" the following: "expenses which include
8 but are not limited to".

Senate Concurred 4/14/94 (P. 221) RECEIVED FROM THE HOUSE

S-5634 FILED APRIL 13, 1994

SENATE FILE 2264

H-5605

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By COMMITTEE ON HUMAN RESOURCE
PLASIER of Sioux, Chairperson

H-5605 FILED MARCH 23, 1994

Adopted 4/13/94 (P. 1510)

Judge. chair

Riordan

Rittner

SSB-2138

Human Resources

SENATE FILE ^{New} 2264

BY (PROPOSED COMMITTEE ON HUMAN RESOURCES BILL BY CHAIRPERSON SZYMONIAK)

Passed Senate, Date _____ Passed House, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

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SENATE FILE 2264

AN ACT

RELATING TO THE ESTABLISHMENT OF SUPPLEMENTAL NEEDS TRUSTS FOR PERSONS WITH DISABILITIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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b. Shall contain provisions which prohibit disbursements that would result in replacement, reduction, or substitution for publicly funded benefits otherwise available to the beneficiary or in rendering the beneficiary ineligible for publicly funded benefits. The supplemental needs trust shall provide for distributions only in a manner and for purposes that supplement or complement the benefits available under medical assistance, state supplementary assistance, and other publicly funded benefit programs for persons with disabilities.

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4. A supplemental needs trust is not enforceable if the trust beneficiary becomes a patient or resident after sixty-four years of age in a state institution or nursing facility for six months or more and, due to the beneficiary's medical need for care in an institutional setting, there is no reasonable expectation, as certified by the beneficiary's attending physician, that the beneficiary will be discharged from the facility. For the purposes of this subsection, a beneficiary participating in a group residential program is not a patient or resident of a state institution or nursing facility.

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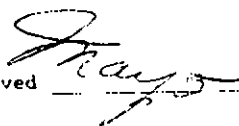
the United States social security administration resulting from a judgment regarding the regulatory schemes for determination of child disability.

LEONARD L. BOSWELL
President of the Senate

HAROLD VAN MAANEN
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2264, Seventy-fifth General Assembly.

JOHN F. DWYER
Secretary of the Senate

Approved  1994

TERRY E. BRANSTAD
Governor