

3/4/96 Do Pass
S. 3/11/96 Human Res.

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HUMAN RESOURCES

HOUSE FILE 2355
BY WITT, HARRISON, BRANSTAD,
HARPER, BODDICKER, HOUSER,
and MASCHER

Passed House, Date 3-11-96 ^(p.613) Passed Senate, Date _____
Vote: Ayes 94 Nays 0 Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the establishment of personal needs trusts for
2 persons with disabilities.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 2355

1 Section 1. NEW SECTION. 634B.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 the creation of a trust
6 which otherwise qualifies as a personal 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. "Personal needs trust" means an irrevocable trust
18 created for the benefit of a person with a disability and
19 funded with income or lump sum amounts received as damages or
20 for any other purpose to or for the benefit of the trust
21 beneficiary under the terms of a settlement agreement or
22 judgment.

23 Sec. 2. NEW SECTION. 634B.2 PERSONAL NEEDS TRUST --
24 REQUIREMENTS.

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

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

30 a. Shall be established by a parent, grandparent, legal
31 guardian, or spouse of the beneficiary within six months of
32 receipt of the initial amount under the terms of a settlement
33 agreement or judgment.

34 b. Shall be established as a discretionary trust for the
35 purposes of providing a supplemental source of payment of

1 expenses which include but are not limited to the reasonable
2 living expenses and basic needs of a person with a disability
3 only if benefits from publicly funded benefit programs are not
4 sufficient to provide adequately for those expenses or needs.

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

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

22 4. The trust income and assets of a personal needs trust
23 are considered available to the beneficiary for medical
24 assistance or other public assistance program purposes to the
25 extent that income and assets are considered available in
26 accordance with the methodology applicable to a particular
27 program.

28 5. A personal needs trust is not subject to administration
29 in the Iowa district court sitting in probate. A trustee of a
30 personal needs trust may disburse both income and principal in
31 any amount according to the terms of the trust document,
32 without the supervision or approval of the court.

33 6. The trustee of a personal needs trust may, at the
34 trustee's discretion, use income and principal for expenses
35 associated directly with the beneficiary's disability, and for

1 expenses that are solely supplemental in nature to improve the
2 beneficiary's quality of life as determined by the trustee.

3 7. Following the death of the beneficiary of a personal
4 needs trust, the state may file a claim against the personal
5 needs trust for payment of any debt due and owing the
6 department of human services for payment of medical assistance
7 paid on behalf of the beneficiary.

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

18 EXPLANATION

19 This bill provides for the establishment of personal needs
20 trusts which are established for the benefit of persons with
21 disabilities and which are funded by amounts received through
22 a settlement agreement or judgment. The trust is to be
23 established as a discretionary trust with income and assets of
24 the trust used only for supplementing existing funding sources
25 for payment of the needs of the person with a disability.
26 Disbursement of the funds is prohibited if the result would be
27 a replacement, reduction, or substitution of public funds or
28 would render the beneficiary ineligible for a publicly funded
29 benefit. Establishment of eligibility of a person as a person
30 with a disability may be provided by the written opinion of a
31 licensed professional who is qualified to diagnose the injury,
32 illness, or condition if the opinion is confirmed by a second
33 qualified person. The bill provides that the trust income and
34 assets are considered to be available to the beneficiary for
35 the purposes of determining the beneficiary's eligibility for

1 public programs to the extent that a particular program's
2 methodology requires. A personal needs trust is not subject
3 to administration by the probate court and the trustee may
4 make disbursements at the trustee's discretion, in accordance
5 with the terms of the trust document, for expenses associated
6 directly with the beneficiary's disability and for expenses
7 which are solely supplemental in nature if the beneficiary's
8 quality of life will be enhanced, without the supervision or
9 approval of the court. A personal needs trust is not
10 available to a person who is a patient or resident of a state
11 institution or nursing facility for six months or more after
12 the age of 64 if the person is not reasonably expected to be
13 discharged from the facility.

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