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MAR 6 1997

HOUSE FILE 492
BY COMMITTEE ON HUMAN RESOURCES

Place On Calendar

(SUCCESSOR TO HSB 161)

Passed House, ^(P.962) Date 4-2-97 Passed Senate, Date 4/23/97
Vote: Ayes 96 Nays 0 Vote: Ayes 48 Nays 0
Approved May 2, 1997

A BILL FOR

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

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

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HOUSE FILE 492

H-1242

1 Amend House File 492 as follows:
2 1. Page 1, line 22, by inserting after the word
3 "include" the following: ", but is not limited to,".
By WITT of Black Hawk

H-1242 FILED MARCH 19, 1997

adapted 4-2-97 (P.961)

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HT 472

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 an inter vivos or
18 testamentary trust created for the benefit of a person with a
19 disability and funded by a person other than the trust
20 beneficiary or the beneficiary's spouse, and which is declared
21 to be a supplemental needs trust in the instrument creating
22 the trust. "Supplemental needs trust" shall include a trust
23 created for the benefit of a person with a disability and
24 funded solely with moneys awarded as damages in a personal
25 injury case or moneys received in the settlement of a personal
26 injury case provided that the trust is created within six
27 months of receiving the award or settlement, the trust is
28 irrevocable, the beneficiary is not named a trustee of the
29 trust, and the instrument creating the trust declares the
30 trust to be a supplemental needs trust.

31 Sec. 2. NEW SECTION. 634A.2 SUPPLEMENTAL NEEDS TRUST --
32 REQUIREMENTS.

33 1. A supplemental needs trust established in compliance
34 with this chapter is in keeping with the public policy of this
35 state and is enforceable.

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

3 a. Shall be established as a discretionary trust for the
4 purpose of providing a supplemental source for payment of
5 expenses which include but are not limited to the reasonable
6 living expenses and basic needs of a person with a disability
7 only if benefits from publicly funded benefit programs are not
8 sufficient to provide adequately for those expenses and needs.

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

19 3. For the purpose of establishing eligibility of a person
20 as a beneficiary of a supplemental needs trust, disability may
21 be established conclusively by the written opinion of a
22 licensed professional who is qualified to diagnose the illness
23 or condition, if confirmed by the written opinion of a second
24 licensed professional who is also qualified to diagnose the
25 illness or condition.

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

1 facility.

2 5. The trust income and assets of a supplemental needs
3 trust are considered available to the beneficiary for medical
4 assistance or other public assistance program purposes to the
5 extent that income and assets are considered available in
6 accordance with the methodology applicable to a particular
7 program.

8 6. A supplemental needs trust is not subject to
9 administration in the Iowa district court sitting in probate.
10 A trustee of a supplemental needs trust has all powers and
11 shall be subject to all the duties and liabilities of a
12 trustee as provided in the probate code, except the duty of
13 reporting to or obtaining approval of the court.

14 7. Notwithstanding the prohibition of the funding of a
15 supplemental needs trust by the beneficiary or the
16 beneficiary's spouse, a supplemental needs trust may be
17 established with the proceeds of back payments made by the
18 United States social security administration resulting from a
19 judgment regarding the regulatory schemes for determination of
20 the disability of a child.

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EXPLANATION

22 This bill reenacts Code chapter 634A which was repealed in
23 1995. Code chapter 634A relates to supplemental needs trusts
24 for people with disabilities.

25 The bill defines "supplemental needs trust" as an inter
26 vivos or testamentary trust created for the benefit of a
27 person with a disability and funded by a person other than the
28 trust beneficiary or the beneficiary's spouse, and which is
29 declared to be a supplemental needs trust in the instrument
30 creating the trust. A supplemental needs trust is also
31 defined as a trust created for the benefit of a person with a
32 disability and funded solely with moneys awarded as damages in
33 a personal injury case or moneys received in the settlement of
34 a personal injury case provided that the trust is created
35 within six months of receiving the award or settlement, the

1 trust is irrevocable, the beneficiary is not named a trustee
2 of the trust, and the trust instrument declares the trust to
3 be a supplemental needs trust.

4 The bill provides that a supplemental needs trust must be
5 established as a discretionary trust for the purpose of
6 providing a supplemental source for the payment of expenses
7 only if benefits from publicly funded benefit programs are not
8 sufficient to provide adequately for those expenses and needs.
9 The bill also provides that a supplemental needs trust must
10 contain provisions which would prohibit disbursements that
11 would result in replacement, reduction, or substitution of
12 publicly funded benefits or would render the beneficiary
13 ineligible for publicly funded benefits. Distributions under
14 the trust must only be in a manner or for purposes that
15 supplement or complement publicly funded benefits.

16 The bill provides that eligibility of a person as a
17 beneficiary may be established conclusively by the written
18 opinion of a qualified licensed professional if confirmed by
19 the written opinion of a second qualified licensed
20 professional.

21 The bill provides that a supplemental needs trust becomes
22 unenforceable if the beneficiary becomes a patient or resident
23 after 64 years of age in a state institution or nursing
24 facility for six months or more and there is no reasonable
25 expectation the beneficiary will be discharged. The trust
26 will not become unenforceable for living in a group
27 residential program.

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

34 The bill provides that a supplemental needs trust is not
35 subject to administration in the Iowa district court sitting

1 in probate.

2 The bill provides that the trust may be established with
3 the proceeds of back payments made by the United States social
4 security administration resulting from a judgment regarding
5 the regulatory schemes for determination of child disability.

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4/2/97 Memo Res.
5-4/3/97 Do Pass
5-4/10/97 Unfinished Business Calendar

HOUSE FILE **492**
BY COMMITTEE ON HUMAN RESOURCES

(SUCCESSOR TO HSB 161)

(As Amended and Passed by the House, April 2, 1997)

Passed House, Date _____ Passed Senate, Date 4/23/97
Vote: Ayes _____ Nays _____ Vote: Ayes 48 Nays 0
Approved May 2, 1997

A BILL FOR

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

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

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House Amendments _____

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 an inter vivos or
18 testamentary trust created for the benefit of a person with a
19 disability and funded by a person other than the trust
20 beneficiary or the beneficiary's spouse, and which is declared
21 to be a supplemental needs trust in the instrument creating
22 the trust. "Supplemental needs trust" shall include, but is
23 not limited to, a trust created for the benefit of a person
24 with a disability and funded solely with moneys awarded as
25 damages in a personal injury case or moneys received in the
26 settlement of a personal injury case provided that the trust
27 is created within six months of receiving the award or
28 settlement, the trust is irrevocable, the beneficiary is not
29 named a trustee of the trust, and the instrument creating the
30 trust declares the trust to be a supplemental needs trust.

31 Sec. 2. NEW SECTION. 634A.2 SUPPLEMENTAL NEEDS TRUST --
32 REQUIREMENTS.

33 1. A supplemental needs trust established in compliance
34 with this chapter is in keeping with the public policy of this
35 state and is enforceable.

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

3 a. Shall be established as a discretionary trust for the
4 purpose of providing a supplemental source for payment of
5 expenses which include but are not limited to the reasonable
6 living expenses and basic needs of a person with a disability
7 only if benefits from publicly funded benefit programs are not
8 sufficient to provide adequately for those expenses and needs.

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

19 3. For the purpose of establishing eligibility of a person
20 as a beneficiary of a supplemental needs trust, disability may
21 be established conclusively by the written opinion of a
22 licensed professional who is qualified to diagnose the illness
23 or condition, if confirmed by the written opinion of a second
24 licensed professional who is also qualified to diagnose the
25 illness or condition.

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

1 facility.

2 5. The trust income and assets of a supplemental needs
3 trust are considered available to the beneficiary for medical
4 assistance or other public assistance program purposes to the
5 extent that income and assets are considered available in
6 accordance with the methodology applicable to a particular
7 program.

8 6. A supplemental needs trust is not subject to
9 administration in the Iowa district court sitting in probate.
10 A trustee of a supplemental needs trust has all powers and
11 shall be subject to all the duties and liabilities of a
12 trustee as provided in the probate code, except the duty of
13 reporting to or obtaining approval of the court.

14 7. Notwithstanding the prohibition of the funding of a
15 supplemental needs trust by the beneficiary or the
16 beneficiary's spouse, a supplemental needs trust may be
17 established with the proceeds of back payments made by the
18 United States social security administration resulting from a
19 judgment regarding the regulatory schemes for determination of
20 the disability of a child.

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Witt, Ch
Veenstra
LORD

HSB 161

HUMAN RESOURCES

Successfully
492

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
HUMAN RESOURCES BILL BY
CHAIRPERSON BODDICKER)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

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2 disabilities.

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

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10/1/1992

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23 as damages in a personal injury case or moneys received in the
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26 settlement, the trust is irrevocable, and the beneficiary is
27 not named the trustee of the trust.

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

18 EXPLANATION

19 This bill reenacts Code chapter 634A which was repealed in
20 1995. Code chapter 634A relates to supplemental needs trusts
21 for people with disabilities.

22 The bill defines "supplemental needs trust" as an inter
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33 security administration resulting from a judgment regarding
34 the regulatory schemes for determination of child disability.

35

HOUSE FILE 492

AN ACT

RELATING TO SUPPLEMENTAL NEEDS TRUSTS FOR PERSONS WITH
DISABILITIES.

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

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

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7. Notwithstanding the prohibition of the funding of a supplemental needs trust by the beneficiary or the beneficiary's spouse, a supplemental needs trust may be established with the proceeds of back payments made by the United States social security administration resulting from a

judgment regarding the regulatory schemes for determination of the disability of a child.

RON J. CORBETT
Speaker of the House

MARY E. KRAMER
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 492, Seventy-seventh General Assembly.

ELIZABETH ISAACSON
Chief Clerk of the House

Approved *May 2*, 1997

TERRY E. BRANSTAD
Governor