

CHAPTER 1157**HAZARDOUS SUBSTANCES CLEANUP COSTS***S.F. 2216*

AN ACT allowing recovery of hazardous substances cleanup costs by governmental subdivisions.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 455B.392, subsection 1, paragraph a, Code Supplement 1993, is amended to read as follows:

a. The reasonable cleanup costs incurred by the state or its political subdivisions, by governmental subdivisions, or by any other persons participating in the prevention or mitigation of damages with the approval of the director, as a result of the failure of the person to clean up a hazardous substance involved in a hazardous condition caused by that person.

Sec. 2. Section 455B.392, subsection 5, Code Supplement 1993, is amended to read as follows:

5. Money collected pursuant to this section shall be deposited in the hazardous waste remedial fund created in section 455B.423 and. Moneys shall be used to reimburse governmental subdivisions requested to assist in the cleanup for which the moneys were collected. The remainder of the moneys shall be used in the manner permitted for the fund.

Approved May 5, 1994

CHAPTER 1158**SUPPLEMENTAL NEEDS TRUSTS FOR PERSONS WITH DISABILITIES***S.F. 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:

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

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

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

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

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

2. "Supplemental needs trust" means an inter vivos or testamentary trust created for the benefit of a person with a disability and funded by a person other than the trust beneficiary, the beneficiary's spouse, or any person obligated to pay any sum for damages or for any other purpose to or for the benefit of the trust beneficiary under the terms of a settlement agreement or judgment.

Sec. 2. NEW SECTION. 634A.2 SUPPLEMENTAL NEEDS TRUST — REQUIREMENTS.

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

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

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

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.

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

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.

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

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

7. Notwithstanding the prohibition of the funding of a supplemental needs trust by the beneficiary, the beneficiary's spouse, or a person obligated to pay the beneficiary under a settlement agreement or judgment, 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 child disability.

Approved May 5, 1994