

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2187

2001 SENATE HUMAN SERVICES

SB 2187

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2187

Senate Human Services Committee

Conference Committee

Hearing Date January 23, 2001

Tape Number	Side A	Side B	Meter #
1	X		
1		X	23.5
January 24, 2001 1	X		37.6
Committee Clerk Signature	<i>Paul Klodejchuk</i>		

Minutes:

The Senate Human Services Committee was called to order by Senator Lee with all members present.

The hearing was opened on SB 2187.

SENATOR MATHERN introduced the bill on behalf of the well-being of family members in the case of disability. Government programs are often not adequate to meet the needs of the person or the family believe there should be a greater level of support than the Government provides.

There is a wish to put money aside to help that person meet the needs of the future. A supplemental needs trust is set up, an asset on the side, for times of need. The technical and legal side will be discussed by others.

WILLIAM GUY III, Attorney with Gunhus Law Firm, Fargo, Moorhead, supports bill. (Written testimony). Presented proposed amendments. SENATOR LEE: Has there ever been a limit of dollars on the trust? MR. GUY: There is no limit. An estate plan for a family would be the trust

getting equal share of the estate. SENATOR KILZER: When did the Federal Statute come into

being? MR. GUY: With the overact of 1993, 7 years. SENATOR KILZER: Occasionally

there is an accident in which a settlement which goes to the disabled. Is this a place for this

money? MR. GUY: If the disabled person receives a settlement, these funds would go into a

special need trust authorized by Federal law. After the death of the individual the proceeds

would go to the Human Services Department for money advanced to them during the lifetime of

the disability. This is already a matter of Federal. This bill will only make it clear that the state

has authority to create trust. SENATOR MATHERN: Would you review the amendments?

MR. GUY: An attorney from the Human Services department went through it and even though

they do not basically agree with it, it alleviated many of their concerns. SENATOR FISCHER:

Do these amendments destroy or alter the general intent of the original bill? MR. GUY: No they

operate well without them. SENATOR MATHERN: Two questions - Where is the expertise to

make this work? Where would the money be held? MR. GUY: The expertise to prepare these

trusts lies primarily with the attorneys who do estate planning. The trustee could be a family

member, trustee, or someone appointed.

ROGER SCHWINGHAMMER, father of disabled child, supports bill. What happens to child

when parents are gone. We rely on help from citizens. Assets need to be used before

Government income kicks in. (written testimony).

BILL CHAUSSEE, President of the Guardianship Assoc. Of ND, supports bill. (Written

testimony)

COURTNEY KOEBELE, ARC, supports bill.. SENATOR KILZER: What are tax effects for

income, Federal and State?

MEL WEBSTER, Lawyer, supports bill. This law tracks the Federal law and ND Human Services Department. Make legal community aware of trusts for individuals.

BLAINE NORDWALL, Director of Economic Assistance Policy for ND Dept. Of Human Services, is neutral from the Department. The amendments should take care of most of our reservations with bill. This is an expansion. (Written testimony). We don't know what is might cost and we don't think it does much. SENATOR MATHERN: Would you like us to add something so it does more? MR. NORDWALL: A bill itself won't inform families. They will go to lawyers, friends, family and that's how they continue to find out. SENATOR MATHERN: Does the Dept make people aware of supplemental needs trust availability? MR. NORDWALL: The department does not have such a brochure, but I believe that in practice the people who deal with developmental disabilities know that trusts are possible. SENATOR LEE: Can you comment on amendments? MR. NORDWALL: The amendments would take care of concerns. The special needs trust is no a concern. The supplemental needs trust is the concern because of Federal law.

SOL WEZELMAN, father, was not aware that this was new? What effect will this bill have on my trust. This bill raises questions. It implies 3 different trusts. We don't seem to fall into any of those. If we are going to grandfather trusts created before those dates, it would clarify the bill. MR. NORDWALL: 1993 was the effective date of language you see. Trusts established before that date would be outside of the trust regulations.. MR. GUY: If his trust is in his will he does not know what will happen. If the trust is approved by department it will continue to be approved.

The hearing was closed on SB 2187.

Discussion resumed on 2187, Tape 1, Side B, Meter 23.5

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Senate Human Services Committee
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SENATOR FISCHER moved to accept the amendment. SENATOR KILZER seconded it.

Roll call vote carried 6-0. SENATOR FISCHER moved DO PASS AS AMENDED.

SENATOR MATHERN seconded it. Roll Call Vote carried 6-0. SENATOR MATHERN will carry the bill.

January 24, 2001, Tape 1 Side A, Meter 37.6.

SENATOR MATHERN moved to reconsider the action taken previously. SENATOR FISCHER seconded it. Voice vote carried. SENATOR MATHERN explained the concern of prior trusts to be accepted. Suggested wording - on Page 2, line 24 we would insert the wording

"notwithstanding any other provisions, this chapter shall not be construed to disqualify any supplemental needs trust that qualifies under previously existing law." We are simply

grandfathering in all existing trusts to the extent that they were already qualified. Discussion.

SENATOR MATHERN moved to further amend SB 2187. SENATOR ERBELE seconded it.

Roll call vote carried 6-0. SENATOR MATHERN moved a DO PASS AS AMENDED.

SENATOR ERBELE seconded the motion. Roll call vote carried 6-0. SENATOR MATHERN will carry the bill.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2187

Page 1, line 9, replace "under the" with ":",

Page 1, after line 9, insert:

"a. Under the"

Page 1, line 11, after "Income" insert ";" and remove "has a physical or mental illness or condition that,"

Page 1, after line 11, insert:

"b. Under the regulations of the Department of Human Services."

Page 1, remove lines 12 through 15

Page 1, line 19, after the second "trust" insert "that is otherwise qualified pursuant to section 2 of this chapter"

Page 1, line 21, after "spouse," insert "a parent of a minor beneficiary,"

Page 2, overstrike lines 1 through 4

Page 2, line 11, replace "disabled individuals" with "an individual with a disability"

Page 2, remove lines 15 through 21

Page 2, line 22, replace "3" with "2"

Page 3, remove lines 6 through 8

Page 3, line 9, replace "4" with "3" and after "law" insert "if the court determines the reformation to be necessary"

Renumber accordingly

Roll Call Vote #: /

Date: 11/23/01

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2187

Senate HUMAN SERVICES Committee

Subcommittee on _____

or

Conference Committee

Legislative Council Amendment Number _____

Action Taken Amendment

Motion Made By Sen Fischer Seconded By Sen Kilzer

Senators	Yes	No	Senators	Yes	No
Senator Lee, Chairperson	✓		Senator Polovitz	✓	
Senator Kilzer, Vice-Chairperson	✓		Senator Mathern	✓	
Senator Erbele	✓				
Senator Fischer	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Roll Call Vote #: 2 Date: 1/23/01

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2187

Senate HUMAN SERVICES Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Amended

Motion Made By Sen Fischer Seconded By Sen Mathern

Senators	Yes	No	Senators	Yes	No
Senator Lee, Chairperson	✓		Senator Polovitz	✓	
Senator Kilzer, Vice-Chairperson	✓		Senator Mathern	✓	
Senator Erbele	✓				
Senator Fischer	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen Mathern

If the vote is on an amendment, briefly indicate intent:

PROPOSED AMENDMENTS TO SENATE BILL NO. 2187

Page 1, line 9, insert :

Page 1, line 9, insert a.

Page 1, line 15, insert or.

Page 1, line 16, insert b.

Page 1, line 11, remove ~~or has a physical or mental illness or condition that, in the expected natural course of the illness or condition either before or after the creation of the trust, to a reasonable degree of medical certainty, is expected to last for a continuous period of twelve months or more and substantially impairs that individual's ability to provide for that individual's care or custody~~ and replace with or under the regulations of the Department of Human Services.

Page 1, line 19, insert which is otherwise qualified pursuant to section 2 of this chapter

Page 1, line 21, insert a parent of a minor beneficiary.

Page 2, line 1, remove ~~Establishment of disability. For purposes of this chapter, disability may be established conclusively by the written opinion of a licensed professional who is qualified to diagnose the illness or condition, confirmed by the written opinion of a second licensed professional who is qualified to diagnose the illness or condition.~~

Page 2, line 5, title as SECTION 2.

Page 2, line 6, remove ~~must~~ and replace with may

Page 2, line 11, replace ~~disabled individuals~~ with an individual with a disability.

Page 2, line 15, remove ~~The trust income and assets of a supplemental needs trust are considered available to the beneficiary for medical assistance purposes to the extent they are considered available to the beneficiary under medical assistance or supplemental security income, whichever is used to determine the beneficiary's eligibility for medical assistance. For other public assistance programs established or administered under state law, assets and income will be considered available to the beneficiary in accordance with the methodology applicable to the program.~~

Page 2, line 22, remove ~~3:~~

Page 2, line 25, title as SECTION 3.

Page 2, line 27, title as SECTION 4.

Page 3, line 6, remove ~~The trustee or the grantor of any trust may amend the trust to conform with state or federal law to accomplish the purpose of a supplemental needs trust or special needs trust without the need for court approval.~~

Page 3, line 9, remove ~~4:~~

Page 3, line 9, insert if the court determines the reformation to be necessary.

Roll Call Vote #:

Date: 1/24/01
3

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2187

Senate HUMAN SERVICES Committee

Subcommittee on _____

or

Conference Committee

Legislative Council Amendment Number _____

Action Taken Amended amendments

Motion Made By Sen Mathern Seconded By Sen Erbele

Senators	Yes	No	Senators	Yes	No
Senator Lee, Chairperson	✓		Senator Polovitz	✓	
Senator Kilzer, Vice-Chairperson	✓		Senator Mathern	✓	
Senator Erbele	✓				
Senator Fischer	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Roll Call Vote #: 4

Date: 1/24/01

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2187

Senate HUMAN SERVICES Committee

Subcommittee on _____

or

Conference Committee

Legislative Council Amendment Number _____

Action Taken Be pass as amended

Motion Made By Sen Mathern Seconded By Sen Erbele

Senators	Yes	No	Senators	Yes	No
Senator Lee, Chairperson	✓		Senator Polovitz	✓	
Senator Kilzer, Vice-Chairperson	✓		Senator Mathern	✓	
Senator Erbele	✓				
Senator Fischer	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen Mathern

If the vote is on an amendment, briefly indicate intent:

