

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1290

Introduced by DeBoer, 10.

Read first time January 16, 2024

Committee:

- 1 A BILL FOR AN ACT relating to public health and welfare; to amend section
- 2 30-3801, Reissue Revised Statutes of Nebraska; to provide
- 3 requirements for special needs trusts as prescribed; and to repeal
- 4 the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 30-3801, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 30-3801 (UTC 101) Sections 30-3801 to 30-38,110, and sections 2 to 6
4 of this act, shall be known and may be cited as the Nebraska Uniform
5 Trust Code.

6 Sec. 2. It is the policy of the State of Nebraska to encourage the
7 use of a special needs trust by an individual with disabilities to
8 preserve funds to provide for the needs of the individual that are not
9 met by governmental benefits and that enhance such individual's quality
10 of life.

11 Sec. 3. For purposes of sections 1 to 5 of this act:

12 (1) Beneficiary with a disability means a beneficiary of a trust,
13 who a special needs fiduciary believes may qualify for governmental
14 benefits based on disability whether or not the beneficiary currently
15 receives those benefits, or is an individual who has been adjudicated to
16 be disabled;

17 (2) Governmental benefits means financial aid or services from a
18 state, federal, or other public agency;

19 (3) Pooled special needs trust means a trust which combines assets
20 and is managed by a nonprofit association providing a separate account
21 maintained for each beneficiary with a disability;

22 (4) Self-settled special needs trust means a trust which has been
23 funded with the assets of a beneficiary with a disability and includes a
24 first party special needs trust;

25 (5) Special needs fiduciary means a trustee or other fiduciary,
26 other than a settlor, that has discretion to distribute, or is required
27 to distribute, part or all of the principal of a trust to a current
28 beneficiary with a disability;

29 (6) Special needs trust means a trust the trustee believes would not
30 be considered a resource for purposes of determining whether a
31 beneficiary with a disability is eligible for governmental benefits and

1 includes a supplemental needs trust; and

2 (7) Third-party special needs trust means a trust which has been
3 funded with the assets of an individual other than the beneficiary with a
4 disability.

5 Sec. 4. (1) Each state agency that provides governmental benefits
6 to individuals of any age with disabilities through means-tested
7 programs, including the medical assistance program, shall adopt
8 regulations that:

9 (a) Are not more restrictive than existing federal law, regulations,
10 or policies with regard to the treatment of a special needs trust,
11 including a trust defined in 42 U.S.C. 1396p(c)(2) and 42 U.S.C. 1396p(d)
12 (4);

13 (b) Are not more restrictive than any state law regarding trusts,
14 including any state law relating to the reasonable exercise of discretion
15 by a trustee, guardian, or conservator in the best interests of the
16 beneficiary;

17 (c) Do not require disclosure of a beneficiary's personal or
18 confidential information without the consent of the beneficiary;

19 (d) Allow an individual account in a pooled asset special needs
20 trust to be funded without financial limit;

21 (e) Allow an individual to establish or fund an individual account
22 in a pooled special needs trust without an age limit or a transfer
23 penalty;

24 (f) Allow an individual to fund a special needs trust for the
25 individual's child with disabilities without a transfer penalty and
26 regardless of the child's age; and

27 (g) Allow all legally assignable income or resources to be assigned
28 to any special needs trust without limit.

29 (2) Nothing in this section may be interpreted to require a court
30 order to authorize the funding of, or a disbursement from, a special
31 needs trust.

1 Sec. 5. (1) A determination by the Internal Revenue Service
2 regarding the nonprofit status of a nonprofit organization operating a
3 pooled special needs trust shall be sufficient to satisfy the nonprofit
4 requirement of 42 U.S.C. 1396p(d)(4)(C).

5 (2) A state agency may not impose additional requirements on an
6 organization described in subsection (1) of this section for the purpose
7 of qualifying or disqualifying the organization from offering a pooled
8 asset special needs trust.

9 Sec. 6. A regulation adopted by a state agency regarding pooled
10 special needs trusts shall apply only to those trust beneficiaries who
11 are residents or who receive governmental benefits funded by the state.

12 Sec. 7. Original section 30-3801, Reissue Revised Statutes of
13 Nebraska, is repealed.