

CHAPTER 107—S.F.No. 487

An act relating to natural resources; requiring that iron mines and production facilities be maintained in salable operating condition; proposing coding for new law in Minnesota Statutes, chapter 93.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. [93.003] IRON MINING; CONDITIONS.

Legal authority to mine and process iron ore, a basic irreplaceable natural resource of the people of the state of Minnesota, is subject to the conditions of this section. When the owner or operator of an iron mine or related production or beneficiation facilities determines to discontinue the operation of the mine or facilities for any reason it shall maintain the mine or facilities in salable operating condition for at least one year after it discontinues operation in order to allow the state of Minnesota and other interested public and private bodies to seek a new owner and operator. The requirement imposed by this section is a preliminary and permanent requirement on the right of an owner to commence or continue the operation of an iron mine or related facilities. This requirement is enforceable on all owners and operators and successors of owners and operators and shall be enforced by the state in any action in bankruptcy or other litigation that may affect it.

Presented to the governor May 6, 1993

Signed by the governor May 7, 1993, 3:20 p.m.

CHAPTER 108—S.F.No. 44

An act relating to trusts; making certain trust provisions related to public assistance eligibility unenforceable as against public policy; clarifying availability of trusts in determining eligibility for medical assistance and other benefit programs; defining supplemental needs trusts; clarifying enforceability of supplemental needs trusts; amending Minnesota Statutes 1992, section 501B.89.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1992, section 501B.89, is amended to read:

501B.89 ~~EXCULPATORY CLAUSES TRUST PROVISIONS LINKED TO PUBLIC ASSISTANCE ELIGIBILITY UNENFORCEABLE; SUPPLEMENTAL NEEDS TRUSTS.~~

Subdivision 1. TRUSTS CONTAINING LIMITATIONS LINKED TO ELIGIBILITY FOR PUBLIC ASSISTANCE. (a) Except as allowed by subdivision 2, a provision in a trust created after July 1, 1992, purporting to make assets or income unavailable to a beneficiary that provides for the suspension,

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termination, limitation, or diversion of the principal, income, or beneficial interest of a beneficiary if the beneficiary applies for or, is determined eligible for, or receives public assistance or benefits under a public health care program is unenforceable as against the public policy of this state, without regard to the irrevocability of the trust or the purpose for which the trust was created.

(b) This subdivision applies to trust provisions created after July 1, 1992. For purposes of this section, a trust provision is created on the date of execution of the first instrument that contains the provision, even though the trust provision is later amended or reformed or the trust is not funded until a later date.

Subd. 2. SUPPLEMENTAL TRUSTS FOR PERSONS WITH DISABILITIES. (a) It is the public policy of this state to enforce supplemental needs trusts as provided in this subdivision.

(b) For purposes of this subdivision, a "supplemental needs trust" is a trust created for the benefit of a person with a disability and funded by someone other than the trust beneficiary, the beneficiary's spouse, or anyone obligated to pay any sum for damages or any other purpose to or for the benefit of the trust beneficiary under the terms of a settlement agreement or judgment.

(c) For purposes of this subdivision, a "person with a disability" means a person who, prior to creation of a trust which otherwise qualifies as a supplemental needs trust for the person's benefit:

(1) is considered to be a person with a disability under the disability criteria specified in Title II or Title XVI of the Social Security Act; or

(2) has a physical or mental illness or condition which, in the expected natural course of the illness or condition, either prior to or following creation of the trust, to a reasonable degree of medical certainty, is expected to:

(i) last for a continuous period of 12 months or more; and

(ii) substantially impair the person's ability to provide for the person's care or custody.

Disability may be established conclusively for purposes of this subdivision 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.

(d) The general purpose of a supplemental needs trust must be to provide for the reasonable living expenses and other basic needs of a person with a disability when benefits from publicly funded benefit programs are not sufficient to provide adequately for those needs. Subject to the restrictions contained in this paragraph, a supplemental needs trust may authorize distributions to provide for all or any portion of the reasonable living expenses of the beneficiary. A supplemental needs trust may allow or require distributions only in ways and for purposes that supplement or complement the benefits available under medical

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assistance, Minnesota supplemental aid, and other publicly funded benefit programs for disabled persons. A supplemental needs trust must contain provisions that prohibit disbursements that would have the effect of replacing, reducing, or substituting for publicly funded benefits otherwise available to the beneficiary or rendering the beneficiary ineligible for publicly funded benefits.

(e) A supplemental needs trust is not enforceable if the trust beneficiary becomes a patient or resident after age 64 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 that the beneficiary will ever be discharged from the institution or facility. For purposes of this paragraph "reasonable expectation" means that the beneficiary's attending physician has certified that the expectation is reasonable. For purposes of this paragraph, a beneficiary participating in a group residential program is not deemed to be a patient or resident in a state institution or nursing facility.

(f) 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, supplemental security income, or aid to families with dependent children methodology, which ever 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.

(g) Nothing in this subdivision requires submission of a supplemental needs trust to a court for interpretation or enforcement.

(h) Paragraphs (a) to (g) apply to supplemental needs trusts whenever created, but the limitations and restrictions in paragraphs (c) to (g) apply only to trusts created after June 30, 1993.

Sec. 2. EFFECTIVE DATE; APPLICATION.

Section 1 is effective retroactive to July 1, 1992.

Notwithstanding the provisions of section 1, subdivision 2, providing that a supplemental needs trust may not be funded by the beneficiary 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 payments made by the social security administration pursuant to the United States Supreme Court decision in Sullivan v. Zebley, 110 S.Ct. 885 (1990).

Presented to the governor May 6, 1993

Signed by the governor May 7, 1993, 2:44 p.m.

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