

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

23/4

2001 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2314

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2314

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 1-30-00

Tape Number	Side A	Side B	Meter #
1	x		0 to 18.0
(March 28/01) 1	x		25.7 to 31.1
(April 03/01) 1	x		25.9 to 34.7
Committee Clerk Signature <i>Don E. Perry</i>			

The meeting was called to order. All committee members present. Hearing was opened on SB 2314 relating to pre-need funeral contracts.

AANDERS JACKSON (ND Funeral Directors Association) Supports the bill. The prime reason for requesting that a portion of the pre-need contracts be made irrevocable is to ensure that the wishes of an individual's contract be followed. See attached testimony.

SENATOR ESPEGARD: Currently, the funeral arrangements are revocable. Are you asking for them to be irrevocable?

AANDERS JACKSON: Yes, we want to make it so the consumer has a choice.

SENATOR KREBSBACH: If someone stated in the will how they wish funeral arrangements to be handled, would this still work?

AANDERS JACKSON: The problem with that is that wills are usually read 2-3 weeks after the funeral.

SENATOR EVERY: What happens if I come to you, pre-plan a funeral, and three years down the road I find another funeral home who offers a better deal, can I take it?

AANDERS JACKSON: Yes, it is portable- it can be moved from funeral home to funeral home.

SENATOR KLEIN: What is with the "45 day" issue?

AANDERS JACKSON: If a person comes in, sets money aside for funeral, they then have 45 days to "cancel".

SENATOR KLEIN: So once it is "irrevocable" and it passes the 45 day deadline, it's too bad?

AANDERS JACKSON: Yes, but most of the people who do this are elderly and down to the last dollar and trying to keep money from others; so this is good for them.

REP. JON NELSON, District 7, cosponsor of this bill. Vote do pass.

WILLIAM DELMORE, Counsel, ND Funeral Director's Association, in favor.

SENATOR KLEIN: The question here is the amount of allowable assets, calculating different costs, and setting aside money that agencies or Social Services can't touch?

WILLIAM DELMORE: We currently can take \$3000 for a funeral not counted by Social Services.

SENATOR MUTCH: So even if you have a \$5000 contract, could they could still come in and take the extra \$2000 up and above the \$3000?

WILLIAM DELMORE: Yes.

Blaine L Nordwall, Director of Economic Assistance, Human Services; Neutral. Seeks clarification and includes amendment relating to asset exclusion. NDCC currently imposes a \$3,000 limitation on asset exclusion.

Page 3

Senate Industry, Business and Labor Committee

Bill/Resolution Number SB 2314

Hearing Date 1-30-01

See attached testimony and proposed amendment.

Senator Klein: Would someone in favor of this bill tell me if the proposed amendment looks satisfactory to you?

WILLIAM DELMORE: We are comfortable with the amendment, it makes things more specific.

Hearing closed.

Senator Espegard moves to accept proposed amendment. Seconded by Senator D. Mathern. Roll call vote taken, 7-0-0.

Senator Krebsbach made a motion to "Do Pass" as amended. Seconded by D. Mathern. Roll call vote taken, 7-0-0. Floor carrier is D. Mathern.

Page 4
Senate Industry, Business and Labor Committee
Bill/Resolution Number SB 2314
Hearing Date 1-30-01

March 28/01. Tape 1-A- 25.7 to 31.1

Committee reconvened. All members present. Committee reviewed and discussed amendments.

Action deferred pending outcome of HB 1126 and consultation with sponsors.

April 03/01. Tape 1-A-25.9 to 34.7

Committee reconvened. All members present.

Jennifer Clark, Legislative Council. Amendment are alternative amendments dependent on passage of HB 1126. Regardless the bill still does something. 1126 became effective then amend section 43.10.1 or 3.1 of the code. 1126 repealed law 2314 was going to amend, took it out of title 23 and moved it over to title 43 almost word for word. Substantive changes in 1126: money needs to be deposited. 2314 addresses irrevocable pre-need funeral contract. If you want the irrevocable provision put into law, you need to pass 2314.

Senator Espgaard: If I set up x dollar amount for funeral , x has to be spent. Is that what irrevocable means?

J Clark: Honestly I didn't look at the substance of the provisions, it has something to do with medical assistance eligibility.

Senator Mathern: Do we need to remove section alluding to HB 1126 in amendments?

J Clark: It stands either way, whatever is easier for you.

Senator Mathern: Motion to concur with House amendments. **Senator Krebsbach**: Second.

Roll call vote: 6 yes;

Prepared by the North Dakota
Department of Human Services
January 29, 2001

PROPOSED AMENDMENTS TO SENATE BILL NO. 2314

Page 2, line 5, replace "chapter 50-24.1" with "section 50-24.1-02.3"

Renumber accordingly

Date: 1-30-01
Roll Call Vote #: /

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2314

Senate Industry, Business and Labor

Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Accept proposed amendment

Motion Made By S Espgaard Seconded By W Mathern

Senators	Yes	No	Senators	Yes	No
Senator Mutch - Chairman	✓		Senator Every	✓	
Senator Klein - Vice Chairman	✓		Senator Mathern	✓	
Senator Espgaard	✓				
Senator Krebsbach	✓				
Senator Tollefson	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

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

Date: 1-30-01
Roll Call Vote #: 2

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2314

Senate Senate Industry, Business and Labor Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken DPA

Motion Made By Sen Krebsbach Seconded By S. Mathern

Senators	Yes	No	Senators	Yes	No
Senator Mutch - Chairman	✓		Senator Every	✓	
Senator Klein - Vice Chairman	✓		Senator Mathern	✓	
Senator Espegard	✓				
Senator Krebsbach	✓				
Senator Tollefson	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Sen Mathern

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

REPORT OF STANDING COMMITTEE (410)
January 31, 2001 8:08 a.m.

Module No: SR-17-1972
Carrier: D. Mathern
Insert LC: 10743.0101 Title: .0200

REPORT OF STANDING COMMITTEE

SB 2314: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2314 was placed on the Sixth order on the calendar.

Page 2, line 5, replace "chapter 50-24.1" with "section 50-24.1-02.3"

Renumber accordingly

Date: 4/03/01
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2314

Senate Industry, Business and Labor Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do concur with House amendments

Motion Made By Sen Mathern Seconded By Sen Krebsbach

Senators	Yes	No	Senators	Yes	No
Senator Mutch - Chairman	✓		Senator Every	✓	
Senator Klein - Vice Chairman	✓		Senator Mathern	✓	
Senator Espegard	✓				
Senator Krebsbach	✓				
Senator Tollefson	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Sen Mathern

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

2001 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2314


2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2314

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date March 5, 2001

Tape Number	Side A	Side B	Meter #
2	X		32.1
		X	-13.1
Committee Clerk Signature 			

Minutes: Chairman R. Berg, Vice-Chair G. Kelsner, Rep. M. Ekstrom, Rep. R. Froelich, Rep. G. Froseth, Rep. R. Jensen, Rep. N. Johnson, Rep. J. Kasper, Rep. M. Klein, Rep. Koppang, Rep. D. Lemieux, Rep. B. Pietsch, Rep. D. Ruby, Rep. D. Severson, Rep. E. Thorpe.

Rep Dave Weiler: Cosponsor of bill.

Syver Vinje: Explained HB 1126 and its relation to SB 2314.

Aanders Jackson: *ND Funeral Directors Assoc.* **Written testimony** in support of bill.

Doug Murphy: *Funeral director* It's the money that irrevocable, not the wishes.

Bill Delmer: *Kelsch law Firm* Up to \$3,000 is irrevocable because then public services can't be removed. SB 2493 allows that the wishes need to be followed by the family.

Murphy: With this there is little reason to change the wishes.

Jackson: We're not changing, we're just adding another option.

Rep Kasper: Which is more powerful, the will of the person or an irrevocable contract?

Jackson: The contract is generally first, the will is usually after the funeral.

Page 2 **IBL**
House ~~Government and Veterans Affairs Committee~~
Bill/Resolution Number SB 2314
Hearing Date March 5, 2001

Rep Pietsch: Is this included in assets?

Jackson: No it is not an asset.

Delmer: People haven't been following the wishes because they take the money after a cheaper service. This would attempt to prevent that.

Blaine Nordwall: (6.5) *Medicaid* We support this bill, we don't care where the money is coming from. This helps provide expected money's to funeral directors and helps the deceased also.

Contracts can be written to do whatever.

Chairman Berg: We'll close the hearing on SB 2314.

March 12, 2001

VR
3/13/01
1082

House IBL AMendments to Eng. SB 2314 3/13/01

Page 1, line 1, after the comma insert "or in the alternative to amend and reenact section 43-10.1-03.1 of the North Dakota Century Code as created by section 3 of House Bill No. 1126, as approved by the fifty-seventh legislative assembly,"

Page 1, line 4, replace "Section" with "If House Bill No. 1126 does not become effective, section"

House IBL Amendments to SB 2314 3/13/01

Page 2, line 3, remove the first "pre-need" and after "purchaser" insert "of a pre-need funeral service contract"

Page 2, line 6, remove the first "pre-need" and replace "The pre-need purchaser has forty-five days from" with "A purchaser of a pre-need funeral service contract has forty-five days from entering the contract to cancel the irrevocable part of the contract by giving notice to the cemetery association or licensed funeral establishment with whom the contract was entered. Any pre-need funeral service contract held by a cemetery association or a licensed funeral establishment must be fully transferable to another cemetery association or funeral establishment licerised under chapter 43-10 or a substantially similar law of another jurisdiction which agrees to accept the obligations."

Page 2, remove line 7

Page 2, after line 19, Insert:

"SECTION 2. AMENDMENT. If House Bill No. 1126 becomes effective, section 43-10.1-03.1 of the North Dakota Century Code, as created by section 3 of House Bill No. 1126, as approved by the fifty-seventh legislative assembly, is amended and reenacted as follows:

43-10.1-03.1. Payments on pre-need funeral contracts to be deposited -
Depository shall keep record of deposit - Personal property storage. Whenever payments are made to any person upon pre-need funeral service contracts, one hundred percent of the funds collected under the contracts for the sale of professional service or personal property to be used in funeral services and fifty percent of the funds collected under the contracts for the sale of cemetery merchandise must be deposited in or transferred to a trust company in this state or to a federally insured bank, credit union, or savings and loan association in this state, within ten days. The deposit must be placed in a federal deposit insurance corporation or national credit union administration insured certificate of deposit or negotiable debt obligation of the United States government. Payments received from the sale of professional service or personal property to be used in funeral services or cemetery merchandise which cannot or would not be serviced by a licensed funeral establishment or cemetery association in the area where the service or property was sold are specifically included, whether or not the sales might otherwise be considered pre-need funeral service contracts, within the payments to be deposited under this section. The funds may be released or transferred by the bank, credit union, savings and loan association, or trust company to the depositor upon the death of the person for whose benefit the funds were paid. A certified copy of the certificate of death must be furnished to the bank, credit union, savings and loan association, or trust company as prima facie evidence of death. The funds may be released or transferred by the bank, credit union, savings and loan association, or trust company to the person making the payment, before the death of

the person for whose benefit the funds are paid, upon a five-day written notice by registered or certified mail made by the bank, credit union, savings and loan association, or trust company to the depositor or transferor at the request of the person making the payment. Upon written request, however, a purchaser of a pre-need funeral service contract may make a certain amount of the pre-need funds irrevocable. The irrevocable amount may not exceed the amount of the allowable asset exclusion used for determining eligibility for medical assistance under section 50-24.1-02.3 at the time the contract is entered. A purchaser of a pre-need funeral service contract has forty-five days from entering the contract to cancel the irrevocable part of the contract by giving notice to the cemetery association or licensed funeral establishment with whom the contract was entered. Any pre-need funeral service contract held by a cemetery association or a licensed funeral establishment must be fully transferable to another cemetery association or funeral establishment licensed under chapter 43-10 or a substantially similar law of another jurisdiction which agrees to accept the obligations.

A bank, credit union, savings and loan association, or trust company receiving such a deposit or transfer shall keep a complete record of the deposit or transfer, showing the name of the depositor or transferor, name of the person making payment, name of the person for whose benefit payment is made, and any other pertinent information.

Any personal property to be used in funeral services or cemetery merchandise which is sold to a purchaser on the basis that it will be identified and marked as belonging to such purchaser, and stored or warehoused for the purchaser, must be stored or warehoused at some location within this state."

Renumber accordingly

E

Date: 3-12-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2314

House Industry, Business and Labor Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as amended

Motion Made By Koppang Seconded By M. Klein

Representatives	Yes	No	Representatives	Yes	No
Chairman- Rick Berg	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Rep. Jim Kasper	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Vice-Chairman George Keiser	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Rep. Matthew M. Klein	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rep. Mary Ekstorm	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Rep. Myron Koppang	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rep. Rod Froelich	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Rep. Doug Lemieux	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Rep. Glen Froseth	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Rep. Bill Pietsch	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rep. Roxanne Jensen	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Rep. Dan Ruby	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rep. Nancy Johnson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Rep. Dale C. Severson	<input type="checkbox"/>	<input checked="" type="checkbox"/>
			Rep. Elwood Thorpe	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Total (Yes) 10 No 4

Absent 1

Floor Assignment Rep Koppang

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

REPORT OF STANDING COMMITTEE

SB 2314, as engrossed: Industry, Business and Labor Committee (Rep. Berg, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2314 was placed on the Sixth order on the calendar.

Page 1, line 1, after the comma insert "or in the alternative to amend and reenact section 43-10.1-03.1 of the North Dakota Century Code as created by section 3 of House Bill No. 1126, as approved by the fifty-seventh legislative assembly,"

Page 1, line 4, replace "Section" with "If House Bill No. 1126 does not become effective, section"

Page 2, line 3, remove the first "pre-need" and after "purchaser" insert "of a pre-need funeral service contract"

Page 2, line 6, remove the first "pre-need" and replace "The pre-need purchaser has forty-five days from" with "A purchaser of a pre-need funeral service contract has forty-five days from entering the contract to cancel the irrevocable part of the contract by giving notice to the cemetery association or licensed funeral establishment with whom the contract was entered. Any pre-need funeral service contract held by a cemetery association or a licensed funeral establishment must be fully transferable to another cemetery association or funeral establishment licensed under chapter 43-10 or a substantially similar law of another jurisdiction which agrees to accept the obligations."

Page 2, remove line 7

Page 2, after line 19, insert:

"SECTION 2. AMENDMENT. If House Bill No. 1126 becomes effective, section 43-10.1-03.1 of the North Dakota Century Code, as created by section 3 of House Bill No. 1126, as approved by the fifty-seventh legislative assembly, is amended and reenacted as follows:

43-10.1-03.1. Payments on pre-need funeral contracts to be deposited - Depository shall keep record of deposit - Personal property storage. Whenever payments are made to any person upon pre-need funeral service contracts, one hundred percent of the funds collected under the contracts for the sale of professional service or personal property to be used in funeral services and fifty percent of the funds collected under the contracts for the sale of cemetery merchandise must be deposited in or transferred to a trust company in this state or to a federally insured bank, credit union, or savings and loan association in this state, within ten days. The deposit must be placed in a federal deposit insurance corporation or national credit union administration insured certificate of deposit or negotiable debt obligation of the United States government. Payments received from the sale of professional service or personal property to be used in funeral services or cemetery merchandise which cannot or would not be serviced by a licensed funeral establishment or cemetery association in the area where the service or property was sold are specifically included, whether or not the sales might otherwise be considered pre-need funeral service contracts, within the payments to be deposited under this section. The funds may be released or transferred by the bank, credit union, savings and loan association, or trust company to the depositor upon the death of the person for whose benefit the funds were paid. A certified copy of the certificate of death must be furnished to the bank, credit union, savings and loan association, or trust company as prima facie evidence of death. The funds may be released or transferred by the bank, credit union, savings and loan association, or trust company to the person making the payment, before the death of the person for whose benefit the funds are paid, upon a five-day written notice

by registered or certified mail made by the bank, credit union, savings and loan association, or trust company to the depositor or transferor at the request of the person making the payment. Upon written request, however, a purchaser of a pre-need funeral service contract may make a certain amount of the pre-need funds irrevocable. The irrevocable amount may not exceed the amount of the allowable asset exclusion used for determining eligibility for medical assistance under section 50-24.1-02.3 at the time the contract is entered. A purchaser of a pre-need funeral service contract has forty-five days from entering the contract to cancel the irrevocable part of the contract by giving notice to the cemetery association or licensed funeral establishment with whom the contract was entered. Any pre-need funeral service contract held by a cemetery association or a licensed funeral establishment must be fully transferable to another cemetery association or funeral establishment licensed under chapter 43-10 or a substantially similar law of another jurisdiction which agrees to accept the obligations.

A bank, credit union, savings and loan association, or trust company receiving such a deposit or transfer shall keep a complete record of the deposit or transfer, showing the name of the depositor or transferor, name of the person making payment, name of the person for whose benefit payment is made, and any other pertinent information.

Any personal property to be used in funeral services or cemetery merchandise which is sold to a purchaser on the basis that it will be identified and marked as belonging to such purchaser, and stored or warehoused for the purchaser, must be stored or warehoused at some location within this state."

Renumber accordingly

2001 TESTIMONY

SB 2314

**TESTIMONY OF AANDERS JACKSON
ON BEHALF OF THE
NORTH DAKOTA FUNERAL DIRECTORS ASSOCIATION
BEFORE THE
SENATE INDUSTRY, BUSINESS AND LABOR COMMITTEE
CHAIRMAN, DUANE MUTCH**

SENATE BILL 2314

JANUARY 29, 2001

My name is Aanders Jackson. I am appearing on behalf of the North Dakota Funeral Directors Association in support of Senate Bill 2314.

The purpose of Senate Bill 2314 is to allow funeral service pre-need contract purchasers the ability to make that portion of the pre-need contract which is allowable for asset exclusion in determining eligibility for public assistance irrevocable.

We have reviewed 47 states and their requirements regarding pre-need contracts. Only five states (including North Dakota) provide for revocable pre-need contracts only. Seven other states allow the pre-need contract to be irrevocable in the case of a purchaser who qualifies for public assistance. The other 35 states allow the pre-need contract to be irrevocable at least in some form to an amount equal to or above that requested in Senate Bill 2314. All of the adjoining states of Montana, Colorado, Nebraska, South Dakota, Iowa, and Minnesota allow the contracts to be irrevocable to a degree. Wyoming allows irrevocable contracts where the purchaser is the recipient of "old age pension benefits". In order to adequately conduct commerce with our adjoining states and provide funeral services, we need to be able to offer irrevocable contracts to a limited degree.

In most states the portion of the pre-need contract which is irrevocable allows federal and state welfare and assistance agencies to better count and track assets of their recipients.

However, the prime reason for requesting that a portion of pre-need contracts be made irrevocable, is to ensure that the wishes of an individual pre-need contract purchaser be followed. We have experienced instances where a person has purchased a pre-need contract desiring a funeral and an heir has revoked the pre-need contract after the death of the purchaser and requested cremation. We are concerned about providing quality services to our pre-need contract purchasers and being able to competently follow their wishes regarding proper burial and funeral services.

I will be happy to answer any questions. An outline summary of our review of the 47 other states is available from our counsel, William J. Delmore.

**TESTIMONY BEFORE THE
SENATE INDUSTRY, BUSINESS AND LABOR COMMITTEE
REGARDING
SENATE BILL NO. 2314
January 30, 2001**

Chairman Mutch, members of the Senate Industry, Business and Labor Committee, my name is Blaine Nordwall. I am Director of Economic Assistance Policy for the North Dakota Department of Human Services. The department neither supports nor opposes Senate Bill 2314. However, we do seek a clarification, and I have attached a clarifying amendment to this testimony.

At page 2, lines 4 through 6, the bill provides that the irrevocable amount would not exceed allowable asset exclusions used in determining eligibility for Medical Assistance under chapter 50-24.1 at the time the pre-need contract is entered. Because the reference to chapter 50-24.1 is so general, it arguably could include asset exclusions for things like a home or automobile. I assume the drafters actually intended to refer to the asset exclusion provided in N.D.C.C. § 50-24.1-02.3, which specifically refers to designated pre-need funeral service contracts, and currently imposes a \$3,000 limitation.

If there are any questions, I'll try to answer them.

Presented by:

**Blaine L. Nordwall
Director, Economic Assistance Policy
ND Department of Human Services**

EXPLANATION OF AMENDMENTS TO SENATE BILL 2314

The title of the bill has been changed to reflect the amending of two sections of the Century Code, one that is being repealed and other is to be newly created. Legislation was introduced, namely House Bill 1126, to repeal section 23-06-03.1 and move the language from the health statutes by creating a new section for the implementation of the language in the statutes dealing with pre-need funeral service contracts since the language dealt with the deposit or transfer of funds paid upon the entering of a pre-need funeral contract.

House Bill 1126 was introduced at the request of the Securities Commissioner. Subsequently Senate Bill 2314 was introduced to amend the section of law that is to be repealed with a new section to be created in House Bill 1126 to retain the repealed language. Therefore, it became necessary to take action to give direction to the amendments in Senate Bill 2314 in the event section 3 of House Bill 1126 is or is not created and further if House Bill 1126 in its entirety does or does not become effective.

Section 1 of the bill will amend section 23-06-03.1 in the event House Bill 1126 does not become effective. The amendment will allow a purchaser of a pre-need funeral service contract the opportunity to make a certain amount up to \$3,000 irrevocable. The amount may not exceed the amount of the allowable asset exclusion used for determining eligibility for medical assistance. Should the purchaser decide to make an amount up to \$3,000 irrevocable, such purchaser would have up to 45 days to cancel the irrevocable part of the contract by notifying the funeral establishment or cemetery association. An additional provision is included so that the contract can be transferred to another cemetery association or licensed funeral establishment in the state or another state having a similar law.

Section 2 of the bill, which is a part of the amendment, provides for the amending of the newly created section in House Bill 1126, which replaces section 23-06-03.1, should such bill and section become effective and gives direction for the amendment contained in Senate bill 2314.

AMENDMENTS TO ENGROSSED SENATE BILL NO. 2314

Page 1, line 1 – Following the word "reenact" delete the word "section" and insert the following language "sections 23-06-03.1 or 43-10.1-03.1 as created by section 3 of House Bill No. 1126, as approved by the fifty-seventh legislative assembly, "

Page 1, line 4 - Delete the word "Section" and insert "If House Bill No. 1126 does not become effective, section"

Page 2, after line 19 add the following language - **"SECTION 2. AMENDMENT.**
If House Bill No. 1126 becomes effective, Section 43-10.1-03.1 of the North Dakota Century Code as created by section 3 of Engrossed House Bill No. 1126 is amended and reenacted as follows:

43-10.1-03.1. Payments on pre-need funeral contracts to be deposited –
Depository shall keep rr deposit – Personal property storage.
Whenever payments are made to a person upon pre-need funeral service contracts, one hundred percent of the funds collected under the contracts for the sale of professional service or personal property to be used in funeral services and fifty percent of the funds collected under the contracts for the sale of cemetery merchandise must be deposited in or transferred to a trust company in this state or to a federally insured bank, credit union, or savings and loan association in this state, within ten days. The deposit must be placed in a federal deposit insurance corporation or national credit union administration insured certificate of deposit or negotiable debt obligation of the United States

government. Payments received from the sale of professional service or personal property to be used in funeral services or cemetery merchandise which cannot or would not be serviced by a licensed funeral establishment or cemetery association in the area where the service or property was sold are specifically included, whether or not the sales might otherwise be considered pre-need funeral service contracts, within the payments to be deposited under this section. The funds may be released or transferred by the bank, credit union, savings and loan association, or trust company to the depositor upon the death of the person for whose benefit the funds were paid. A certified copy of the certificate of death must be furnished to the bank, credit union, savings and loan association, or trust company as prima facie evidence of death. The funds may be released or transferred by the bank, credit union, savings and loan association, or trust company to the person making the payment, before the death of the person for whose benefit the funds are paid, upon a five-day written notice by registered or certified mail made by the bank, credit union, savings and loan association, or trust company to the depositor or transferor at the request of the person making the payment. Upon written request, however, a purchaser of a pre-need funeral service contract may make a certain amount of the pre-need funds irrevocable. The irrevocable amount may not exceed the amount of the allowable asset exclusion used for determining eligibility for medical assistance under section 50-24.1-02.3 at the time the contract is entered. The pre-need funeral service contract purchaser has forty-five days from entering the contract to cancel the irrevocable part of the contract by giving notice to the cemetery association or

licensed funeral establishment with whom the contract was entered. Any pre-need funeral service contract held by a cemetery association or a licensed funeral establishment must be fully transferable to another cemetery association or funeral establishment licensed under chapter 43-10 or a substantially similar law of another jurisdiction that agrees to accept the obligations.

A bank, credit union, savings and loan association, or trust company receiving such a deposit or transfer shall keep a complete record of the deposit or transfer, showing the name of the depositor or transferor, name of the person making payment, name of the person for whose benefit payment is made, and any other pertinent information.

Any personal property to be used in funeral services or cemetery merchandise which is sold to a purchaser on the basis that it will be identified and marked as belonging to such purchaser, and stored or warehoused for the purchaser, must be stored or warehoused at some location within this state."

Renumber the lines accordingly.

**TESTIMONY OF AANDERS JACKSON
ON BEHALF OF THE
NORTH DAKOTA FUNERAL DIRECTORS ASSOCIATION
BEFORE THE
HOUSE INDUSTRY, BUSINESS AND LABOR COMMITTEE
CHAIRMAN, RICK BERG**

SENATE BILL 2314

March 5, 2001

My name is Aanders Jackson. I am appearing on behalf of the North Dakota Funeral Directors Association in support of Senate Bill 2314.

The purpose of Senate Bill 2314 is to allow funeral service pre-need contract purchasers the ability to make that portion of the pre-need contract which is allowable for asset exclusion in determining eligibility for public assistance irrevocable.

We have reviewed 47 states and their requirements regarding pre-need contracts. Only five states (including North Dakota) provide for revocable pre-need contracts only. Seven other states allow the pre-need contract to be irrevocable in the case of a purchaser who qualifies for public assistance. The other 35 states allow the pre-need contract to be irrevocable at least in some form to an amount equal to or above that requested in Senate Bill 2314. All of the adjoining states of Montana, Colorado, Nebraska, South Dakota, Iowa, and Minnesota allow the contracts to be irrevocable to a degree. Wyoming allows irrevocable contracts where the purchaser is the recipient of "old age pension benefits". In order to adequately conduct commerce with our adjoining states and provide funeral services, we need to be able to offer irrevocable contracts to a limited degree.

In most states the portion of the pre-need contract which is irrevocable allows federal and state welfare and assistance agencies to better count and track assets of their recipients.

However, the prime reason for requesting that a portion of pre-need contracts be made irrevocable, is to ensure that the wishes of an individual pre-need contract purchaser be followed. We have experienced instances where a person has purchased a pre-need contract desiring a funeral and an heir has revoked the pre-need contract after the death of the purchaser and requested cremation. We are concerned about providing quality services to our pre-need contract purchasers and being able to competently follow their wishes regarding proper burial and funeral services.

I will be happy to answer any questions. An outline summary of our review of the 47 other states is available from our counsel, William J. Delmore.

EXPLANATION OF AMENDMENTS TO SENATE BILL 2314

The title of the bill has been changed to reflect the amending of two sections of the Century Code, one that is being repealed and other is to be newly created. Legislation was introduced, namely House Bill 1126, to repeal section 23-06-03.1 and move the language from the health statutes by creating a new section for the implementation of the language in the statutes dealing with pre-need funeral service contracts since the language dealt with the deposit or transfer of funds paid upon the entering of a pre-need funeral contract.

House Bill 1126 was introduced at the request of the Securities Commissioner. Subsequently Senate Bill 2314 was introduced to amend the section of law that is to be repealed with a new section to be created in House Bill 1126 to retain the repealed language. Therefore, it became necessary to take action to give direction to the amendments in Senate Bill 2314 in the event section 3 of House Bill 1126 is or is not created and further if House Bill 1126 in its entirety does or does not become effective.

Section 1 of the bill will amend section 23-06-03.1 in the event House Bill 1126 does not become effective. The amendment will allow a purchaser of a pre-need funeral service contract the opportunity to make a certain amount up to \$3,000 irrevocable. The amount may not exceed the amount of the allowable asset exclusion used for determining eligibility for medical assistance. Should the purchaser decide to make an amount up to \$3,000 irrevocable, such purchaser would have up to 45 days to cancel the irrevocable part of the contract by notifying the funeral establishment or cemetery association. An additional provision is included so that the contract can be transferred to another cemetery association or licensed funeral establishment in the state or another state having a similar law.

Section 2 of the bill, which is a part of the amendment, provides for the amending of the newly created section in House Bill 1126, which replaces section 23-06-03.1, should such bill and section become effective and gives direction for the amendment contained in Senate bill 2314.

AMENDMENTS TO ENGROSSED SENATE BILL NO. 2314

Page 1, line 1 – Following the word "reenact" delete the word "section" and insert the following language "sections 23-06-03.1 or 43-10.1-03.1 as created by section 3 of House Bill No. 1126, as approved by the fifty-seventh legislative assembly, "

Page 1, line 4 - Delete the word "Section" and insert "If House Bill No. 1126 does not become effective, section"

Page 2, line 3 – Delete the word "pre-need" which precedes the word "purchaser"

Page 2, line 3 – After the word "purchaser" insert "of a pre-need funeral service contract"

Page 2, line 6 – Delete the word "pre-need" which precedes the word "contract"

Page 2, lines 6 and 7 – Delete the sentence "The pre-need purchaser has forty-five days from entering the contract to cancel an irrevocable contract by giving notice to the pre-need seller."

Insert in lieu thereof the following sentences: "A purchaser of a pre-need funeral service contract has forty-five days from entering the contract to cancel the irrevocable part of the contract by giving notice to the cemetery association or licensed funeral establishment with whom the contract was entered. Any pre-need funeral service contract held by a cemetery association or a licensed funeral establishment must be fully transferable to another cemetery association or funeral establishment licensed under chapter 43-10 or a substantially similar law of another jurisdiction that agrees to accept the obligations."

Page 2, after line 19 add the following language - **"SECTION 2. AMENDMENT.**

If House Bill No. 1126 becomes effective, Section 43-10.1-03.1 of the North Dakota Century Code as created by section 3 of Engrossed House Bill No. 1126 is amended and reenacted as follows:

**43-10.1-03.1. Payments on pre-need funeral contracts to be deposited –
Depository shall keep record of deposit – Personal property storage.**

Whenever payments are made to a person upon pre-need funeral service contracts, one hundred percent of the funds collected under the contracts for the sale of professional service or personal property to be used in funeral services and fifty percent of the funds collected under the contracts for the sale of cemetery merchandise must be deposited in or transferred to a trust company in this state or to a federally insured bank, credit union, or savings and loan association in this state, within ten days. The deposit must be placed in a federal deposit insurance corporation or national credit union administration insured certificate of deposit or negotiable debt obligation of the United States government. Payments received from the sale of professional service or personal property to be used in funeral services or cemetery merchandise which cannot or would not be serviced by a licensed funeral establishment or cemetery association in the area where the service or property was sold are specifically included, whether or not the sales might otherwise be considered pre-need funeral service contracts, within the payments to be deposited under this section. The funds may be released or transferred by the bank, credit union, savings and loan association, or trust company to the depositor upon the death of the person for whose benefit the funds were paid. A certified copy of the certificate of death must be furnished to the bank, credit union, savings and loan association, or trust company as prima facie evidence of death. The funds may be released or transferred by the bank, credit union, savings and loan association, or trust

company to the person making the payment, before the death of the person for whose benefit the funds are paid, upon a five-day written notice by registered or certified mail made by the bank, credit union, savings and loan association, or trust company to the depositor or transferor at the request of the person making the payment. Upon written request, however, a purchaser of a pre-need funeral service contract may make a certain amount of the pre-need funds irrevocable. The irrevocable amount may not exceed the amount of the allowable asset exclusion used for determining eligibility for medical assistance under section 50-24.1-02.3 at the time the contract is entered. A purchaser of a pre-need funeral service contract has forty-five days from entering the contract to cancel the irrevocable part of the contract by giving notice to the cemetery association or licensed funeral establishment with whom the contract was entered. Any pre-need funeral service contract held by a cemetery association or a licensed funeral establishment must be fully transferable to another cemetery association or funeral establishment licensed under chapter 43-10 or a substantially similar law of another jurisdiction that agrees to accept the obligations.

A bank, credit union, savings and loan association, or trust company receiving such a deposit or transfer shall keep a complete record of the deposit or transfer, showing the name of the depositor or transferor, name of the person making payment, name of the person for whose benefit payment is made, and any other pertinent information.

Any personal property to be used in funeral services or cemetery merchandise which is sold to a purchaser on the basis that it will be identified and marked as

belonging to such purchaser, and stored or warehoused for the purchaser, must be stored or warehoused at some location within this state."

Renumber the lines accordingly.