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10-16-03
Date

2003 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2144

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2144

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date 1-14-03

Tape Number	Side A	Side B	Meter #
1	xx	xx	3327
Committee Clerk Signature <i>Lisa Van Berkom</i>			

Minutes: Chairman Mutch opened the hearing on SB 2114. All Senators were present.

Karen Tyler, North Dakota Securities Commissioner, introduced SB 2114 relating to the deposit of pre-need funeral contract funds. See attached testimony.

See proposed amendments

Testimony in support of SB 2144

See above testimony taken from Karen Tyler.

Chairman Mutch asks Karen to clarify the procedure of obtaining pre-need funeral contracts and how they are used. She then invited Harold Kocher into the testimony. Note neither Karen Tyler or Harold Kocher signed the registration. Harold Kocher explains further the procedure for withdrawing funds from a pre-need funeral account prior to death. He stated that they are simply trying to clarify the notification process. The bill would enforce that the bank notify the funeral home of the client withdrawing funds prior to death.

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Page 2
Senate Industry, Business and Labor Committee
Bill/Resolution Number 2144
Hearing Date 1-14-03

Senator Krebsbach states that this bill would be effective only when the contract with the funeral home is revoked, ensuring the notification of the funeral home.

Karen Tyler states that that is correct.

Senator Klein asks what made Karen decide the particular language.

Karen states that the request was made by Mr. Harm in the Governor's office.

Senator Mutch asks what provoked the need for this legislation.

Karen states that it is because bank's fail to fulfill there duty to notify the funeral homes of withdrawal. (meter 5600).

Opposing testimony

Don Forsberg, Executive Vice President of Independent Community Banks of ND. He states that the organization he represents is opposed to lines 5 through 9 on page two. See written testimony. He presents a proposal to amend SB 2144. See amendment.

Side B of tape begins here.

Don feels that there is no need for a third party to be involved in the contract between the funeral home and the client.

Bill Delmore, on behalf of the ND Funeral Directors. Bill did not sign registration or bring written testimony. He states that they didn't have anything to do with the making of this bill and stated that he wanted the bankers to know that. He does not want to lose the notice aspect of the current law. Bill stated that all funds are transferable already, so one could move funds from one funeral home to another without worry. Bill did not state opposition or support or neutral feeling on this bill.

Senator Krebsbach asks how the transition of funds transfer takes place.

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Page 3

Senate Industry, Business and Labor Committee

Bill/Resolution Number 2144

Hearing Date 1-14-03

Bill states that ALL funds are completely transferable currently. One could go to any funeral establishment and move the pre-need funeral funds at any time.

Senator Krebsbach asks who notifies the previous funeral home of the transfer.

Bill states that it is the new funeral home that was chosen who notifies the other.

End testimony at meter no. 1146. Hearing closed, no action taken at this time.

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2144

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date 1-21-03

Tape Number	Side A	Side B	Meter #
1	XXXX		4090-4700

Committee Clerk Signature *Lisa Van Berkom*

Minutes: Chairman Mutch opened the discussion on SB 2144. SB 2144 relates to depositing pre-need funeral contract payments.

Senator Klein states that he feels there should be an amendment to strike anything relating to giving registered notice. He stated that the only reason for this bill is because of one incident involving a son withdrawing the funds without the funeral home being notified.

The son had legal authority and when the man died, there were no funds for the funeral home to withdraw. It is discussed that one problem should not be the cause of making a law.

Senator Klein moved a **DO NOT PASS**. Senator Espegard seconded.

Roll Call Vote: 7 yes. 0 No. 0 Absent.

Carrier: Senator Klein.

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Date: 1-21-03
Roll Call Vote #:

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2144

Senate IBL Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DO NOT PASS

Motion Made By Klein Seconded By Espegard

Senators	Yes	No	Senators	Yes	No
7- Sen. Duane Mutch, Chairman	X		Sen. Michael Every 5	X	
7- Sen. Jerry Klein, Vice Chairman	X		Sen. Joel Heitkamp 4	X	
6- Sen. Duaine Espegard	X				
2- Sen. Karen Krebsbach	A				
3- Sen. Dave Nething	X				

Total (Yes) 6 No 0

Absent 1 - Krebsbach voted after hearing

Floor Assignment Klein

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

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REPORT OF STANDING COMMITTEE (410)
January 21, 2003 11:58 a.m.

Module No: SR-11-0829
Carrier: Klein
insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2144: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends
DO NOT PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2144 was
placed on the Eleventh order on the calendar.

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2003 TESTIMONY

SB 2144

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Senate Bill No. 2144

Good Morning Chairman Mutch and members of the Industry,
Business and Labor Committee, my name is Don Forsberg and I am the
Executive Vice President of Independent Community Banks of North Dakota.
I am here to oppose that part of senate bill 2144 contained in the added
sentence in lines 5 through 9 on page two.

Senate Bill 2144 and the original statute wording in Section 43-10.1-
03.1 of the North Dakota Century Code are intended to provide "notice" to
the funeral home or cemetery association within the specified time period of
the withdrawal of funds from a deposit account held for a pre need funeral
contract. Our concerns are with the notice requirement and include the
following: First, financial institutions are already subjected to volumes of
regulation on both the federal and state level. Both the existing wording in
lines 3 through 5 and the proposed wording in lines 5 through 9 have and
continue to place a regulatory burden of additional reporting on a financial
institution. Second, this section of the statute both as it exists and in this
proposed bill 2144 is for the sole purpose of providing notice to the funeral
home and cemetery association that a withdrawal has taken place. This notice
does not give the funeral home or cemetery association the right to prevent
the release of the funds on deposit. Third, no other depositor or customer

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type receives this level of notice for funds withdrawn from a deposit whether the account is business or personal. In any other jointly held deposit accounts, where more than one party has co-ownership of the account, the financial institution is under no obligation to report to any other co owner regarding the withdrawal of funds by any other authorized party on the account. The pre-need funeral contracts are entirely unique in this area courtesy of this statute. Fourth, the cost of providing the notice with the existing statute and senate bill 2144 is not only the cost of providing a certified letter but also the cost and time needed to deal with the transactions individually in order to meet the notice requirements. Fifth, based upon conversations with the securities commissioner's office even though the statute has been in existence for over 25 years there is still confusion over the when and how the notice is to be given and thus the reason for senate bill 2144.

In summary, the purpose of this section of the original statute and this bill appears to be to assist the funeral home or cemetery association in their bookkeeping. It does not change the ability of the person making the payment for the deposit from being able to withdraw the funds. It does not guarantee the funds will be there at the time of death either under the old wording or with senate bill 2144. There already exists a method for any

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depositor to verify the existence and amount of any deposit account through a written or in person inquiry of the financial institution. A standard inquiry could be sent by the funeral home or cemetery association which would certainly be less expensive than a certified mailing required of the banks and far less cumbersome.

We would propose for your consideration an amendment to senate bill 2144 to strike through the language referring to notice in lines 5 through 9 of page 2 thereby removing the required registered mail notice.

Mr. Chairman and committee members that concludes my testimony on this bill. If the members of the committee have any questions I would be happy to try and answer them.

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Bank

AMENDMENT TO SENATE BILL NO. 2144

Page 2 Lines 5 through 9 – Strike through the sentence referring to giving notice as follows:

~~The bank, credit union, savings and loan association, or trust company shall provide notice by registered mail within five days to the funeral establishment or cemetery association that deposited the funds after the funds have been released to the person who made payment or the appointed person pursuant to a durable power of attorney.~~

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PROPOSED AMENDMENTS TO SENATE BILL 2144

Page 1, line 20, overstrike "may" and insert "shall"

Page 1, line 21, overstrike "to the depositor" and "the death of the"

Page 1, overstrike lines 22-24

Page 2, line 1, overstrike "savings and loan association, or trust company to the person making the payment" and remove "or to an"

Page 2, line 2, remove "appointed person pursuant to a durable power of attorney" and overstrike ", before the death of the person for"

Page 2, line 3, overstrike "whose benefit the funds are paid"

Page 2, line 5, overstrike the period, insert thereafter "either of the following conditions:

1. Upon the death of the person for whose benefit the funds were paid, to the funeral establishment or cemetery association upon the presentation of a certified copy of the death certificate.

2. Before the death of the person for whose benefit the funds were paid, to the person making the payment to the funeral establishment or cemetery association or to the appointed person having legal authority to act on behalf of the person making the payment, upon written request of either person."

and replace "The" with "For any payment made pursuant to subsection 2, the"

Page 2, line 8, remove "to the person who made payment or the appointed person pursuant to a durable"

Page 2, Line 9, remove "power of attorney"

Renumber accordingly

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SB 2144

Testimony of North Dakota Securities Commissioner Karen Tyler
Before the Senate Industry, Business and Labor Committee
January 14, 2003

Mr. Chairman and members of the Committee, I am Karen Tyler, the North Dakota Securities Commissioner.

Senate Bill 2144, relating to the deposit of pre-need funeral contract funds, is introduced by this agency to clarify procedures and ensure that the contract funds on deposit with financial institutions can be released only to the individual who made the payment or to another legally authorized party.

Senate Bill 2144 clarifies the requirement of a notification that must be provided to a funeral home or cemetery association by a financial institution in the event of a release of funds to the individual who made the payment or to another legally authorized party, and that this notification must be provided within 5 days of the release of funds.

Mr. Chairman and members of the committee, after submission of this bill to the legislative council, a drafting style issue was presented that resulted in recommended changes in style, but not substance. These changes begin on page 1, line 20 and continue through page 2, line 9, and the amended language can be found in the "Excerpt of Amended Language" document. (attached)

Mr. Chairman, this agency respectfully recommends a "do-pass" on Senate Bill 2144. I would be pleased to answer any questions at this time.

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Katherine A. Lee
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Excerpt of Amended language in bill

The language on the bill from the new sentence on Page 1, Line 20 to the end of the sentence on Page 2, Line 9 is replaced with the following:

The Funds shall be released or transferred by the bank, credit union, savings and loan association, or trust company upon either of the following conditions:

1. Upon the death of the person for whose benefit the funds were paid, to the funeral establishment or cemetery association upon the presentation of a certified copy of the death certificate.
2. Before the death of the person for whose benefit the funds were paid, to the person making the payment to the funeral establishment or cemetery association or to the appointed person having legal authority to act on behalf of the person making the payment, upon written request of either person.

For any payment made pursuant to subsection 2, the bank, credit union, savings and loan association, or trust company shall provide notice by registered mail within five days to the funeral establishment or cemetery association that deposited the funds after the funds have been released.

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