

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2246

2001 SENATE INDUSTRY, BUSINESS AND LABOR
SB 2246

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2246

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date January 31, 2001.

Tape Number	Side A	Side B	Meter #
3	x		2.4 to 24.5
(2/05/01) 2		x	41.1 to 48.3
(3/20/01) 1	x		39.2 to end
		x	0 to 1.9
Committee Clerk Signature <i>Douglas Perez</i>			

Minutes:

The meeting was called to order. All committee members present. Hearing was opened on SB 2246 relating to the duties of a trustee of a life insurance trust; and to provide for retroactive application.

SUSAN RIBEIRO, President, Frontier Trust Company. This bill would allow a trustee to hold an insurance policy in an irrevocable trust for its insurance values and not its potential investment value. Written testimony attached.

SENATOR ESPEGARD: You will simply be holding the policy and not have the normal fiduciary responsibility that you have with other accounts?

S RIBEIRO: We will only hold the policy and not manage it. We believe it's not reasonable for trust departments to evaluate insurance companies and decide to move the policy. If the grantor chose that company it is best to leave it alone. Basically we are asking permission to leave it alone.

Page 2

Senate Industry, Business and Labor Committee

Bill/Resolution Number SB 2246

Hearing Date January 31, 2001.

MARILYN FOSS, Frontier, ND Bankers' Assn. In favor. In ND these products (irrevocable life insurance trusts) have not been offered by trust departments, except for very large customers, because the litigation risk from beneficiary outweighs the income from holding the policy. This bill does not eliminate fiduciary duties.

PAT WARD, ND Domestic Insurance Companies, opposed, problem is that fiduciary responsibility avoided. Beginning of the bill says "notwithstanding any other provision of law" ND code says trustee should "invest and manage trust assets as a prudent investor", trustee to comply with prudent investor rule as defined in the code.

SENATOR KLEIN: Testimony heard before said this wouldn't be affected you say otherwise.

P WARD: SB 2247 and 2246 seen together seem to mean that an out of state insurance producer can take policies out of state and move them within their own agencies, and reissue them, with no accountability in ND.

VANCE MAGNUSON, ND Insurance Dept., neutral. Possible problem we see: depending on where the policy issued would determine if ND has jurisdiction or not. If the contract issued in Florida for all practical purposes ND has no jurisdiction, especially if companion bill 2247 passes. Concern this trusts will be inactively managed.

M FOSS: These bill have been referred to as companion bills and they are not. These issues can be and are usually addressed in the trust agreements.

Written testimony submitted by Paul J. Wolmoutka, CPA, in favor.

Hearing closed.

Feb 05/01. Tape 2-B-41.1 to 48.3

Committee reconvened. All members present. Discussion held regarding amendments submitted by Pat Ward.

Page 3

Senate Industry, Business and Labor Committee

Bill/Resolution Number SB 2246

Hearing Date January 31, 2001.

SENATOR ESPEGARD: Motion to adopt amendments. SENATOR KLEIN: Seconded.

Roll call vote: 7 yes; 0 no. Motion carried.

SENATOR ESPEGARD: Motion: do pass as amended. SENATOR TOLLEFSON: Second.

Roll call vote: 7 yes; 0 no. Carrier: SENATOR ESPEGARD

Page 4

Senate Industry, Business and Labor Committee

Bill/Resolution Number SB 2246

Hearing Date January 31, 2001.

March 20/01 Tape 1-A- 39.2 to end. 1-B- 0 to 1.9

Committee reconvened. All members present. Committee studied House amendments. Written testimony from **Marilyn Foss**, ND Bankers Assn., in agreement with House amendments. distributed.

Discussion held.

Senator Mutch: What does "reshopping" mean?

Senator Espegard: When you look at the policies you have and see there is a better policy out you cancel and reissue a new one. It is a fiduciary responsibility.

Discussion held.

Senator Krebsbach: Motion: accede to House amendments. **Senator Espegard.** Second.

Roll call vote: 7 yes; 0 no. Motion carried. Floor assignment: **Senator Espegard.**

PROPOSED AMENDMENTS TO SB 2246

Page 1, line 2, remove "; and to provide for"

Page 1, line 3, remove "retroactive application"

Page 1, line 7, remove "acquisition,"

Page 1, line 9, remove "acquisition," and remove comma after "retention"

Page 1, line 17, after "duties" insert ", except where a trustee purchases or acquires a new or replacement policy for the trust which was not selected by the original grantor under the trust instrument"

Page 1, remove lines 18 through 20

Renumber accordingly

Date: 2/05/01
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2246

Senate Industry, Business and Labor

Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Adopt amendments

Motion Made By Sen Espigard Seconded By Sen Klein

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

Total (Yes) 7 No 0

Absent _____

Floor Assignment _____

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

Date: 2/05/01

Roll Call Vote #: 2

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2244

Senate Industry, Business and Labor

Committee

☐ Subcommittee on

or

☐ Conference Committee

Legislative Council Amendment Number DPA

Action Taken

Motion Made By

Seconded

By

[illegible]

Total (Yes) 1 No 0

Absent D

Floor Assignment 1 Edward

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

To remove retroactivity,

REPORT OF STANDING COMMITTEE

SB 2246: 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 2246 was placed on the Sixth order on the calendar.

Page 1, line 2, remove "; and to provide for"

Page 1, line 3, remove "retroactive application"

Page 1, line 7, remove "acquisition,"

Page 1, line 9, remove "acqulsition," and remove the second comma

Page 1, line 17, after "duties" insert ", except if a trustee purchases or acquires a new or replacement policy for the trust which was not selected by the original grantor under the trust instrument"

Page 1, remove lines 18 through 20

Renumber accordingly

Date: 3/20/01
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2246

Senate Industry, Business and Labor

Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Accede to house amendment

Motion Made By Sen Klobuchar Seconded By Sen Espagno

[illegible]

Total (Yes) 7 No 0

Absent 0

Floor Assignment Sen Espigarral

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

2001 HOUSE JUDICIARY

SB 2246

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2246

House Judiciary Committee

☐ Conference Committee

Hearing Date 03-06-01

Tape Number	Side A	Side B	Meter #
TAPE I	x		2498 to 6224
TAPE I		x	01 to 1223
Committee Clerk Signature <i>Joan Diers</i>			

Minutes: Chairman DeKrey opened the hearing on SB 2246. Relating to the duties of a trustee of a life insurance trust.

Susan Ribeiro: President of Frontier Trust Company (see attached testimony) has some amendments attached.

Chairman DeKrey: Right now there is no estate tax if the estate is under \$600,000.00, how many people would that effect. The tax rate is 65%, does that kick in right away.

Susan Ribeiro: No, there is a sliding scale. We have a lot of people over forty in the state of North Dakota that have at least that much. But also nationally.

Chairman DeKrey: Had a question about land in trust.

Susan Ribeiro: That will come up in the bill 2248.

Rep Delmore: I am not sure that this bill is customer friendly. I would want someone to make sure that things were kept in place and someone is responsible for it.

Susan Ribeiro: The person chooses the insurance and the agent and the company. It is not the trust company to second guess what was wanted. A change can be made by a third party, the trust cannot make those decisions. Raising our fees from 200 to 1,000 is also not customer friendly.

Rep Delmore: You are just a hold company.

Susan Ribeiro: That is correct. We do the paperwork to insure the policy is in effect by mailing notices etc. Upon the death of the customer we collect the amount and pay it out.

Rep Onstad: Why is not wise to have one heir full ownership, can you site some examples why this would be.

Susan Ribeiro: Gave an example with someone having five or six children.

Rep Onstad: Gives an example, under federal law, I can gift them that premium. You can currently do that now.

Susan Ribeiro: that is correct.

Rep Onstad: Why would I want to go to a trust.

Susan Ribeiro: Their are minor children or a "spend thrift" a trust is used to protect the funds. A trust takes into consideration age and life style.

Rep Klemin: On line 13, the trustee is not liable, who would be able to exercise a policy option.

Susan Ribeiro: A third party, someone who is called the "named" individual.

Rep Klemin: You say a properly constructed trust, what if it is not.

Susan Ribeiro: People that are in this business should do that.

Rep Klemin: Asks again, who would be able to exercise an option.

Susan Ribeiro: The trust doesn't have the duty, but that doesn't mean they can't.

Rep Klemin: It could just be put in a file.

Susan Ribeiro: We don't do that.

Rep Klemin: You could.

Susan Ribeiro: Explains what happens then.

Rep Mahoney: I get the impression that fees are what they are because of the liability. How many times has Frontier been sued.

Susan Ribeiro: Never, but some companys are saying that they won't do a trust at any cost.

Rep Mahoney: As a trust company do you have a higher duty do you not.

Susan Ribeiro: Yes, we do, but we also have a risk and reward in our society. This is a very good planning tool. Goes on to give an example of how the process of evaluating works.

Rep Mahoney: I am hearing different things, on one hand without this you would have to do all these different things, and you are not doing that currently. But you have a fear of being sued. You have these fees, can you reduce those fees, do any go towards a liability cost to protect against a law suit.

Susan Ribeiro: Right now we only offer trusts that include insurance from one of our affiliates.

Rep Klemin: You don't really need this bill, unless it is something to help you expand.

Susan Ribeiro: Yes, we do want to expand our business.

Rep Klemin: This would then have a favorable effect on you Errors and Omissions Insurance rate.

Susan Ribeiro: NO, I don't think so.

Rep Klemin: Makes a comment.

Susan Ribeiro: It won't effect our rates. We only work with our own insurance companies.

Rep Klemin: You do that now anyway.

TAPE I SIDE B

Susan Ribeiro: continues No our legal department says no to other insurance companies.

Rep Klemin: Would this bill allow you to do otherwise.

Susan Ribeiro: Yes.

Rep Grande: If we put this bill in place, explains with an example. Talking about liability of insurance company.

Susan Ribeiro: that is correct, if we make a bad choice, we are liable for it.

Rep Grande: When President Bush passes the repealer on the estate tax, this will all go away.

Susan Ribeiro: I don't believe that it will all be repealed.

Rep Delmore: How often do you make the choice. How often does this leave you open for liability.

Susan Ribeiro: If we follow the letter of the law, we should be looking at these policies very one to two years. At present there is no law that says you must.

Rep Delmore: This bill relieves you of the liability, how often are you liable.

Susan Ribeiro: The beneficiaries say we should look at the policies, but we say no.

Chairman DeKrey: If there are no further questions, thank you for appearing before the committee.

Marilyn Foss: North Dakota Bankers Association, spoke in support of SB 2246.

Chairman DeKrey: Can I do this in South Dakota, if I can't in North Dakota.

Marilyn Foss: I don't know.

Rep Delmore: According to what is in here we could not go to any surrounding state. There are only eight other states, most on the east coast.

Marilyn Foss: I understood Chairman DeKrey's question to be, are South Dakota Institutions offering this product, I don't know.

Rep Delmore: If there is no liability, why if I had lots of money would I not take care of this myself.

Marilyn Foss: Trusts require a fair amount of administrative details to meet federal law, also gift tax exclusion and such it becomes very complicated.

Rep Delmore: There is a great deal of paper work and federal regulations.

Marilyn Foss: Yes.

Rep Maragos: My understanding is that financial institutions can do this but choose not to.

Marilyn Foss: Correct.

Rep Mahoney: Some companies are, and some companies are drawing away from this, can you respond to this.

Marilyn Foss: I have inquired and the response is that they will do it for a very good customer, if they have been doing business with them, but not for all. Legislation will make a difference.

Rep Mahoney: There has never been any litigation in North Dakota, is this another lawyer fear thing.

Marilyn Foss: We ask for laws all the time that have no litigation.

Rep Grande: Is it not that the trustee is asking to take on the risk when they have been the one purchasing and but when they are the grantor and did not take on the initial risk then why would they want to continue on.

Marilyn Foss: That is correct.

Chairman DeKrey: If there are no further questions, thank you for appearing, anyone wishing to testify in support, opposition or neutral.

Terry Weis: North Dakota Association of Financial and Insurance Advisors: explains how a trust is set up, they work as a team with the insurance agent, the customer and lawyer. When a change is made they all have input. An insurance policy can be used to replace assets that they use up.

Rep Klemin: What kind of insurance policy is in the trust , are they term.

Terry Weis: That is the decision of the members of the team, he then names several types of insurance. But 90% of the policies are whole life policies.

Rep Klemin: We would see the amount of the premium is becoming a lot of the policy.
terrifies: No, that should never happen.

Chairman DeKrey: If there are no further questions, thank you for appearing before this committee.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2246b

House Judiciary Committee

☐ Conference Committee

Hearing Date 03-13-01

Tape Number	Side A	Side B	Meter #
TAPE I		x	2101 to 2587
Committee Clerk Signature <i>Joan Diers</i>			

Minutes: Chairman DeKrey called the committee to order on SB 2246.

COMMITTEE ACTION

Chairman DeKrey: what are the wishes of the committee. Rep Maragos moved the amendments.

Marilyn Foss was there to explain the amendments. Chairman DeKrey are you ok with the amendments. Marilyn Foss replies that she is. Rep Grande seconded the amendments. Voice vote on the amendments, the amendments pass. Rep Grande move a DO PASS as amend, seconded by Rep Klemin.

DISCUSSION

Chairman DeKrey: The clerk will call the roll on a DO PASS as amend motion on SB 2246. The motion passes with 12 YES, 1 No and 2 ABSENT. Carrier Rep Klemin.

PROPOSED AMENDMENTS TO ENGROSSED SB 2246

Page 1, line 7, after the second "the" insert "acquisition."

Page 1, line 10, after the comma insert "but, except as provided below,"

Page 1, line 17, remove "purchase or"

Replace lines 18 and 19 with " acquires a replacement policy for the trust which replaces an existing policy owned by the trust or previously owned by the trust. The exoneration from duty provided in this section does not apply to any such replacement policy and only applies to a policy transferred to a trust by the grantor or some other party other than the trustee or acquired by the trustee of a trust which prior to the acquisition of such policy had never owned any such life insurance policy.

Renumber accordingly

VR
3/13/01

HOUSE AMENDMENTS TO ENGROSSED SB 2246 HOUSE JUDICIARY 03-14-01

Page 1, line 7, after the second "the" insert "acquisition," and after "retention" insert a comma

Page 1, line 10, after "but" insert ", except as provided below,"

Page 1, line 17, replace "purchases or" with "acquires a replacement policy for the trust which replaces an existing policy owned by the trust or previously owned by the trust. The trustee's exoneration from duty provided in this section does not apply to the replacement policy and only applies to a policy transferred to a trust by the grantor or some other party other than the trustee or acquired by the trustee of a trust which before the acquisition of the policy had never owned any such life insurance policy."

Page 1, remove lines 18 and 19

Renumber accordingly

Date: 03-13-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB-2246

House JUDICIARY

Committee

☐ Subcommittee on _____

or

☐ Conference Committee

Legislative Council Amendment Number 18304.0201 .0300

Action Taken Do Pass as amend

Motion Made By Rep Grande Seconded By Rep Klemin

Representatives	Yes	No	Representatives	Yes	No
CHR - Duane DeKrey	✓				
VICE CHR -- Wm E Kretschmar	✓				
Rep Curtis E Brekke					
Rep Lois Delmore	✓				
Rep Rachael Disrud	✓				
Rep Bruce Eckre	✓				
Rep April Fairfield					
Rep Bette Grande	✓				
Rep G. Jane Gunter	✓				
Rep Joyce Kingsbury	✓				
Rep Lawrence R. Klemin	✓				
Rep John Mahoney		✓			
Rep Andrew G Maragos	✓				
Rep Kenton Onstad	✓				
Rep Dwight Wrangham	✓				

Total (Yes) 12 No 1

Absent 2

Floor Assignment Rep Klemin

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

REPORT OF STANDING COMMITTEE

SB 2246, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 1 NAY, 2 ABSENT AND NOT VOTING). Engrossed SB 2246 was placed on the Sixth order on the calendar.

Page 1, line 7, after the second "the" insert "acquisition," and after "retention" insert a comma

Page 1, line 10, after "but" insert ", except as provided below,"

Page 1, line 17, replace "purchases or" with "acquires a replacement policy for the trust which replaces an existing policy owned by the trust or previously owned by the trust. The trustee's exoneration from duty provided in this section does not apply to the replacement policy and only applies to a policy transferred to a trust by the grantor or some other party other than the trustee or acquired by the trustee of a trust which before the acquisition of the policy had never owned any such life insurance policy."

Page 1, remove lines 18 and 19

Renumber accordingly

2001 TESTIMONY

SB 2246

**TESTIMONY OF SUSAN RIBEIRO
IN FAVOR OF SENATE BILL 2246**

Mr. Chairman, Members of Committee:

My name is Susan Ribeiro I am President of Frontier Trust Company, FSB which is located in Fargo, North Dakota.

Frontier Trust Company, FSB is a Federal Savings Bank with trust powers that was originally chartered in the early 1960's as a North Dakota Banking Association. In 1987, Frontier Trust Company, FSB was purchased by The Equitable Life Assurance Society of the U.S. In June, 2000, at the time of the conversion to a Federal Savings Bank, ownership was transferred to AXA Financial.

Frontier provides trustee services for retirement plans and certain types of personal trusts. Frontier is trustee for over 2700 companies and individuals. Most of our clients are located outside the state of North Dakota.

You may be aware that Frontier has introduced three bills relating to trust services for the consideration of the 2001 Legislative Session. To quote a recent business journal article, "Trust is hot business". South Dakota, Delaware and other states have passed laws to attract trust business that is profitable but also safe and sound.

Senate Bill 2246 is one of the three bills Frontier is sponsoring. It relates specifically to irrevocable life insurance trusts. Legislation similar to this bill has been passed by at least 8 other states,

South Carolina, Pennsylvania, North Carolina, West Virginia, Virginia, Maryland, Connecticut and Massachusetts.

Irrevocable Life Insurance Trusts are a very valuable estate-planning tool. The maximum Federal Estate tax rate is 55% and if estate tax is due on an estate it must be paid within nine months of the date of death. This tax can impose a severe hardship on the deceased's surviving spouse and family. Even if assets are available to pay the estate taxes, market conditions at the time the tax is due may be such that a forced sale of those assets causes hardship.

Life insurance gives a person the means of providing the necessary cash to their heirs so they can pay the estate tax bill. But, if the person owns or controls the life insurance policy at the time of death, the policy death benefit is also taxed in their estate. It would be possible to avoid estate tax on the insurance by having the heirs own the policy. But, in some cases, it may not be wise to give one's heirs full ownership and control of the insurance policy. Using an irrevocable insurance trust to hold the insurance policy also provides a method to avoid state taxes. Upon death, the trustee can distribute the policy proceeds to the heirs or make a loan to the person's estate, thereby providing the cash needed to pay the estate tax bill. Because the policy was in an irrevocable trust, its proceeds were not taxed in the insured's estate. If tax rules are properly followed, the gifts to the trust can also qualify for the annual gift tax exclusion. These gifts can be used to pay the premiums on the insurance policy held in trust during the insured's lifetime. Such trusts have been used for nearly thirty years to provide a tax efficient method of paying estate taxes.

Since providing cash at the time of death is the primary objective of such a trust, life insurance is normally the only asset held in the trust. For many years, corporate trust companies would agree to serve as trustee of an irrevocable life insurance trust for a nominal fee. The trust company would send out the required notices, make sure the premiums were paid on the policy and, eventually, distribute the cash provided by the insurance policy.

In recent years, concerns over the trustee's potential liability have caused many trust companies to either refuse to act as trustee of an irrevocable life insurance trust or to substantially increase their fees for such trusts. It is not uncommon to find annual trustees fees that exceed \$1,000 a year for a trust whose only asset is an insurance policy and in some states the annual trustee's fees exceed \$2,000 per year.

S.B. 2246 will allow a trustee to hold an insurance policy in an irrevocable trust for its insurance value and not its potential investment value. This should lead to lower costs for this service and will insure that this valuable estate-planning tool remains available.

The bill provides that a trustee does not have a duty to:

1. Determine whether any life insurance policy is or remains a proper investment
2. Exercise policy options available under the policy; or
3. Diversify the policy.

Unless the trust document specifically provides otherwise, this bill would apply both retroactively and prospectively, to any trust established before or after the effective date of this Act and to any life insurance policy acquired by a trustee before or after the Act.

When a person decides to establish an irrevocable life insurance trust they typically transfer an existing policy to the trust or work with an insurance professional to purchase new life insurance. The trustee does not select the insurance policy but merely implements the selection made by the insured.

Frontier does not believe that the trustee should be required to periodically reevaluate the insurance policy the insured selected to place in the trust. Such evaluations are difficult and expensive. Trustees typically do not have the staff, the expertise, or the right to obtain in-depth information regarding the solvency of insurance companies. This is a function delegated to state insurance departments. Changing coverage also requires new medical information from the insured and, a new coverage, the suicide provision begins anew.

In addition, the insured may have selected the policy held in trust and the insurance professional for reasons that are not known to the trustee. Changes in insurance coverage made by the trustee, while reducing liability for the trust company, may well be contrary to the wishes and intent of the insured.

Irrevocable insurance trusts are a very valuable estate planning tool that provide cash for beneficiaries to pay estate taxes, rather than being forced to sell the estate's assets to pay taxes. If the trustees must establish a formal, periodic evaluation process for the insurance policies held in irrevocable insurance trusts and provide for the possibility of future court actions by trust beneficiaries, then trustee fees will increase. Corporate trustees, concerned with possible liability, will discourage irrevocable trusts, or establish fee schedules that will have the same effect.

Frontier is in favor of SB 2246 and believes it will keep irrevocable life insurance trusts available and affordable to the citizens of North Dakota. We hope the committee will vote to recommend passage.



Consultants • Certified Public Accountants

January 31, 2001

Senate Industry Business and Labor
North Dakota Senate
600 E Boulevard Ave
Bismarck, ND 58505

RE: Senate Bill 2246 Relating to Life Insurance Trust

Dear Chairman and Committee Members:

I'm am in favor of House Bill 2246.

Using a trust to own life insurance is one of the methods used to keep life insurance out of an individual's taxable estate. These trusts are not for everyone. However, they do have their place and they are being used.

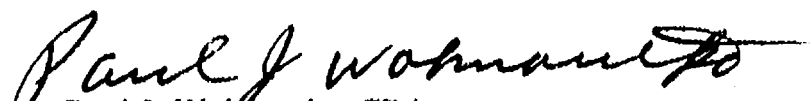
Obtaining a trustee for life insurance trusts is sometimes difficult because of lawsuits that have occurred in other states. Trustees find themselves in an awkward situation. The insured tells them they want a specific type of policy and the insured periodically deposits money in the trust for paying those premiums. After the insured dies, family members have been known to bring suit against the trustee for not shopping for other insurance policies, exercising certain options under a policy and/or diversifying the investment when the only investment in the trust is the insurance policy selected by the creator of the trust.

This Bill will make it more palatable for trustees to serve as a trustee of a life insurance trust and carrying out the wishes of the individual who created the life insurance trust.

I urge your vote of do pass on Senate Bill 2246.

Sincerely,

EIDE BAILLY LLP


Paul J. Wonnoutka, CPA

TESTIMONY OF SUSAN RIBEIRO

IN FAVOR OF SENATE BILL 2246

Mr. Chairman, Members of Committee:

My name is Susan Ribeiro. I am President of Frontier Trust Company, FSB which is located in Fargo, North Dakota.

Frontier Trust Company, FSB is a Federal Savings Bank with trust powers that was originally chartered in the early 1960's as a North Dakota Banking Association. In 1987, Frontier Trust Company, FSB was purchased by The Equitable Life Assurance Society of the U.S. In June, 2000, at the time of the conversion to a Federal Savings Bank, ownership was transferred to AXA Financial.

Frontier provides trustee services for retirement plans and certain types of personal trusts. Frontier is trustee for over 2700 companies and individuals. Most of our clients are located outside the state of North Dakota.

You may be aware that Frontier has introduced three bills relating to trust services for the consideration of the 2001 Legislative Session. To quote a recent business journal article, "Trust is hot business". South Dakota, Delaware and other states have passed laws to attract trust business that is profitable but also safe and sound.

Senate Bill 2246 is one of the three bills Frontier is sponsoring. It relates specifically to irrevocable life insurance trusts. Legislation similar to this bill has been passed by at least 8 other states, South Carolina, Pennsylvania, North Carolina, West Virginia, Virginia, Maryland, Connecticut and Massachusetts.

Irrevocable Life Insurance Trusts are a very valuable estate-planning tool. The maximum Federal Estate tax rate is 55% and if estate tax is due on an estate it must be paid within nine months of the date of death. This tax can impose a severe hardship on the deceased's surviving spouse and family. Even if assets are available to pay the estate taxes, market conditions at the time the tax is due may be such that a forced sale of those assets causes hardship.

Life insurance gives a person the means of providing the necessary cash to their heirs so they can pay the estate tax bill. But, if the person owns or controls the life insurance policy at the time of death, the policy death benefit is also taxed in their estate. It would be possible to avoid estate tax on the insurance by having the heirs own the policy. But, in some cases, it may not be wise to give one's heirs full ownership and control of the insurance policy. Using an irrevocable insurance trust to hold the insurance policy also provides a method to avoid state taxes. Upon death, the trustee can distribute the policy proceeds to the heirs or make a loan to the person's estate, thereby providing the cash needed to pay the estate tax bill. Because the policy was in an irrevocable trust, its proceeds were not taxed in the insured's estate. If tax rules are properly followed, the gifts to the trust can also qualify for the annual gift tax exclusion. These gifts can be used to pay the

premiums on the insurance policy held in trust during the insured's lifetime. Such trusts have been used for nearly thirty years to provide a tax efficient method of paying estate taxes.

Since providing cash at the time of death is the primary objective of such a trust, life insurance is normally the only asset held in the trust. For many years, corporate trust companies would agree to serve as trustee of an irrevocable life insurance trust for a nominal fee. The trust company would send out the required notices, make sure the premiums were paid on the policy and, eventually, distribute the cash provided by the insurance policy.

In recent years, concerns over the trustee's potential liability have caused many trust companies to either refuse to act as trustee of an irrevocable life insurance trust or to substantially increase their fees for such trusts. It is not uncommon to find annual trustee's fees that exceed \$1,000 a year for a trust whose only asset is an insurance policy and in some states the annual trustee's fees exceed \$2,000 per year.

S.B. 2246 will allow a trustee to hold an insurance policy in an irrevocable trust for its insurance value and not its potential investment value. This should lead to lower costs for this service and will insure that this valuable estate-planning tool remains available.

The bill provides that a trustee does not have a duty to:

1. Determine whether any life insurance policy is or remains a proper investment
2. Exercise policy options available under the policy; or
3. Diversify the policy.

When a person decides to establish an irrevocable life insurance trust they typically transfer an existing policy to the trust or work with an insurance professional to purchase new life insurance. The trustee does not select the insurance policy but merely implements the selection made by the insured.

Frontier does not believe that the trustee should be required to periodically reevaluate the insurance policy the insured selected to place in the trust. Such evaluations are difficult and expensive. Trustees typically do not have the staff, the expertise, or the right to obtain in-depth information regarding the solvency of insurance companies. This is a function delegated to state insurance departments. Changing coverage also requires new medical information from the insured and, on new coverage, the suicide provision begins anew.

In addition, the insured may have selected the policy held in trust and the insurance professional for reasons that are not known to the trustee. Changes in insurance coverage made by the trustee, while reducing liability for the trust company, may well be contrary to the wishes and intent of the insured.

Irrevocable insurance trusts are a very valuable estate planning tool that provide cash for beneficiaries to pay estate taxes, rather than being forced to sell the estate's assets to pay taxes. If

the trustees must establish a formal, periodic evaluation process for the insurance policies held in irrevocable insurance trusts and provide for the possibility of future court actions by trust beneficiaries, then trustee fees will increase. Corporate trustees, concerned with possible liability, will discourage irrevocable trusts, or establish fee schedules that will have the same effect.

Frontier is in favor of SB 2246 and believes it will keep irrevocable life insurance trusts available and affordable to the citizens of North Dakota. We hope the committee will vote to recommend passage.

February 18, 2001

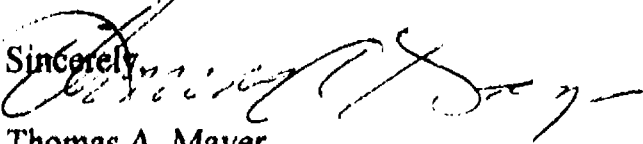
Hon. Duane DeKrey
House of Representatives
State Capitol
Bismarck, ND 58505

Dear Rep. DeKrey,

I'm writing in advance of scheduling of a hearing on SB 2246. Enclosed is a copy of my letter to a sponsor, Rep. Al Carlson, which I would like to have considered by the committee.

I've learned that the bill was amended since I wrote the letter to eliminate the retroactive provision which makes it only slightly less suspect. The essential question is why should one kind of asset in a trust be singled out for less than the usual standard of care by trustees than for other kinds of assets in a trust. I can't fathom a reasonable answer. Something's rotten in the camps of the trustees.

Sincerely,



Thomas A. Mayer
612 Mandan St.
Bismarck, ND 58501

February 11, 2001

Hon. Al Carlson
House of Representatives
State Capitol
Bismarck, ND 58505

Dear Rep. Carlson,

I'm writing to you as the sponsor of HB 2246. This bill bothers me and I think it should bother legislators. I have no personal interest in the bill. I am a co-remainder beneficiary of a small trust but it has no insurance in it. But for those who do, or might in the future this bill is not consumer friendly.

Following is what I emailed another sponsor, Sen. Judy Lee, a day after the bill unanimously passed the Senate. The style has been cleaned up. This bill exempts trustees from the fiduciary duty governing trustees to act prudently regarding insurance held in a trust. For some inexplicable reason the State of North Dakota by this bill gives a trustee a pass regarding insurance policies held in trust. A trustee is excused from doing all the things that persons expect their trustees to do regarding their stocks, their bonds, their real estate, their collectibles—all other types of property managed under a trust. That's why trustees get paid a fee: to determine whether this or that asset is a proper investment; to determine the proper mix or diversification of the investments; to clip the bond coupons timely; to exercise reasonable care and their best efforts to manage the trust assets to realize a fair return. So why should insurance policies be excluded from the duty a trustee has regarding all other assets of a trust? Something's not right.

Furthermore, the bill is to be retroactive. That's a real red flag.

Here's my gut analysis. Some trustee screwed up regarding an insurance policy held in trust and requested this bill. The rationale was explained in investmantese but the bottom line is that it will take the trustee off the hook and protect the trustee from having to pay for the losses attributable to the screw up.

Here's my surmise scenario, or one that will be excused in the future if this bill passes. The trustor put in trust a term life insurance policy covering his spouse that he purchased years ago. The trust was large and grew larger over the years. The trust continued in effect after the trustor died. His spouse was the income beneficiary and the children or grandchildren the remainder beneficiaries. The policy was overlooked. As the widow aged the premiums increased every year or five years. The premium bills were paid automatically with other trust expenses. The widow lived to a ripe old age and lets say the premiums reached \$1000 a month over the last ten years of her life. At her death

there was a \$50,000 policy payable to the trust to be distributed to the children or grandchildren with other assets. One was a lawyer or accountant and when he or she realized that the trustee had paid \$120,000 over the last ten years of the widow's life for a \$50,000 policy he or she was upset. When it was calculated what \$1000 a month invested in the stock market the last ten years would have earned the beneficiaries contacted a lawyer and had unpleasant things to say to the trustee.

And that's what this bill is all about. In a way it is the hokey pokey.

Sincerely,

Thomas A. Mayer
612 Mandan St.
Bismarck, ND 58501
701 328 3537 (w)
701 223 6218 (h)

FOSS AND MOORE

— ATTORNEYS AT LAW —
314 EAST THAYER
P.O. BOX 2218
BISMARCK, ND 58502-2218

MARILYN FOSS
SHERRY MILLS MOORE

PHONE: 701-222-4777
FAX: 701-222-8802

March 9, 2001

Honorable Duane DeKrey, Chair
Committee Members
House Judiciary Committee
North Dakota House of Representatives
State Capitol Building
600 East Boulevard Avenue
Bismarck, North Dakota 58505

RE: SB 2246

Dear Representative DeKrey and Members of the Committee:

Thank you for providing me with an opportunity to respond to Tom Mayer's February 11, 2001, and February 18, 2001 letters. Mr. Mayer has no current or past relationship with Frontier Trust Company. He did not discuss SB 2246 with any Frontier representative nor, apparently, with any financial planning, trust or insurance professional. Mr. Mayer describes his assertions as being based upon his "gut feeling" and "surmise". Apparently he has no personal or professional experience as an estate or financial planner, attorney, or life insurance grantor, or beneficiary. It's likely he would have a completely different perspective if he had experience in any of these capacities.

An irrevocable life insurance trust helps people preserve their assets. If a life insurance trust is established and administered properly, contributions to the trust can qualify for a gift tax exclusion and proceeds from the policies which are trust assets are not taxable in the estate of the deceased insured. These are recognized to be very substantial benefits.

The Honorable Duane DeKrey

March 9, 2001

Page 2

Because of tax regulations, there is much about a life insurance trust which is form over substance. It is the grantor/insured who has selected an attorney and insurance agent and has worked with them to choose a policy and trustee, but the grantor can not retain or exercise attributes of ownership over the trust assets, even though contributions from the grantor are the main source of funding to pay policy premiums. Grantors expect the trustee's function for a life insurance trust to be mostly passive, i.e., to consist of collecting contributions and paying life insurance premiums so the policy doesn't lapse, notifying beneficiaries of contributions and rights to withdraw funds to maintain favored tax treatment, and collecting and distributing policy proceeds after the insured grantor's death as directed in the trust instrument. Grantors aren't requesting or expecting active management of life insurance policy assets as they might be when trust assets consist of securities and other income producing property.

Mr. Mayer suggests that SB 2246 has been introduced to provide cover for trustee mistakes. That's simply not true. Frontier has never been sued or subjected to a claim that it's administration of a life insurance trust (or any other trust) was substandard. So far as I am aware, no North Dakota trust company or bank has been sued about its administration of a life insurance trust or life insurance policy. Frontier and NDBA members support this bill because they believe there is a market for irrevocable life insurance trust services and that the market is being unmet because the irrevocable life insurance trust product has largely been priced out of the market as a direct result of litigation risk.

In the cases which were discussed by Ms. Ribeiro, the contention was that a trustee's duties to *beneficiaries* included duties to evaluate the solvency of insurers, duties to evaluate and exercise policy options and diversify "investments". No grantor was unhappy. The claims by beneficiaries did not and do not reflect the realities of the relationships and roles of the insurance agent, grantor/insured or corporate or individual trustee in connection with a life insurance trust, but they do represent a real risk. After all, successfully defending a lawsuit can be extremely expensive. SB 2246 benefits consumers because it will bring financial institutions back into the life insurance trust market and at a price which would again make administration of a life insurance trust by a professional trustee truly

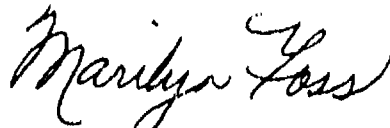
The Honorable Duane DeKrey
March 9, 2001
Page 3

affordable once again. It will benefit corporate trustees because it enlarges their product lines.

Will this change in the law mislead anyone about the services which are offered by a life insurance trustee? We don't think so. Trusts are set up or reviewed by a grantor's professional advisors. These include attorneys and accountants who are in no way connected to the trustee or insurer. Nothing in SB 2246 affects the independent judgment of these advisors or their obligation to represent the interests of the grantor who is their client. If a grantor desires to have the trustee's duties include analyses of insurer solvency and "active" management of insurance policies, nothing in the bill prevents the grantor from making that type of active management a requirement for the trust as set out in the trust instrument.

SB 2246 (with the amendments discussed in committee) deserves your favorable consideration. Thank you.

Sincerely Yours,

A handwritten signature in cursive script that reads "Marilyn Foss".

Marilyn Foss
Lobbyist No. 25

WHEELER WOLF

ATTORNEYS

Albert A. Wolf
Jack McDonald
Gregory C. Larson
Steven L. Latham
Sarah Vogel

Todd A. Schwarz
Courtney Koebele
Anthony J. Weiler
Damian J. Huettl
Andrew F. Nilles

Legal Assistants
Dianne M. Taix, CLAS
Char J. Jacober, CLA

220 North Fourth Street • P.O. Box 2056 • Bismarck, ND 58502-2056 • (701) 223-5300 • Fax (701) 223-5366

March 9, 2001

Chairman Duane DeKrey
House Judiciary Committee
State Capitol
600 East Boulevard
Bismarck, North Dakota 58505

RE: SB 2246 and SB 2248

Dear Chairman DeKrey:

I am writing regarding two bills: SB 2246 and SB 2248.

SB 2246 relates to the duties and liabilities of a trustee of a life insurance trust and SB 2248 does away with the rule against perpetuities in North Dakota and allows trusts to be set up and allows "dynasty" trusts to be set up in North Dakota.

My Background.

I have practiced in Bismarck for 21 years specializing in estate and tax planning. I represent a broad base of clients. For most of them, I have prepared wills, powers of attorney, health care powers of attorney, and living wills. For many with larger taxable estates, I have also prepared life insurance trusts. For the largest estates that I work on, I have been involved the establishment of "dynasty" trusts.

SB 2246.

I have reviewed this bill and am very much in favor of its passage. The bill addresses an issue that has become a problem for insureds throughout the United States. The problem is finding a corporate or professional trustee that will be the trustee of a life insurance trust for a reasonable fee. For many years, trust companies were willing to be trustees of life insurance trusts for a very reasonable fee (usually between \$200.00 and \$500.00). However, in recent years, there have been lawsuits brought in other states where the beneficiaries of life insurance trusts have sued the trustees.

Chairman Duane DeKrey

March 9, 2001

Page 2 of 3

The typical lawsuit against the trustees has been based on a claim that the trustees did not purchase the very best policy with the premiums that they paid. In other words, the beneficiaries are complaining that for the premium dollars paid, the trustees could have found a better product in the market place.

Most life insurance trusts are set up by the insured as the grantor and his spouse and/or children as beneficiaries. The purpose of a life insurance trust is to insure the life of the grantor while keeping the insurance proceeds out of the taxable estate of the grantor. This is accomplished by having ownership of a policy in the name of the trustee of the life insurance trust. Typically, the insured already has his policy picked out prior to the establishment of the life insurance trust. The trustee is then instructed to make premium payments on the policy already selected. Normally, the duties of the trustee are limited to making premium payments until the insured passes away.

Because of the lawsuits mentioned above, trustees have been reluctant to take on these duties. The result of this reluctance is that trust companies either refuse to take on these duties or they have raised their rates considerably so as to discourage insureds from hiring them.

The passage of this bill would minimize the exposure of trustees regarding policies selected by the grantor/insured. It would also allow the trustee to just make premium payments without being required to review every product in the marketplace every year to be assured the trust has the best product. This product review would be the responsibility of the insured and his insurance agent.

I have read the letter dated February 11, 2001, written by Thomas A. Mayer and sent to the Representative Al Carson. I completely disagree with Mr. Mayer's concerns and speculations. The purpose of this bill is simply to allow insureds to set up a life insurance trust and find a trustee that will take on the duties of making premium payments without charging an excessive fee. The passage of this bill will benefit the consumer by allowing them to have a professional trustee at a reasonable fee.

SB 2248.

This bill eliminates the rule against perpetuities. This rule has been in place to stop trusts from being perpetual. It required trusts to terminate and distribute property within a certain time limit. If trust property is distributed, when the recipient dies, those assets will be part of the recipient's estate; and possibly cause the occurrence of an estate tax.

The purpose of the "dynasty" trust is to set up a trust that will go for the lifetime of the grantor's children and when the children pass away, the trust will continue on for the lifetime of grandchildren. When the grandchildren pass away, the trust will continue on for the lifetime of the great-grandchildren. This can continue on generation after generation.

Chairman Duane DeKrey

March 9, 2001

Page 3 of 3

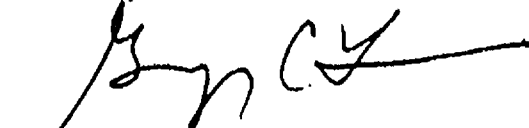
The benefit of this type of trust is that there is no estate tax required to be paid at the death of a beneficiary, since that beneficiary only had the right to receive income during his or her lifetime. This can be very beneficial to allow estates to continue to grow without being reduced by the occurrence of an estate tax. This is a very popular and beneficial estate tax planning tool.

In the past, I have been required to go to South Dakota to have these types of trusts set up for my clients. There are just a few states (Alaska, Delaware, Wisconsin and South Dakota) that have laws that will allow these types of trusts to be set up.

If this bill is passed, it will enhance the ability of North Dakota trustees to be trustees of these trusts for North Dakota citizens and also for out-of-state citizens. All of the states that have eliminated the rule against perpetuities seek business across the United States from people who wish to take advantage of this estate tax planning benefit. Typically, the amount of money placed in a "dynasty" trust will range from \$1,350,000 to \$2,000,000. It would be very beneficial to North Dakota trust departments and related businesses to keep that kind of money in North Dakota. Also, the ability to draw money from outside of North Dakota in those amounts would provide a great benefit to related North Dakota businesses.

If you have any questions on either of this bills, please let me know.

Sincerely,



Gregory C. Larson

Email: glarson@wheelerwolf.com

GCL:sar/dms

FOSS AND MOORE

— ATTORNEYS AT LAW —

314 EAST THAYER

P.O. BOX 2216

BISMARCK, ND 58502-2216

MARILYN FOSS
SHERRY MILLS MOORE

PHONE: 701-222-4777

FAX: 701-222-6502

March 19, 2001

Duane Mutch, Chairman
Members
Senate Industry Business and Labor Committee
600 East Boulevard Avenue
Bismarck, North Dakota 58505

RE: Re-engrossed Senate Bill 2246 (Irrevocable Life Insurance Trusts)

Dear Senator Mutch and Committee Members:

This is to ask the Senate IBL committee to concur with the House on re-engrossed SB 2246 which passed the House of Representatives on Friday, March 16.. In the House there was only one dissenting vote.

SB 2246 was amended in the Senate as requested by Pat Ward. Frontier was concerned about the language of those amendments but was not able to have alternative language considered by all interested parties before the bill had to be passed out of the Senate IBL Committee. After the bill was amended and passed the Senate, we were able to get together with Mr. Ward and his clients and suggest new amending language to address the substantive concern (re-shopping by trustees) and a technical concern with the language of the engrossed bill. (That concern centered around language about the grantor replacing an insurance policy. If a grantor acted to do that directly, it would jeopardize the federal estate tax exemption for policy proceeds.)

By the time Engrossed SB 2246 came before the House Judiciary Committee, the parties had agreed on specific House amendments to address the concerns of all parties. Those amendments are reflected in re-engrossed SB 2246.

Senate IBL Committee

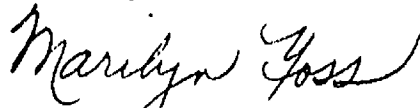
March 19, 2001

Page Two

Re-engrossed SB 2246 is now acceptable to Frontier Trust Company, the North Dakota Bankers Association, Mr. Ward and his various clients, and also to Terry Weis and his group of insurance and financial advisors. (Mr. Weis had expressed concerns about re-shopping when he testified on the bill before the Senate IBL committee. In the House he testified he and his group were neutral on the bill and the amendments which were proposed in the House.)

I will check with you to see if you have any questions about the House amendments.

Sincerely Yours,

A handwritten signature in cursive script that reads "Marilyn Foss".

Marilyn Foss

cc: Susan Ribeiro (Frontier)

Pat Ward

Terry Weis