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2005 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2190

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2190

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 1-18-05

Tape Number	Side A	Side B	Meter #
1		xxx	3960-end
2	xx		0-3300
2		xx	1000-1140
Committee Clerk Signature Lisa Van Berkom			

Minutes: **Chairman Mutch opened the hearing on SB 2190. All Senators were present.**

SB 2190 relates to transfers involving annuities.

Senator Rich Wardner, introduced the bill. SB 2190 was put in at the request of constituents. We definitely need the second page because everything on the front page is in code already. It's the second page where we mended it to make the language more clear and precise. With that, Representative Wald is here as well as **Mike Maus,** and **Steve Schneider** to speak on the bill.

Mike Maus, attorney from Dickinson, spoke in support of the bill.

Mike: I want to discuss with you, the problem that came up with regard to this Medicaid qualified annuity that you passed last session. A specific example. The problem dissolved with this woman in her early 60's, her husband was in a serious car accident. Over a period of four or five years, he had to be committed to a nursing home. Over the course of their forty year marriage they had accumulated approx. $200,000. A small house in Killdeer and a car. She came into me for advise saying it was costing $4500 a month for nursing home care and wanted to know what to do. I told her that one of her options was to get divorced. She said she wouldn't. Then I told her about this Medicaid qualified annuity, which seems ideal for her situation. She went back to work in her 60's. She put the $200,000 into a Medicaid qualified annuity under this statute and she is going to get back about $1100 per month. Before she does that, we run it by Stark County Social Services. They say on two separate occasions that this annuity qualifies. Department of Human Services came back and said that it didn't qualify. Based on the life expectancy of 63, she should have the annuity for 20.3 years. She put this money into the annuity in February. The annuity became final as a policy on March 26th, 2004. Irrevocable. Then she has a birthday on April 18th. She gets her first payment in May. The Department of Human Services says since she didn't get her payment until May, that is when you life expectancy should have been determined. So she got $200,000 in annuity that is irrevocable and she is getting a bill from the nursing home for $4500 per month. Fortunately the annuity company said that they understand that she didn't create this problem and are going to change the annuity. From 21 years and three months back to 20 years and so many months because she is 63. She resubmitted the annuity. Then the Department of Human Services came back and said that this annuity states that the client can cancel within 20 days following a Medicaid disapproval. It allows the annuity to be cashed in. If the client doesn't act within 20 days they lose the right to cash in. We are urging a DO PASS on this bill, so that life expectancy is determined on the day of issuance of the annuity.

Senator Espegard : The statute we passed last time said that based on your age and life expectancy and based on a certain interest rate, you can put that amount of money away?

Mike: Right.

Senator Espegard : You are saying here that this person had these trouble with the Human Services will happen again.

Mike: It appears to me that there is a potential objective to make sure that nobody qualifies as a feasibility frankly, she went through all of the steps and she did it correctly and she was even told it was okay.

Senator Heitkamp : If the Department of Human Services doesn't determine the life expectancy at the beginning of the annuity, and you are going to over strike that, and you are going to put in that the life expectancy is decided at the date of the issuance, who is going to decide that life expectancy.

Mike: They still have charts to determine that.

Senator Heitkamp : Why are we over striking "by the Department of Human Services"?

Mike: They determined that it will be the date of the first check. That leaves that gap in there where someone can change ages as she did. It should be the date of the issuance of the policy, not the date that you get the check.

Senator Heitkamp : By over striking the language, are we still empowering the Department of Human Services to be the determiner of the life expectancy?

Mike: I don't have any problem with their charts for determining life expectancy, as long as they can nail down the date when it starts.

Senator Espegard : It appears that somebody is trying to circumvents the statute, and that is what we don't want.

Chairman Mutch : In the first instance, what was the amount of money that this lady put in?

Mike: About $200,000. That gives her a monthly income of $1100 per month for 21 years.

Senator Espegard : The purpose of this legislation was to allow the person to have some of their own income without spending $4500 a month and having no dignity left and pretty soon the state's supporting both. This is good legislation and it should be followed.

Steve Schneider, Investment Advisor Representative, spoke in support of the bill. I spent six months with this client, to see what we can do legally to protect her assets. Mike had mentioned her situation. She was a stay at home mom until her kids left, so social security is about $500 a month. She works now for a small income and has a very small 401k. As you can see, if she is not able to keep this contract and get that income, her outlook in the future, the state will be taking care of her and her husband, as Senator Espegard said. This bill would keep this loop hole in the legislature to make sure people like her don't fall through the cracks.

Senator Espegard : The point is that she put all that she could away.

Chairman Mutch : She isn't able to draw it now, because the Human Services Department won't allow it.

Senator Nething : Wouldn't we need to make this retroactive to cover this?

Steve: I would like to see it help our mutual client here because she did this....when I was working to assist her, it will protect her lively-hood and income, which isn't much. It's to protect her.

Senator Heitkamp : You say it's her assets, I'm sure it's his assets as well. So if we are going to talk about capitalism, walk me through why that's fair?

Steve: Currently, how it works is the state pools the moneys together first they have to go through assets needs assessment to see what they can keep and what they need to pay down every month when the bill comes from long-term care. Currently the maximum for the community spouse, the person living outside, not in the home, is $90,660. So they pull the assets together and split them in half. This will protect her in retirement.

Senator Heitkamp : In your experience, this program, use of federal dollars to help him out in the home, so that she can use the assets for long-term care, is fair?

Steve: Yes.

Chairman Mutch : In other words, the annuity was issued jointly?

Steve: No, it was issued in her name alone.

Senator Klein : As she moves on to the nursing home, that annuity would help pay for that?

Steve: Yes.

Senator Espegard : Upon her death, what would happen?

Steve: It would pay for those expenses and what is left over would go to the beneficiaries.

Senator Krebsbach: You say that this has been denied to her to receive this $1100 per month, correct?

Steve: Yes.

Senator Krebsbach: What is happening to that money at this time?

Steve: She is continuing to receive payments every month. We are waiting for the Dept. of Human Services to take care of this.

Curtis Volesky, Director of Medicaid Eligibility for the Dept. of Human Services, spoke in opposition to the bill. See attached testimony.

Senator Espegard: In the bottom of page one and the top of page two of your testimony, I question: Is not the determination of the amount of money that can go in, determined by your life expectancy and the maximum of $2260?

Curtis: That is correct.

Senator Espegard : Explain to me how you say a guy can select a payment option of only 15 years when he only has a life expectancy of nine years.

Curtis: If this law was changed, based on when the annuity was issued, that's basically what the result would end up being. They could purchase the annuity early on, not even funded, but just let it sit there at the point that they need Medicaid, put their money in, select the payment options provided to them at that point.

Senator Espegard : I don't think you can buy that kind of annuity.

Curtis: There are a variety of annuities. The annuity that you described is considered an immediate annuity. Where they purchase it to take payments right away. We see a number of annuities that are purchased early on and do not select a payment option. They are not required to select a payment option until they want to receive it.

Senator Espegard : Let's say that a person buys the annuity for the maximum amount at 65 years old and doesn't want to start drawing until they are 75 years old. He would have too much money in that annuity at that time. That wouldn't qualify then.

Senator Heitkamp : The language in this bill overstrikes the Department of Human Services, on the date of issuance of annuity. Does that take you out of the mix of determining the average life expectancy?

Curtis: By taking out that language, we don't believe that it's really going to change how we look at life expectancy. We feel it will make it more difficult. We currently have a state review team that looks at the medical information that we receive, on individuals that have health conditions and they help make that determination.

Senator Heitkamp : My point is, this is the section of law that allows for the annuity. In this section, the Dept. of Human Services makes the determination on average life expectancy. If we overstrike that, can "Joel" determine the average life expectancy? Someone has to determine it.

Senator Klein : According to his testimony, he says it isn't going to hurt them. It won't change the fact of who determines it, but will make it more difficult to do so.

Curtis: We use an actuarial table. It's the same table that the insurance industry uses. The only time we come with a different life expectancy, is if the individual has a medical condition that is expected to shorten the life.

Senator Espegard : It's says right here in the law that the annuity will return the full amount if it's within the person's life expectancy as determined on the date of the annuity. It doesn't say that you can go ten years from now.

Curtis: People can use these annuities to plan for their retirement. Maybe they purchased this annuity at 65 because they don't want payments to start because they are going to work for a number of years. They can say they only want the payments to start when they reach the age of 70.

Senator Espegard : So then what life expectancy would you use when determining how much money she can put away?

Curtis: We would look at the point that she is going to start receiving the payments at age 70. We would then ask what her life expectancy is. Making that determination at the age in which she purchased it.

Senator Espegard : I have to disagree with that. This annuity is purchased for the specific purpose of keeping the money with the spouse. It is purchased on a certain date and that is the date that you determine that she is going to get $1100 a month.

Curtis: Again, some people do purchase annuities to do that very thing. But not all people purchase those types of annuities. The language on here would open the doors wide open.

Senator Espegard : I disagree with that. It says that the determination would be made on the date of issuance of the annuity.

Curtis: That's the date that we are going to look at that person's health or life expectancy. The date that the annuity is issued, a person may have a long life expectancy. When it is issued does not necessarily mean that that is the date when payments start.

Chairman Mutch: With this annuity, is the husband and the wife separately considered?

Curtis: Currently when an annuity holder passes away, if there is still payments left to be made, those payments go to the beneficiary.

Senator Espegard : I personally don't like the fact that you can determine, other than the actuarial table, that someone is going to die either. If they do die early, it's to the benefit of their spouse to get the money anyway. I don't think you can buy the policy until someone is in the nursing home already. I don't think you understand the type of annuity that we are talking about here.

Senator Fairfield : In your example of what could happen, it was a matter of months. If the intent of the department was not to find a way around this to deny, I can't imagine what the intent was.

Curtis: Again, I'm not familiar with this case.

Senator Fairfield : This woman seemed to have jumped through hoops. At first she went in and it was 20.3 months and you said life expectancy was 21.5 months, so then she went in and the insurance company allowed her to back out of it and then you found another reason to deny it. Was it just that you were looking for a reason to not uphold the law?

Curtis: It sounds like the second time that the annuity came back, the number of months was fine, but they had then included this clause that says "if a person doesn't have Medicaid, they have a right to get their money back".

Chairman Mutch called on Rep. Wald.

Representative Frank Wald, Dickinson, spoke on the bill. I think Senator Espegard absolutely understands what's going on here. So the issue raised by Curtis, in my mind, is bogus information. There is only two kinds of annuities that you can buy. An immediate annuity or a deferred annuity. If I buy the deferred annuity and want to wait the five years before I start making my monthly annuity, that would not qualify the Dept. of Human Service under the scenario that we have set up. This was the reason this law was established.

Mike Maus, presents the committee with annuity examples. See attached.

Chairman Mutch : So the one who lives the longest gets the most money?

Schneider: Yes, correct.

Senator Klein : If this lady is 63 years old now and working a little. She's getting $1100 per month. How is this going to go now if it's not qualified?

Schneider: Right now she is making about $900 a month, and receiving the $1100 per month and now she needs to pay a bill for $5000 a month to the nursing home. She needs to pay that bill with less than $2000 and then she is supposed to live.

Senator Klein : Then we reach the point where when she goes to the home, all the resources are exhausted.

Damian Huettl, attorney with Wheeler Wolf Law Firm, spoke on the bill.

Damian: I would like to respond to Senator Espegard's opinion of the actuarial table should only be utilized and the department should not have any latitude in determining someone's life expectancy. Our firm has been involved in a couple of these occasions. One where, we represented an 83 year old female who purchased an annuity under this bill. The bill satisfied all of the requirements of the bill and structured to pay out the full principal and interest with in her life expectancy, as the actuarial charts indicated. However, the Department of Human Services was able to get their hands on some of her medical records that we didn't even have access to and they took the position that she was suffering from certain diagnosis that impacted her life expectancy. My opinion would be, what 83 year old person doesn't have any diagnosis that impacts their life expectancy? Obviously, the result in that case was similar to the result that Mr. Maus is experiencing. So there is an overall disdain and disapproval of this bill. The department is not upholding what the legislature intended.

Senator Krebsbach: Are there other situations that have been dealt with since this legislation was enacted and if so, how many cases?

Damian: I would guess probably 75% of the annuities that the Department of Human Services sees comes from our office. And I would say in the past two years, roughly twenty. There is some misleading by the department as to the effect that this bill is having on the department's budget.

Curtis: I want to clarify that the Dept. of Human Services likes the existing law, just fine. We do follow the law. The life expectancy issue, we do follow the table. The only time that we look beyond that is if someone has a known condition that their doctor is saying that their life expectancy is shortened. Also, if the community spouse that has this annuity does pass away, there is no guarantee that the funds left in the annuity will go to the spouse in the nursing home. It depends on who the beneficiary is. We review approximately 20-30 annuities a month. We see a lot of annuities. Most of the beneficiaries are the children, not the surviving spouse.

The hearing was closed.

Senator Espegard moved to amend. Senator Klein seconded.

Roll Call vote: 7 yes. 0 no. 0 absent.

Senator Espegard moved a DO PASS AS AMENDED. Senator Klein seconded.

Roll Call Vote: 7 yes. 0 no. 0 absent.

Carrier: Senator Espegard

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2190

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 2-01-05

Tape Number	Side A	Side B	Meter #
3	xxx		275
			751
Committee Clerk Signature Lisa VanBerkom			

Minutes: **Chairman Mutch allowed committee discussion on SB 2190. All Senators were present. SB 2190 relates to transfers involving annuities.**

At the committee's request, the Human Services Department was on hand to answer questions pertaining to the revised fiscal note.

Senator Klein: Dave (Human Services Dept.), maybe we could open this up, would you respond to how this fiscal note was created?

Dave Zenter, Director of Medical Services of the Human Services Dept: I didn't, Curtis Volesky did. Curtis is the administrator of the eligibilty side of it. I think initially, what we looked at when we looked at this bill, we didn't know how to put a fiscal note on this. I think the original fiscal note probably said we couldn't determine a cost to it. When the amendment came up, we took another look at it, and said, "Wait a minute, we need to really analyze this to see what kind of a tiger we have". That's when we ended up looking at the process. I'll let Curt get into the details. But what you are talking about here, I think this bill occurred because you wanted to look at one individual, who had a problem. The problem is when you affect change like this, you are affecting it for everyone. Everyone else in the same boat can take advantage of the situation and that is what we are dealing with here. We used an estimate that much depends on how many people will take advantage of this. I'll let Curt try to explain what we are talking about.

Senator Klein : I think we were at some what of a disagreement with Curt's information from the beginning on how these annuities actually work. There are members of this committee who have a good point here on who's being included, which seems to be inflated fiscal note. I am not saying you don't understand but it certainly doesn't seem to be that someone understands how these actually work.

Senator Espegard : This bill that we have here today, is only a clarification of the statute that we put in last time in 2003, which said that you have to recognize them. Now I realize that the department hasn't recognized them and doesn't like them very well, although they say they are neutral on it, but there has been trouble on it. All this says is two things:

1) All this says is that you will use a standard actuarial table, not subject to what the department thinks about how long I will live. Example: If I am sixty years old and think that I might live for thirty years, but you say that I'm overweight and only going to live fifteen years, I don't think that's right. This bill takes away the subjectivity.

2) It says that the annuity is determined at the time in which the annuity is purchased. As to the date and goes retroactive. Because in this particular case, someone had bought an anuity and that is the individual case. I don't care if it's one or twenty back there. This person bought an annuity, an irrevokable annuity, based on two hundred thousand and her getting eleven hundred dollars a

month. She's done everything in her power that was right, and then was denied, she can no longer cancel the annuity, now she's got herself a real mess. She doesn't have the two hundred thousand dollars anymore. But now she's got eleven hundred dollars and now you're going to be after her for her eleven hundred dollars, because you said it doesn't comply. Those two things is what the bill does. Then all of the sudden we get a thirty seven million dollar fiscal note and if you hadn't figured out before, or didn't know and now you have thirty seven million, based off of an estimate that you have taken from all the people that draw in the state. I am watching HB 1248 in the House put in by you again, to do things to these annuities and frankly, I'm getting kind of tired of it. That's why we are here today. That is claw back.

Senator Nething : I think this came only after the amendment to make it retroactive for two years. So we are really talking about a thirty seven million dollar impact for two years. Because we already sighted that it went into effect now, there wouldn't be any impact.

Bob: Number one, HB 1148 was not introduced by the department. It was introduced by Rep. Keiser. What he wanted to do as clarify what he intended in the initial bill. What he wanted to do was clean up some of the language so there was no question and he in fact had no problem with the issue of the department having access to dollars once someone died. That was not our bill. We assisted in the process, but it's Rep. Keiser's bill. With that I will let Curt try to explain where the thirty seven million dollars came from.

Curtis Volesky: I would also like to try to address a couple of issues. It was mentioned regarding life expectancy tables, we do use that table. Yes, in the past we have based on our rules and not understanding what the law provided, looked at individual life expectancy when it wasn't normal. We basically don't make that determination ourselves. We have medical personal that are involved in those types of decisions. With regard to the date that the issuance of the annuity, anybody who sells annuities, basically when they estabolish a life expectancy, they do it based on payments of when you start that annuity. Deferred annuities may be purchased many years in advance of when the annuity starts to pay.

Senator Espegard : I want to check if that's correct. As I understand these, and I may be wrong, but when you buy this you begin collecting your payment immediately. There is no reason to start drawing it months later and that's not how I understand these annuities. If I am right about this, I don't want you misleading the committee about that annuity. So we need to find that out.
You are telling us that they can buy the annuity and not start collecting right away and my understanding is not the same. We need that answer before we can go any further.

Curtis: We have worked with a number of annuities, we have seen many annuities set up that very way. This morning, I was in working on HB 1248, Vance Magnuson was there from the insurance department and he confirmed that annuities can be set up like that. He referred to them as two different kinds, deferred annuities and immediate annuities. Deferred annuities you can purchase it now and payment can start years later. An immediate annuity would be it's purchased now and actually paid out at the same time.

Senator Fairfield: What does this mean that at the bottom on line twenty-three <u>does not a have a balloon or deferred payment of principle or interest</u> isn't that what this is referring to? That's the only way it's allowable is if it's not deferred, what does that mean?

Curtis: That referres to is it can't have annuity that pays the bulk of it's principle in the final payment at the end of the annuity. The reason that is in there, was a number of states have seen individuals set up annuities to pay out over their life expectancy, but the initial payments are very

very small, with the bulk paying out at the end. The whole idea is that if they keep setting up those types of annuities, the bulk of the money will then be passed on to the beneficiary.

Senator Espegard : It says it does not have a balloon, we understand that. But it also says, or deferred payment . I don't have any problem with the balloon, I know it doesn't have one in it. So to tell us that there are all kinds of annuities out there and they come to you with an annuity that has a long time deferred dealer or balloon in it, naturally you would turn that down. We are talking about that one that sets it up for the life expectancy based on the rate of interest that's out there like it's set up and equal monthly payments starting when you buy it until death.

Curtis: That's not our understanding of what this referres to. If that would be the case and the intent of the law, there would be many many medicaid recipients who currently have these annuities who would lose their eligibility. Because they estabolished annuities in the past that did not annuitize them until one spouse went into the nursing home and the community spouse needed the extra income.

Senator Espegard : And you accepted those?

Curtis: Yes, we did.

Senator Espegard : Where in the world would you find law for that? Where would you say that someone is going into a nursing home and say "okay, now by the way, you can buy an annuity that you don't have to take any money out and you have a lump some payment and you can take it out later and we'll call that eligible." .

Curtis: That's the interpretation that our legal staff has had, natural planners that we have talked with, and much of this language came from other states.

Senator Espegard : This specific law says that you can't do that anymore. You can't have those anymore. That was in the 2003 session. It says it's a balloon, no deferred payment, no nothing, that is what we are working with.

Senator Heitkamp : I am going to go back to what Senator Nething said earlier. We came in with no fiscal impact and all we did was try to address that two year window of retroactivity and we got thiry seven million and to me that is the big question in the room.

Senator Espegard : Do you have a list of the annuities, without names, that total up to thirty seven million dollars?

Curtis: No and that is not how we came up with the fiscal note. Originally when this bill came out, we looked at the bill, and initially we didn't know what people were going to do so we aren't sure how we could come up with anything.

Senator Nething : We are not asking what they'll do in the future, we are asking, what did they do in the two year period that made you change your mind from a zero fiscal note to a thirty seven million dollar fiscal note.

Curtis: The fiscal note for thirty seven million dollars is not based on the two year retroactive period. It is based on what this potentially cost us over the next biennium. The retroactive period, we don't know because we don't have records, exactly who purchased what out there. Quite frankly, we can't go back by federal law, by doing that we would lose all federal dollars.

Senator Nething: Brenda is the one that signed the fiscal note that said "It is impossible to determine the number of recipients that might be affected by that bill, therefore this fiscal impact cannot be determined". This leads us to believe that it's zero. Nothing said about a fiscal impact. You people must understand that we have to go by information in these fiscal notes.

Deb MCDermott, Human Services Dept., spoke.

Deb: Just to address that, we don't have any option up in the top part, they are zero, even though the language is saying is that we don't know what it will be. There's no way to get that up in the top part so if you would look at the numbers and see zero and not actually read the verbage in the narrative, it does give a false impression of what the affects of the bill are. We will work with Legislative Council on that.

Senator Espegard : Last session, 50-24 1.2 was put into law. It is law. It says specifically what these annuities are. To come two years later with a fiscal note that addresses this bill is rediculous. What we are saying is you can't be subjective on how long someone lives other than the chart. If it's cancelled, you can't figure that for assistance.

Curtis: Since I was down here last, I went and checked out that case of the lady you are speaking about and I'm not sure why they said she would not have access to that money. Because all she has to do, is if she applies for medicaid and is not eligible, which is the case, she has twenty days in which she can cancel that.

Senator Espegard : Again, by the time she was disapproved, the twenty days had passed. It's irrevokable because that's what the law says it has to be.

Curtis: But it doesn't limit her to one time. If she reapplied again, and was denied, according to the way it's written in that annuity, she could apply again. If we denied it because this annuity was available, she would get another twenty day period. There is no limit on how many twenty day periods she can receive.

Senator Espegard : If you buy an annuity that is irrevokable, it is exactly that. It is irrevokable.They don't give you another chance because of human service things, it's done. Now, if you can bring me an insurance man that says if an annuity comes up, you can revoke it, then bring him to me. I'll be wrong. But I believe that that is not right.

Senator Klein : In looking at this fiscal note, what we are saying here is that we are going to have... people will be buying these annuities that will put so much strain on the medicaid system for their spouses, that we will have a big run?

Senator Espegard : That's not this bill.

Curtis: Subsection 3, the new section that was added, is the piece that is causing the fiscal impact. The first time we were down here, we didn't know how to come up with a fiscal note, plus we didn't at that time, fully understand the impact. When the bill came back with the retroactive amendment, we took a look at the bill again, tried to figure out "how can we come up with a fiscal note?", and during that process, we realized the full impact of this bill.

Senator Espegard : Why would it be turned down? If someone comes in for this type of annuity and meets the criteria that is here, why was it turned down?

Curtis: The problem with that specific case is it was incorrectly approved initially, it never should have been approved. She was misdirected, then it was discovered, after the fact that that was an error.

Senator Espegard : So the dept. origanally approved it, right?

Senator Nething : She did everything she could to be right.

Senator Nething : Curt, I look at your testimony here and when you talk about subsection 3, the strongest language you use is "it's problematic". Never once did you make any reference to difficulties in the fiscal note as to it's so huge we can't even figure out what it is. My gut tells me that I have been misled. That's my problem here. I want to find out why I'm being misled and I want to find out who was misleading me. And when you finish, I want to talk to Debra and I want to ask Debra, who told you what figures to put in this fiscal note and what information did they provide you and who guided you. Because we need to get to the bottom of this. If we can't trust you people when you bring us information, we are really handicapped.

Curtis: I agree with you one hundred percent. I can assure you that we are not trying to mislead you. Originally when I came down and testified on this bill, we did not understand the full impact that subsection 3 would have. It was after that testimony when we started looking further on this trying to come up with another fiscal note because of the addition. Do we know exactly what the fiscal impact this will have? No. There is a potential for this to cost in the next biennium, over one hundred and fifty million dollars. We estimated all the people that potentially could take advantage of this. If only twenty five percent of them did, that is where we get thirty seven million.

Senator Espegard : You are going to abide by the law aren't you? You are going to allow these things aren't you?

Bob: Subsection 3 is the problem.

Senator Espegard : Show me where you had tweny five people that came in , and were disallowed, that now you have to pay. Seems to me that's how you figure the fiscal impact. I'm sure you are going to abide by the law going forward now that you probably understand from the law what it really says.

Curtis: We don't have records that we can readily go back and look at how many cases would be affected. This is not because we were not understanding the law. We just missed it in this annuity.

Senator Espegard : Well then, I submit that you don't have a fiscal note, because you don't know.

Senator Krebsbach: Curtis, I believe you said that in this case, the lady from Dickinson, it did not qualify in the beginning. Now, we were led to understand that they went through all of the hoops, got the approval from both the accountant and the annuity person and each step along the way was approved by your department, what was missed in the beginning?

Curtis: The statement of subsection 3. Federal policy says we have to consider all applications that are available. If they are not eligible for medicaid, they can get the cash back to pay for their care. We missed that in our initial review.

Senator Krebsbach: The reason for final refusal was the date line, not medicaid.

Senator Espegard : I'm wondering if we shouldn't have a committee of two meet with the department and get to the bottom of this and come up with a decent fiscal note.

Senator Nething : I want to ask Debra, your name is on this fiscal note, you are the one, good or bad, that we are under the impression that you prepared it.

Deb: We rely on our program people to come up with the numbers and policies.

Senator Nething : Who were the program people?

Deb: Curtis.

Senator Nething : Curt, who worked with you on this?

Curt: I primarily came up with the numbers from private paying individuals in the nursing home. I got that from Barb Fischer.

Senator Nething : Did you have any consultation on this with your legal coucil?

Curt: Yes.

Senator Nething : What was his reaction to all of this?

Curt: Yes, I was leary about this fiscal note as well, so I took it and had them review the bill.

Senator Nething: Who were they?

Curt: Mellisa Howard.

Senator Nething : Anyone else?

Curt: Dave.

Senator Nething : Did they have any legal coucil look at them?

Curt: I had another legal person look at it.

Senator Nething : Dwayne Nordlom.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2190

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 02-07-05

Tape Number	Side A	Side B	Meter #
1	xxx		0-3251
Committee Clerk Signature			

Minutes: **There was a sub committee appointed to meet with the Human Services Dept. regarding the fiscal impact of this bill and the amendments. Members present were Senator Espegard, Senator Nething, Senator Heitkamp, and Chairman Mutch. Representing Human Services was Carol Olson, Director of Human Services; Dave Zentner, Director of Medical Services; Tove Mandigo, Executive Office; Curtis Volesky, Director of Medicaid eligibility; Melissa Hower, legal counsel.**

Senator Espegard: We have been appointed by the IBL committee to see what we can do here about the situation. To refresh you about the situation, last session, SB 2384 was enacted. Primarily because something that had been law of the land since about 1994, which allowed for annuities to be used in certain cases, was not being utilized by the department. In fact they were disallowing them. So we put into statute in SB 2384, which specified the kind of annuity was eligible. This year, we found out that it wasn't all working that well. In a couple of areas, we found that there were areas of concern in that they were still being disallowed and we heard some stories of someone who has been damaged by this. You can imagine the situation that person was in because now she has this annuity which exempted her from medical assistance and was tied into for her life expectancy. Originally the fiscal impact of this bill was zero. We amended it to say that the department was taking too much liberty in determining what someone's life expectancy was. So we changed it so that the standard actuarial life expectancy chart and the date of issue of the annuity was what had to be used. The rest of the amendment was to make it retroactive. So whatever had gone on since 2003, if people had been damaged by your actions, we want it fixed. That's the law. The bill passed out of committee 7-0 DO PASS, and just before I was to carry the bill on the floor, I was given a new fiscal note that said thirty eight million dollars. That's quite a surprise. When we look at this bill and the fiscal note, we couldn't understand where it would come from, and thus, we would like you to explain. We would like you to explain it. We weren't able to have it explained in the first committee and that is why we are here.

Zentner: I think the issue really is section 3. That is the area that we are struggling with. It was very difficult to price out what something like this would cost, that is why you initially had an indeterminate amount. Frankly I think something needs to be done when we present those fiscal notes because saying zero is not the true picture. When we did get the second request, we took another hard look at it and said well lets try to put something onto this thing that might represent what this might cost us. I think that is really the issue. I think that you have seen this bill as making no substantial changes and in fact, we think section 3 does make substantial changes and that is really where the issue is. The expectancy table, the bill Rep. Kaiser has introduced, solves that problem.

Senator Espegard: We took out that section 3, we worked it out to say that you guys have damaged people in the past and we want it to stop. It's nothing new there. It just says that if by chance you have monkeyed around with some of these things and have disallowed them because of something that is not in the law, we want it fixed. Hopefully today, you will have a list of those people who have you disallowed in the past, and that is what we want fixed. As far as the bill goes forward for the next fifty years, that isn't this time.

Mandigo: One of the things that we want to show you and we will hand out are the examples that this bill and the reason you asked initially the offer of the thirty eight million dollar fiscal note. There are examples in the back and Melissa can go through them.This shows what that action in section 3 does. As far as having examples of people who have been hurt in the past, that is not something the department can do because there are too many annuities to have somebody actually go through all and each annuity in the department. The amount of man power it would take to go through every single annuity.

Senator Nething: We don't want you to do that, we want you to look back two years. Section 3 was part of the original bill, that wasn't part of our amendment. That was the part of the bill that you had a first fiscal note on that didn't give us any information. We didn't even change that.

Mandigo: It says indeterminate though, it didn't say zero.

Senator Nething: I understand that, but we are talking about the amendment we made. The first fiscal note does not drive this into your budget, it's the second fiscal note that does.

Mandigo: The first fiscal note says indeterminate, we couldn't determine it.

Senator Nething: We didn't ask you to give us a different one on that.

Mandigo: This is what this does.

Senator Nething: Why didn't you report it that way in the first place?

Mandigo: Because at that time, I'm not sure why we didn't report it that way. We didn't figure it out.

Olson: Is that what happened there?

Zentner: Well, I think so. Ya know, the problem is you have no idea how many people are going to actually take advantage of something. You have a situation where you are allowing a change that could make it more advantageous for someone to use an annuity to become eligible for the Medicaid program. When we initially did it, we asked how do you know how many people will take advantage of something? The second time around we tried to quantify that.

Senator Nething: The second time around, you should have dealt with the amendments, only. It gives the appearance that the amendments drove the change from zero to thirty seven million. That's not a very good appearance for your agency to have.

Zentner: All we were trying to do is to provide some indication of what might happen if section 3 became law. Should we have done it up front? Probably.

Senator Nething: If you don't do it up front, we don't even question it. We didn't even raise any questions about the fiscal part of it.

Senator Espegard: Then five minutes before I go to the floor with the bill, and someone brings me a fiscal note out of courtesy, kind of upsets me. We want to change what is wrong. There wasn't a fiscal note on SB 2384 either. Maybe we have to rewrite this. Why would you disqualify one of these annuities? If all of the criteria fit? What caused this problem is that you have been disqualifying these annuities, when they are irrevocable. Set the payments to their life time expectancy, meet all of the other criteria, why would you cancel them?

Zentner: Well, we wouldn't.

Senator Espegard: Well you have been. That is where the problem lies.

Zentner: In that example....

Volesky: Any annuity that met the requirements in subsection 2, we have not been disqualifying them. The annuity that was brought up as an example, had a clause in it equal to what subsection 3 does.

Senator Espegard: What is the clause?

Volesky: It basically say that if a person was denied Medicaid, they could cash the annuity in.

Senator Espegard: Just a second. We have the salesman of that annuity here. Let's see the policy and the clause.

The committee reviews the policy.

Senator Espegard: Was that policy canceled within forty days?

Salesman: It was approved twice. This specific case, and then it came back where she had a birthday after the money was put into the contract. Then she received the first payment after her birthday and now the state said that she was now not going to get the money and interest paid back during her life expectancy. That is how this bill came up because there is nothing set that says what they are going to use to determine life expectancy.

Senator Espegard: Which is usually within thirty days of each other?

Salesman: Well, yes. Single premium, immediate annuity specifically is something that you can money in and within a month after putting the money in, you start receiving payments. What brought us to put subsection 3 in this bill is in this specific case we changed the life expectancy, the company was willing to change the age on the contract, so now she met within the state's standards, so she is going to get everything back within her life expectancy. But then, it was disapproved because of this right to examine policy that additional twenty days. Which the company puts this rider on this contract with a mail out where they may give the money back if it is disapproved within twenty days. That is the main reason, so now she is disapproved because of the clause in the contract. Not because of her situation.

Senator Espegard: The one birthday wouldn't change your life expectancy very much?

Salesman: A matter of two months.

Mandigo: The examples that you have in front of you show you how because according to our attorneys, this would go forward and apply to anyone else.

Zentner: Section 2 deals with annuities where there is a spousal situation. Section 3 is a completely different section, it doesn't apply back to section 2.

Melissa recites the examples in submitted examples. See attached.

Melissa: The first example, they have about $400,000 in assets. The husband goes into the nursing home and they paying for his care. They apply for Medicaid and Mary is allowed to keep about $95,000. That is under current Medicaid law. They have about $305,000 over the asset limit. So she purchased a $305,000 annuity with this Medicaid cancellation clause.

Senator Espegard: Which says that if it is disallowed, she can get her money back, right?

Melissa: Correct.

Mandigo: That's in section 3.

Melissa: So the husband becomes eligible for Medicaid and at that point, the Medicaid law says that we can no longer look at the stay at home spouses assets. If she wins the lottery, she gets and inheritance, we can't count it because the husband is eligible. So what the wife can do, if she wants to play games with this clause...

Senator Espegard: Wait a minute now, there is nothing about playing games, this is about what takes place.

Melissa: The husband is continuously eligible. The wife goes and applies for Medicaid for herself. She is well, and has no medical needs. We then deny her for Medicaid. She takes the denial to the company that issued the annuity and says that she has been denied Medicaid and wants her money back. According to this clause, she would have that right.

Senator Espegard: I see what you are saying. After the fact, she goes to it, and they can cancel, but they can't cancel after twenty days. So she would have to do all of this within twenty days. Not a year later.

Melissa: The way I read it is that within twenty days of the denial.

Senator Espegard: No, then you read it wrong. Twenty days after issue. Am I right or wrong?

Olson: After issue?

Salesman: Correct.

Senator Heitkamp: Is that just your policy?

Salesman: That is just one company's policy.

Zentner: What is the meaning of "from the date of notification"?

Salesman: There is an additional twenty days on top of that first twenty days, from date of notification that it would be ineligible.

Mandigo: So that could be ten years later?

Senator Espegard: No, they allow an additional to the first twenty. AN ADDITIONAL TWENTY DAYS, FROM THE DATE OF NOTIFICATION.

Mandigo: What does notification mean?

Salesman: The date of notification from human services department.

Mandigo: So if Human services denies it three years later, what happens?

Zentner: They got twenty days.

Salesman: There is a total of forty days.

Melissa: This is from the date of notification to cancel the transaction, if you receive notification from the Medicaid office, the way I read it.

Mandigo: But that law says that it is from that date of notification so it doesn't say that it is from the date of issuance.

Salesman: The whole reason why section 3 was put in there is because this person was denied. She met all of the specifications within the state and because this company has this clause in there, she was now denied.

Mandigo: There were mistakes made on this case and we are fully prepared to pay this case. But, the thing is that in this instance, according to that clause reads, they way our attorneys look at it and we think it would stand up in court, is that it was two years later, from the issuance of denial, that they have twenty more days, that's what our concern was.

Senator Espegard: That's not the intention. That's your only concern? We can fix that.

Senator Heitkamp: This is just one company's policy. That doesn't mean that there isn't another company right over here with a different policy. So let's go there. There are teeth with these scenarios.

Zentner: The intent was only to go backwards, not to increase the availability for individuals to use annuities. I don't think we have a problem.

Senator Espegard: I don't think we do either.

Senator Heitkamp: We gotta be honest here, Dave, I've seen so many bills come through and then one time you have a fiscal note that says this and then all of the sudden it jumps out at you. People are going to get ticked off. I've seen bills die because of fiscal notes, good bills, and the game that is played with that. But the reality is, if in fact, this thing reads the way it is and you can do what you just described, because really, any good lawyer, could take the language in this paragraph and get the annuity back to her. And we all know that wasn't the intent.

Zentner: The bottom line is that estate planners and lawyers will do it.

Senator Espegard: I don't believe that it says anything other than forty days, but, if that is what's bothering you, let's fix the words in there and change the fiscal note back to what you think it is and let's do it today.

Zentner: The other two examples are situations with single people. What section 3 seems to do is open up the process to single individuals.

Senator Espegard: Your only thought here is that this opens it up twenty days, any time that this is taking place?

Mandigo: Correct.

Senator Espegard: So in that particular case, if they say you don't qualify, why would you not qualify after you have met the requirements? Why would you ever disqualify that?

Mandigo: It doesn't qualify as an asset when she puts it into an annuity.

Senator Espegard: What if this lady was in her fifth year of her fifteen year annuity and her husband dies and she goes into the nursing home. Would you disqualify her then?

Volesky: Actually, we would look at that as an available asset at that point and count it because it is a salable asset.

Senator Espegard: What do you mean?

Volesky: The annuity itself, the right to receive the payments from the annuity is a salable asset.

Senator Espegard: To who? It's not assignable. It's irrevocable.

Volesky: They wouldn't actually sell the annuity itself, they would sell the right to receive the income.

Senator Espegard: You can't do that.

Volesky: Actually, you can.

Salesman: There are beneficiaries set up for the policy.

Senator Espegard: Only after you die.

Salesman: Correct.

Melissa: It can be sold. There are entities or individuals who will purchase contractual rights to receive money payments, like lottery winnings, personal injury settlements.

Senator Espegard: I'm talking about this annuity.

Melissa: A lot of lotteries will pay out winnings through an annuity.

Senator Espegard: Why would anybody buy that annuity? They have her life expectancy on it.

Mandigo: Let's go back to the example you said. He explained that the beneficiaries would get the remaining amount on the annuity. But that means the state then pays for, everybody else pays for her Medicaid stay and the beneficiaries are getting the......

Senator Espegard: She died.

Mandigo: Okay, then we paid for the husband.

Senator Espegard: He died. He's dead.

Mandigo: But we paid for it. You have effectively sheltered money from the state and the state is saying that "why wouldn't anybody do this?", and set up so that you don't ever have to pay Medicaid.

Senator Espegard: I don't know why they wouldn't.

Mandigo: That means that we might well open up the doors. This sets up a way to shelter hundreds of thousands of dollars and give it to their kids.

Senator Espegard: That's SB 2384. That's not what we are talking about today.

Mandigo: That's why Rep. Kaiser came with amendments, because he knew that there was a problem.

Zentner: We are not allowing single people to shelter their assets, so single individuals are not using annuities to shelter their income.

Senator Espegard: But when a husband dies and she goes into the nursing home, and she is drawing $1100, you will use that as income for her care and the state will pay $2400.

Zentner: What we are saying is that our interpretation that's not what would happen. We have to treat all single people the same. We would look at what that asset is worth and if it's over the limit, we wouldn't count it.

Senator Espegard: It's only worth the flow of income, otherwise we will have another bill in here.

Mandigo: Is your intent to allow people to be able to shelter any amount of money they want through an annuity and pass it on to their kids?

Senator Espegard: Of course not. Our intent.....

Mandigo: That's what this bill does.

Senator Espegard: Section 3 is to clean up the past where you have disallowed it and you shouldn't have. You have admitted to the mistakes, we don't want mistakes like that. We want you to go by the law of SB 2384. We want it written so this lady is taken care of.

Mandigo: She's taken care of right now.

Senator Espegard: I'm glad she is.

Mandigo: She's never been off the program.

Salesman: I haven't heard anything. She hasn't heard anything.

Mandigo: She's taken care of.

Zentner: Who do you think is paying the bill?

Salesman: She's waiting for this case with her annuity because she only has social security income of five hundred dollars a month and a 401K of $14000 right now and she has been going through hell waiting for this.

Mandigo: If the department comes up with language, that you agree with and we continue to take care of this lady in Dickinson....

Senator Espegard: And anyone else back there that is retroactive.

Mandigo: Who brings it up.

Senator Espegard: Yes.

Mandigo: Is that what we have to do?

Senator Espegard: That's what you have to do. You have to get rid of that fiscal note of thirty eight million dollars. We have to have it back here by noon today. Anyone who has been hurt, I want it fixed. And I don't want you deciding someone's life expectancy they are too fat.

Senator Heitkamp: I also want to know for my own sake, I want the ND Human Service Department to come in and speak to how they see the bill.

Zentner: The President is coming out with his budget. One of the areas that he is looking to save money on is the very thing we are talking about today. He's proposing over the next ten years to save four and a half million dollars, so this might be a mood issue.

Senator Espegard: It's not an issue, it's the law today.

Zentner: These issues will not be available for the Medicaid program. We'll try to fix this.

Mandigo: We will get the amendments to you as soon as we draft them.

The hearing was closed.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2190

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 02-08-05

Tape Number	Side A	Side B	Meter #
1	xxx		140-4112
Committee Clerk Signature Lisa VanBerkom			

Minutes: **Chairman Mutch allowed committee discussion on SB 2190. The committee had moved to reconsider their action on February 1, 2005. There was a sub committee appointed to meet on February 7th, 2005. All Senators were present. The committee requested the presence of Melissa Hower, of the human services department to answer questions to the amendments they proposed in sub committee.**

Senator Espegard: We asked them to come down today to explain the amendment they proposed.

Melissa goes over the amendments . See attached.

Senator Espegard: The annuity is when your husband is in the home and your assets are dwindling and you have another $200,000. That is when you buy the annuity. That is irrevocable based on the number of years you are going to live. How do annuities you bought when you were twenty five years old come into this?

Senator Klein: If you are buying it at forty five years old, you probably looking so forward to having the department of human services look at that. That is what we are trying to get at. Isn't this something different?

Melissa-I think that was always the intent. What we see when people apply for Medicaid didn't purchase the annuity with any intent to ever become eligible for Medicaid.

Senator Krebsbach: How did you handle things prior to 2003?

Melissa: If the annuity was the kind that you could cash in, like a life insurance policy, we treated it as available. There were very few that were treated as anything other than available.

Senator Klein moved to adopt the proposed amendments. Senator Heitkamp seconded.

Roll call vote: 7 yes. 0 no. 0 absent.

Senator Klein moved a DO PASS AS AMENDED.

Senator Heitkamp seconded.

Roll call vote: 7 yes. 0 no. 0 absent.

Carrier: Senator Espegard

FISCAL NOTE

Requested by Legislative Council
04/15/2005

Amendment to: Reengrossed SB 2190

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

This bill would amend and reenact section 50-24.1-02.8 of the NDCC relating to transfers involving annuities.

A fiscal impact cannot be determined at this time.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*
   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

   B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

   C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Brenda M. Weisz	**Agency:**	DHS
Phone Number:	328-2397	**Date Prepared:**	04/15/2005

FISCAL NOTE

Requested by Legislative Council
03/23/2005

REVISION

Amendment to: Reengrossed SB 2190

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

This bill would amend and reenact section 50-24.1-02.8 of the NDCC relating to transfers involving annuities.

Subsection 3 states that an annuity that contains a provision allowing for cancellation of the annuity upon a denial of medical assistance may not be considered an available asset unless the annuity is cancelled and the proceeds are not used to purchase an annuity that meets the requirements of subsection 2 of this bill or, if HB 1248 becomes effective, subsection 4 of HB 1248. A financial impact from section 3 cannot be determined at this time.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*
   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

   B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

   C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Debra A. McDermott	**Agency:**	Human Services
Phone Number:	328-3695	**Date Prepared:**	03/23/2005

FISCAL NOTE

Requested by Legislative Council
03/18/2005

Amendment to: Reengrossed SB 2190

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

This bill would amend and reenact section 50-24.1-02.8 of the NDCC relating to transfers involving annuities and would provide that the provisions of the bill be made retroactive to purchases of annuities after July 31, 2003.

Subsection 1 of the bill will have fiscal impact by making more individuals not otherwise medicaid-eligible to become eligible for benefits under medicaid. A financial impact from section 1 cannot be determined at this time.

Subsection 2 would make the provisions of the bill retroactive to purchases of annuities occurring after July 31, 2003; this provision would cause some fiscal impact, but it is unknown how many annuities exist that may qualify. A financial impact from section 2 cannot be determined at this time.

Subsection 3 states that an annuity that contains a provision allowing for cancellation of the annuity upon a denial of medical assistance may not be considered an available asset unless the annuity is cancelled and the proceeds are not used to purchase an annuity that meets the requirements of subsection 2 of this bill. A financial impact from section 3 cannot be determined at this time.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*
   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

   B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

   C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Debra A. McDermott	**Agency:**	Human Services
Phone Number:	328-3695	**Date Prepared:**	03/21/2005

FISCAL NOTE
Requested by Legislative Council
02/15/2005

Amendment to: Engrossed SB 2190

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	$0	$0	$0	$0	$0	$0
Expenditures	$0	$0	$0	$0	$0	$0
Appropriations	$0	$0	$0	$0	$0	$0

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
$0	$0	$0	$0	$0	$0	$0	$0	$0

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

This bill would amend and reenact section 50-24.1-02.8 of the NDCC relating to transfers involving annuities and would provide that the provisions of the bill be made retroactive to purchases of annuities after July 31, 2003.

Subsection 1 of the bill will have fiscal impact by making more individuals not otherwise medicaid-eligible to become eligible for benefits under medicaid. A financial impact from section 1 cannot be determined at this time.

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Subsection 3 states that an annuity that contains a provision allowing for cancellation of the annuity upon a denial of medical assistance may not be considered an available asset unless the annuity is cancelled and the proceeds are not used to purchase an annuity that meets the requirements of subsection 2 of this bill. A financial impact from section 3 cannot be determined at this time.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*
   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

   B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

   C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Brenda Weisz	**Agency:**	Human Services
Phone Number:	325-2397	**Date Prepared:**	02/15/2005

FISCAL NOTE

Requested by Legislative Council
02/07/2005

REVISION

Amendment to: SB 2190

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	$0	$0	$0	$0	$0	$0
Expenditures	$0	$0	$0	$0	$0	$0
Appropriations	$0	$0	$0	$0	$0	$0

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
$0	$0	$0	$0	$0	$0	$0	$0	$0

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

This bill would amend and reenact section 50-24.1-02.8 of the NDCC relating to transfers involving annuities and would provide that the provisions of the bill be made retroactive to purchases of annuities after July 31, 2003.

Section 1 of the bill will have fiscal impact by making more individuals not otherwise medicaid-eligible to become eligible for benefits under medicaid.

Section 2 would make the provisions of the bill retroactive to purchases of annuities occurring after July 31, 2003; this provision would cause some fiscal impact, but it is unknown how many annuities exist that may qualify. A financial impact from section 2 cannot be determined at this time.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*
   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

   B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

   C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Debra A. McDermott	**Agency:**	Human Services

Phone Number:	328-3695	Date Prepared:	02/07/2005

FISCAL NOTE
Requested by Legislative Council
01/25/2005

Amendment to: SB 2190

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	$0	$0	$0	$23,820,377	$0	$23,908,298
Expenditures	$0	$0	$12,882,823	$23,820,377	$13,903,339	$23,908,298
Appropriations	$0	$0	$12,882,823	$23,820,377	$13,903,339	$23,908,298

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
$0	$0	$0	$0	$0	$0	$0	$0	$0

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

This bill would amend and reenact section 50-24.1-02.8 of the NDCC relating to transfers involving annuities and would provide that the provisions of the bill be made retroactive to purchases of annuities after July 31, 2003.

Section 1 of the bill will have fiscal impact by making more individuals not otherwise medicaid-eligible to become eligible for benefits under medicaid.

Section 2 would make the provisions of the bill retroactive to purchases of annuities occurring after July 31, 2003; this provision would cause some fiscal impact, but it is unknown how many annuities exist that may qualify. Any financial impact from section 2 would accrue to general funds only.

The provisions of this bill would affect the department's regular appropriations.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*
   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Federal Title XIX revenue in the amounts of $23,820,377 and $23,908,298 would be received for 2005-2007 and 2007-2009 respectively.

   B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Medical assistance grants for 2005-2007 would increase $36,703,200 of which $12,882,823 would be general funds. For 2007-2009 medical assistance grants would increase $37,811,637 of which $13,903,339 would be general funds.

   C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

The appropriation for medical assistance grants for 2005-2007 would increase $36,703,200 of which $12,882,823 would be general funds. For 2007-2009 the appropriation for medical assistance grants would increase $37,811,637 of which $13,903,339 would be general funds.

Name:	Debra A. McDermott	**Agency:**	Human Services
Phone Number:	328-3695	**Date Prepared:**	01/28/2005

FISCAL NOTE

Requested by Legislative Council
01/12/2005

Bill/Resolution No.: SB 2190

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	$0	$0	$0	$0	$0	$0
Expenditures	$0	$0	$0	$0	$0	$0
Appropriations	$0	$0	$0	$0	$0	$0

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
$0	$0	$0	$0	$0	$0	$0	$0	$0

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

This bill would amend and reenact section 50-24.1-02.8 of the NDCC relating to transfers involving annuities.

It is impossible to determine the number of recipients that might be affected by this bill; therefore the fiscal impact cannot be determined.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*
   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

   B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

   C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Brenda Weisz	**Agency:**	Human Services
Phone Number:	328-2397	**Date Prepared:**	01/13/2005

Date: 1-18-05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number SB 2190

Action Taken ~~Do Pass~~ move to Amend

Motion Made By Espegaard Seconded By Klein

Senators	Yes	No	Senators	Yes	No
Senator Mutch, Chairman	X		**Senator Fairfield**	X	
Senator Klein , Vice Chairman	X		**Senator Heitkamp**	X	
Senator Krebsbach	X				
Senator Nething	X				
Senator Espegard	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Espegaard

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

to make the life expectancy determination by a standard actuarial table and to make the bill retroactive

Date: 1-18-05
Roll Call Vote #: 2

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 2190

Action Taken Do Pass As Amended

Motion Made By Espegard Seconded By Klein

Senators	Yes	No	Senators	Yes	No
Senator Mutch, Chairman	X		Senator Fairfield	X	
Senator Klein , Vice Chairman	X		Senator Heitkamp	X	
Senator Krebsbach	X				
Senator Nething	X				
Senator Espegard	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Espegard

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

REPORT OF STANDING COMMITTEE (410)
January 24, 2005 8:25 a.m.

Module No: SR-15-0887
Carrier: Espegard
Insert LC: 50506.0101 Title: .0200

REPORT OF STANDING COMMITTEE

SB 2190: 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 2190 was placed on the Sixth order on the calendar.

Page 1, line 2, after "annuities" insert "; and to provide for retroactive application"

Page 2, line 4, remove the overstrike over "~~by~~" and after "~~services~~" insert "a standard actuarial life expectancy table"

Page 2, after line 12, insert:

"**SECTION 2. RETROACTIVE APPLICATION OF ACT.** This Act applies retroactively to purchases occurring after July 31, 2003."

Renumber accordingly

Date: 2-1-05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2190

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken reconsider Action

Motion Made By Nething Seconded By Heitkamp

Senators	Yes	No	Senators	Yes	No
Senator Mutch, Chairman	X		**Senator Fairfield**	X	
Senator Klein , Vice Chairman	X		**Senator Heitkamp**	X	
Senator Krebsbach	X				
Senator Nething	X				
Senator Espegard	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment

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

Date: 2-8-05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2190

Senate **Industry, Business, and Labor** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number ______

Action Taken Adopt Amendments (Chris's)

Motion Made By Klein Seconded By Heitkamp

Senators	Yes	No	Senators	Yes	No
Chairman Mutch	X		**Senator Fairfield**	X	
Senator Klein	X		**Senator Heitkamp**	X	
Senator Krebsbach	X				
Senator Espegard	X				
Senator Nething	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment ______

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

Date: 2-8-05
Roll Call Vote #: 2

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. Reengrossed 2190

Senate **Industry, Business, and Labor** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass As Amended

Motion Made By Klein Seconded By Heitkamp

Senators	Yes	No	Senators	Yes	No
Chairman Mutch	X		Senator Fairfield	X	
Senator Klein	X		Senator Heitkamp	X	
Senator Krebsbach	X				
Senator Espegard	X				
Senator Nething	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Espegard

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

REPORT OF STANDING COMMITTEE

SB 2190, as engrossed: 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). Engrossed SB 2190 was placed on the Sixth order on the calendar.

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

Page 1, line 19, after "is" insert "a single premium immediate annuity," and after "irrevocable" insert an underscored comma

Page 2, replace lines 10 through 14 with:

"3. An annuity that contains a provision that allows for cancellation of the annuity upon a denial of medical assistance may not be considered an available asset unless the annuity is canceled and the proceeds are not used to purchase an annuity that meets the requirements of subsection 2. Any proceeds from a cancellation described in this subsection which are not used to purchase an annuity described in subsection 2 must be considered an available asset of the annuity owner and the owner's spouse."

Renumber accordingly

2005 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2190

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2190

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 3-7-05

Tape Number	Side A	Side B	Meter #
1	x		13.5-43.4
Committee Clerk Signature	Jody Burke		

Minutes:

Chairman Keiser: Opened the hearing on SB 2190.

Senator Wardner: Appeared in support of bill and also was a sponsor. This bill is before you because of a constituent in my district, this piece of legislation was brought in last session and thoroughly debated on the senate side, and I think there was a lot of misunderstandings between the intent of the law and the department of human services, I think it has been ironed out. It came to up because of the situation that the party that had done this transfer annuity wasn't working out like it should, I would like to point out on the first page of the bill on line 19, where it talks about annuities as a single premium immediate annuity, that was put in on the senate side, and in other words it is there to make sure that it is direct and that it means what it means there is no room for gray areas. On page 2 another part that was in contention and that was the actuarial tables and when you can determine the life expectancy of an individual and that is why that is put in there. The last part of subsection 3 deals about whether this annuity could be claimed as part of the assets or not, that is spelled out. A lot of work has been done on the Senate side, there also was a sub committee on this, and I just want to say publicly for the record, I do appreciate the cooperation of the department working with the committee.

Steve Schnieder, Investment Advisor, Dakota Community Financial Services: Appeared in support of the bill, I have a client whose husband in his early 60's went into the nursing home and very likely will be there for a very long time, the wife came to me and asked what are some things that we can do, I called the human services department to see if there was anything we could do to help protect her assets. She is looking at paying for the long term care of her husband it would put her in a very difficult financial situation. We put this annuity together and got the information from the state, and put this through and it was accepted, so we were told that we could go ahead and do this and it wouldn't be accountable assets to my client. She needed to get things done on her house, so what happened is we had to pull some money out of that then we re applied with the annuity, and it was accepted again, and when it was accepted my client was 62 years old and we started in February working on this her birthday was in April and so she got her first payment from the annuity in May but now she was 63 rather then 62, so then it was declined, what I did was contact the annuity company which didn't have to do this, once you put the money in this type of contract, it is irreversible, it says in the language of the contract. What they did was change it, then they came back and said we are not going to accept it because there is a clause in this that allows that it is a free look when a person gets an annuity, they get 20 days to look at the contract, and get there money back if they don't like it for whatever reason, so we passed that time line in the language in the contract it also gives the insurance company an additional 20 days on top of the first 20 to allow them that if something happens or changes where they can get the money back as well, and is totally on the insurance company. Based on that clause it was declined again and there was no intent to try to hide assets, my client's social security currently right now is $500.00 a month, she started working on her kids less, she has a small 401K roughly about $14,000.00 and you can see that her retirement would be in pretty tough shape once these assets have been spent down. The reason for this amendment is that I would just like to see that have it in writing where we know when the annuity is paid, and what we are going to base it on, so that is what we want this to state so we know and human services know what we are looking at as far as dates. I know that human services has a very difficult job, I know they get a lot of applications wanting to protect or hide assets. I'm a firm believer that people need to take care of their long term care insurance or their going to be self-insured.

Curtis Volesky, Director, Medicaid Eligibility Department of Human Services: Appeared in support of SB 2190 and provided a written statement **(SEE ATTACHED TESTIMONY).**

Norbert Mayer, Volunteer Lobbyist, for North Dakota Association of Insurance and Financial Advisors: Appeared in support of bill, and would like to comment a couple of things that were raised earlier in regards to single premium immediate annuity and the deferred annuities, a client can use a deferred annuity to accumulate this nest egg, which is going to be used in retirement and the common procedure is to go ahead and take a settlement option on that deferred annuity which then immediately starts making payments the advantage of taking the settlement option should be deferred annuity have to be cashed in it would create a tax consequence, where if it goes into a settlement option, they are going to pay taxes on a prorated amount so they are going to get back there cost basis tax free and they are going to pay tax on the earning for the gain in that particular contract so that would be one consideration there, that at least a settlement option would be permitted.

Hearing closed.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2190

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 3-9-05

Tape Number	Side A	Side B	Meter #
2	x		20.3-29.4
Committee Clerk Signature	Jorden Reinke		

Minutes:

<u>Chairman Keiser:</u> Reconvened on **SB 2190.**

<u>Representative Nottestad:</u> I move to **ADOPT** amendments as presented.

<u>Representative Kasper:</u> I **SECOND** the motion to **ADOPT AMENDMENTS**.

Motion carried. Voice vote.

<u>Representative Nottestad:</u> I move a **DO PASS AS AMENDED**.

<u>Representative Ekstrom:</u> I **SECOND** the **DO PASS** as **AMENDED** motion on **SB 2190.**

Motion carried. **<u>VOTE: 13-YES 0-NO 1-Absent (Thorpe).</u>**

Representative Nottestad will carry the bill on the floor.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2190

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 3-14-05

Tape Number	Side A	Side B	Meter #
2	x		50.-end
2		x	0-8.1
Committee Clerk Signature Jody Beck			

Minutes:

Chairman Keiser: Reconvened on SB 2190.

Representative Nottestad: I move to **RECONSIDER** our **ACTIONS** on SB 2190.

Representative N. Johnson: I **SECOND** the motion to **RECONSIDER** our **ACTIONS.**

Motion carried voice vote.

Representative Nottestad: I move to ADOPT my amendments.

Representative Ekstrom: I SECOND the motion on SB 2190 to adopt amendments.

Motion carried voice vote.

Representative Nottestad: I move a **DO PASS** as **AMENDED** on SB 2190.

Representative Johnson: I **SECOND** the **DO PASS** as **AMENDED** motion.

Motion carried **VOTE: 13-YES 0-NO 1-Absent (RUBY).**

Representative Nottestad will carry the bill on the floor.

50506.0301
Title.0400

Adopted by the Industry, Business and Labor Committee
March 9, 2005

VR
3/9/05

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2190

Page 1, line 19, replace the first underscored comma with "or an annuity in which a settlement option has been selected, is"

Page 2, line 5, after "by" insert "the life expectancy tables used by", remove the overstrike over "~~the department of human services~~", and remove "a standard"

Page 2, line 6, remove "actuarial life expectancy table on the date of issuance of the annuity"

Renumber accordingly

Date: 3-9-05

Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2190

House **INDUSTRY, BUSINESS AND LABOR** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Adopt Amendments by Nottestad

Motion Made By Rep. Nottestad Seconded By Rep. Kasper

Representatives	Yes	No	Representatives	Yes	No
G. Keiser-Chairman			Rep. B. Amerman		
N. Johnson-Vice Chairman			Rep. T. Boe		
Rep. D. Clark			Rep. M. Ekstrom		
Rep. D. Dietrich			Rep. E. Thorpe		
Rep. M. Dosch					
Rep. G. Froseth					
Rep. J. Kasper					
Rep. D. Nottestad					
Rep. D. Ruby					
Rep. D. Vigesaa					

Total (Yes) 13 No 0

Absent 1 Thorpe

Floor Assignment

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

Date: 3-9-05

Roll Call Vote #: 2

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2190

House **INDUSTRY, BUSINESS AND LABOR** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass As Amended

Motion Made By Nottestad Seconded By Ekstrom

Representatives	Yes	No	Representatives	Yes	No
G. Keiser-Chairman	X		Rep. B. Amerman	X	
N. Johnson-Vice Chairman	X		Rep. T. Boe	X	
Rep. D. Clark	X		Rep. M. Ekstrom	X	
Rep. D. Dietrich	X		Rep. E. Thorpe		
Rep. M. Dosch	X				
Rep. G. Froseth	X				
Rep. J. Kasper	X				
Rep. D. Nottestad	X				
Rep. D. Ruby	X				
Rep. D. Vigesaa	X				

Reconsidered on Mar. 14

Total (Yes) 13 No 0

Absent (1) Thorpe

Floor Assignment Rep Nottestad

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

REPORT OF STANDING COMMITTEE

SB 2190, as reengrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Reengrossed SB 2190 was placed on the Sixth order on the calendar.

Page 1, line 19, replace the first underscored comma with "<u>or an annuity in which a settlement option has been selected, is</u>"

Page 2, line 5, after "by" insert "<u>the life expectancy tables used by</u>", remove the overstrike over "~~the department of human services~~", and remove "<u>a standard</u>"

Page 2, line 6, remove "<u>actuarial life expectancy table on the date of issuance of the annuity</u>"

Renumber accordingly

Date: 3-14-05

Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2190

House **INDUSTRY, BUSINESS AND LABOR** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number ______

Action Taken Reconsider Actions

Motion Made By Rep. Nottestad Seconded By Rep. N. Johnson

Representatives	Yes	No	Representatives	Yes	No
G. Keiser-Chairman	X		Rep. B. Amerman	X	
N. Johnson-Vice Chairman	X		Rep. T. Boe		X
Rep. D. Clark	X		Rep. M. Ekstrom	X	
Rep. D. Dietrich	X		Rep. E. Thorpe	X	
Rep. M. Dosch	X				
Rep. G. Froseth	X				
Rep. J. Kasper		X			
Rep. D. Nottestad	X				
Rep. D. Ruby	X				
Rep. D. Vigesaa	X				

Total (Yes) 12 No 2

Absent ______

Floor Assignment ______

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

3-9-05

Nottestad Amendments

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2190

Page 1, line 19, remove "a single premium immediate annuity,"

or

Page 1, line 19, remove the first underscored comma and insert immediately thereafter "or an annuity in which a settlement option has been selected, is"

Page 2, line 5, after "by" insert "the life expectancy tables used by", remove the overstrike over "~~the department of human services~~", and remove "a standard"

Page 2, line 6, remove "actuarial life expectancy table on the date of issuance of the annuity"

IF ADOPTED:

a. The annuity is irrevocable, and cannot be assigned to another person.

or

a. The annuity is a single premium immediate annuity or an annuity in which a settlement option has been selected, is irrevocable, and cannot be assigned to another person.

d. The annuity will return the full principle and interest within the purchaser's life expectancy as determined by the life expectancy tables used by the department of human services.

Date: 3-14-05
Roll Call Vote #: 2

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2190

House **INDUSTRY, BUSINESS AND LABOR** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Adopt Nottestad Amendments

Motion Made By Rep. Nottestad Seconded By Rep. Ekstrom. Voice vote

Representatives	Yes	No	Representatives	Yes	No
G. Keiser-Chairman			Rep. B. Amerman		
N. Johnson-Vice Chairman			Rep. T. Boe		
Rep. D. Clark			Rep. M. Ekstrom		
Rep. D. Dietrich			Rep. E. Thorpe		
Rep. M. Dosch					
Rep. G. Froseth					
Rep. J. Kasper					
Rep. D. Nottestad					
Rep. D. Ruby					
Rep. D. Vigesaa					

Total (Yes) 14 No 0

Absent

Floor Assignment

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

Date: 3-14-05

Roll Call Vote #: 3

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2190

House **INDUSTRY, BUSINESS AND LABOR** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number ______

Action Taken Do Pass As Amended

Motion Made By Rep. Nottestad Seconded By Rep. N. Johnson

Representatives	Yes	No	Representatives	Yes	No
G. Keiser-Chairman	X		Rep. B. Amerman	X	
N. Johnson-Vice Chairman	X		Rep. T. Boe	X	
Rep. D. Clark	X		Rep. M. Ekstrom	X	
Rep. D. Dietrich	X		Rep. E. Thorpe	X	
Rep. M. Dosch	X				
Rep. G. Froseth	X				
Rep. J. Kasper	X				
Rep. D. Nottestad	X				
Rep. D. Ruby	A	A			
Rep. D. Vigesaa	X				

Total (Yes) 13 No 0

Absent (1) Rep. Ruby

Floor Assignment Rep.

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

REPORT OF STANDING COMMITTEE

SB 2190, as reengrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Reengrossed SB 2190 was placed on the Sixth order on the calendar.

Page 1, line 19, replace the first underscored comma with "or an annuity in which a settlement option has been selected, is"

Page 2, line 5, after "by" insert "the life expectancy tables used by", remove the overstrike over "~~the department of human services~~", and remove "a standard"

Page 2, line 6, remove "actuarial life expectancy table on the date of issuance of the annuity"

Page 2, line 14, after "of" insert "subsection 4 if House Bill No. 1248 becomes effective or, if House Bill No. 1248 does not become effective,"

Renumber accordingly

2005 SENATE INDUSTRY, BUSINESS AND LABOR

CONFERENCE COMMITTEE

SB 2190

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2190

Senate Industry, Business and Labor Committee

☑ Conference Committee

Hearing Date 4-04-05

Tape Number	Side A	Side B	Meter #
1	xxx		650
Committee Clerk Signature Lisa VanBerkom			

Minutes: Chairman Espegard called the conference committee to order. Members present were: Senator Espegard, Senator Nething, Senator Heitkamp, Rep. Nottestad, Rep. Clark, Rep. Amerman.

Chairman Espegard: I would like an explanation of the amendments from the House.

Rep. Nottestad: The first amendment was necessary because Human Services came in and the individuals from Dickinson were there, I asked if both parties would sit down and come up with an agreable amendment. They did and this is what we have. The amendment is 50506.0302. It would add on "or an annuity which is a settlement option that has been selected." That was necessary and the second part speaks to the life expectancy table. This amendment was drawn up by the two parties together.

The committee reviews the amendments and Chairman Espegard closes the conference committee with no action at this time.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2190

Senate Industry, Business and Labor Committee

☑ Conference Committee

Hearing Date 4-11-05

Tape Number	Side A	Side B	Meter #
2	xxxx		46
Committee Clerk Signature Lisa VanBerkom			

Minutes:

Chairman Espegard opened the conference committee meeting on SB 2190. Members present were: Senator Espegard, Senator Nething, Senator Heitkamp, Rep. Nottestad, Rep.Clark, and Rep. Amerman.

Senator Espegard : We've talked about the amendments. We talked about the actuarial table. The other one that I added because of a problem. Any comments? We have identified the schedule and the table and we have removed the reference to the other bill.

Senator Heitkamp: I move the amendments. **Rep. Nottestad seconded.**

Roll Call Vote: 6 yes. 0 no. 0 absent.

Senator Heitkamp moved the House recede and further amend.

Rep. Nottestad seconded. Roll Call Vote: 6 yes. 0 no. 0 absent.

Senator Espegard will carry the bill to the Senate.

REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE) - 420

07398

(Bill Number) 2190 (, as (re)engrossed):

Your Conference Committee

For the Senate:	Attend	Vote	For the House:	Attend	Vote
Chair Espegard	P PP	YY	Rep. Nottestad	P PP	YY
Sen Nething	P PP	YY	Rep. Clark	P PP	YY
Sen. Heitkamp	P PP	YY	Rep. Amerman	P PP	YY

☐ recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)
723/724 725/726 S724/H726 S723/H725
the (Senate/House) amendments on (SJ/HJ) page(s) 927 - ____

☐ and place ________ on the Seventh order.
727

☒ , adopt (further) amendments as follows, and place
2190 on the Seventh order:

☐ having been unable to agree, recommends that the committee be discharged and a new committee be appointed. 690/515

((Re)Engrossed) ________ was placed on the Seventh order of business on the calendar.

DATE: 4/11/05

CARRIER: Sen. Espegard

LC NO. ________ . ______ of amendment

LC NO. ________ . ______ of engrossment

Emergency clause added or deleted ______

Statement of purpose of amendment ______

(1) LC (2) LC (3) DESK (4) COMM.

REPORT OF CONFERENCE COMMITTEE

SB 2190, as reengrossed: Your conference committee (Sens. Espegard, Nething, Heitkamp and Reps. Nottestad, Clark, Amerman) recommends that the **HOUSE RECEDE** from the House amendments on SJ page 927, adopt amendments as follows, and place SB 2190 on the Seventh order:

That the House recede from its amendments as printed on page 927 of the Senate Journal and page 1167 of the House Journal and that Reengrossed Senate Bill No. 2190 be amended as follows:

Page 1, line 19, replace the first underscored comma with "or an annuity in which a settlement option has been selected, is"

Page 2, line 5, remove the overstrike over "~~the~~" and replace "a standard" with "life expectancy tables published by the centers for medicare and medicaid services"

Page 2, line 6, remove "actuarial life expectancy table on the date of issuance of the annuity"

Page 2, line 9, overstrike "by the"

Page 2, line 10, overstrike "department pursuant to" and insert immediately thereafter "under"

Page 2, remove lines 11 through 17

Renumber accordingly

Reengrossed SB 2190 was placed on the Seventh order of business on the calendar.

2005 TESTIMONY

SB 2190

TESTIMONY BEFORE

THE SENATE INDUSTRY, BUSINESS AND LABOR COMMITTEE

REGARDING SENATE BILL 2190

JANUARY 18, 2005

Chairman Mutch, members of the committee, I am Curtis Volesky, Director of Medicaid Eligibility for the Department of Human Services. The Department is here in opposition to SB 2190.

While many individuals establish annuities to provide retirement income, many also use annuities as a means of sheltering and transferring assets to qualify for Medicaid benefits, at the expense of taxpayers. This statute currently requires that an annuity return the full principle and interest within an individual's life expectancy, which supports annuities as a means to provide for retirement income. Our interpretation of the current statute bases life expectancy on established actuarial tables, but also takes into consideration those situations in which an individual has a shortened life expectancy due to a terminal health condition. The deletion of language, recommended in subsection 2 of this bill, will not change the fact that a determination of life expectancy will still have to be made but removal of the language will likely make the process more cumbersome, and encourage additional appeals.

The additional language added to subsection 2 would require that we look at the individual's life expectancy as of the annuity issuance date instead of the date the payment option is selected. This could encourage early purchases of annuities to secure the date; with the annuitant only selecting a payment option at the time he or she needs Medicaid. In effect, someone could purchase an annuity at age 65, when he has a life expectancy of about 15 years, then if he only needed Medicaid at age 75, when life expectancy is about 9 years, select a payment option for 15 years. Similarly, a healthy individual who purchases an annuity at age 65, then later develops a terminal illness that only gives him two years to live, can select a payment option for 15 years. The extra six to 13 years of payments in these examples would effectively be transferred to the beneficiaries without being considered a disqualifying transfer. An individual who purchases such an annuity in an attempt to shelter assets will not even have to fully fund the annuity, or if he does, will still have full access to the funds in the annuity prior to selecting a payment option and applying for assistance.

The provision in subsection 3 is also problematic. When determining eligibility for medical assistance, we consider all assets that are available, or can be made available to pay for medical care. An annuity that includes the provision proposed in subsection 3 will allow the individual to obtain funds to pay for medical care if the person is not eligible for medical assistance. As a result, the annuity itself may not be considered an available asset when applying for medical assistance, but the funds that can be made available will be, making the provision ineffective. To state that the provision will do otherwise, such as not make the funds available would virtually eliminate the need for an asset test in Medicaid. Almost anyone will be able to keep all of his or her assets by setting up such an annuity. This would be in conflict with federal and state law. In addition, even if an annuity has the provision described in subsection 3, the annuity may still be considered an available asset for other reasons. For example, if the annuity contract allows the owner to surrender the annuity for cash, or to assign the annuity payments, or to cancel the contract for some other reason.

I will be glad to answer any questions regarding my testimony. Thank you.

Marella A. Krein
06/30/2004 03:38 PM

To: Melody K. Bonn/DHS/NoDak@NoDak
cc: Blaine L. Nordwall/DHS/NoDak@NoDak, Curtis A. Volesky/DHS/NoDak@NoDak
Subject: Annuity

Hi Melody,
Blaine did a further review on this annuity and it was determined that this annuity was not actuarially sound because the actual payment didn't start until May 15, 2004 when Ms. Weidener was 63 years old. Based upon the life expectancy table at age 63 Ms. Weidener should live 20.3 years and the annuity is for 21 years and three months. Any withdrawal penalties or fees are allowed to reduce the asset value of the annuity (see MC 510-05-70-45).

Based upon this new determination this household is <u>over</u> the asset limit and Medicaid needs to be closed. I am sorry for the mix-up. If you have any questions or concerns about this, please contact me.
Marella A. Krein, Administrator
Medicaid Policy
(701) 328-4579
sokrem@state.nd.us

----- Forwarded by Marella A. Krein/DHS/NoDak on 06/30/2004 04:33 PM -----

Marella A. Krein
05/07/2004 04:11 PM

To: Melody K. Bonn/DHS/NoDak@NoDak
cc:
Subject: Annuity

Hi Melody,
The annuity concerning Marylene D. Weidener is irrevocable and unassignable, therefore, it is not an available asset. Mrs. weidner is the community spouse and was 62 years old when she took out the annuity. Based upon the life expectancy table Mrs. Weidener should live 1.27 years. Mrs. weidner receives $1106.60 a month from the annuity and will be receiving this amount for 21 years and three months. Based upon these amounts the annuity is actuarially sound ($1,106.60 x 21 months = $278,863.20 + ($1,106.60 x three months = $3,319.80) = $282,183). The monthly income needs to be taken into consideration in determining the monthly income amount for the community spouse. This policy is based upon 510-05-70-45(3).

If you have any questions or concerns about this information, contact me.

Marella A. Krein, Administrator
Medicaid Policy
(701) 328-4579
sokrem@state.nd.us

Melody K. Bonn

Melody K. Bonn
05/07/2004 02:29 PM

To: Marella A. Krein/DHS/NoDak@NoDak
cc:
Subject: Re: Heads up

Yes Spousal, Marylene is in good health she is still currently employed at American State Bank.
Need anything else let me know.
Mel

Melody Bonn

POLICY INFORMATION

OWNER (S): MARYLENE D WEIDNER
JOINT OWNER: NOT APPLICABLE
OR AS NAMED IN THE MOST RECENT CHANGE ON RECORD IN OUR HOME OFFICE.

ANNUITANT: MARYLENE D WEIDNER   POLICY NUMBER: LS002303

ANNUITANT'S BIRTH DATE: APRIL 18, 1941   DATE OF ISSUE: MARCH 26, 2004

BENEFICIARY(IES): BENEFICIARY IS AS NAMED IN THE APPLICATION OR IN THE MOST RECENT CHANGE SENT TO OUR HOME OFFICE.

SINGLE PREMIUM PAID: $224,858.68

ANNUITY TYPE: TYPE 1. INCOME FOR FIXED PERIOD OF 21 YEARS AND 3 MONTHS. (THIS ANNUITY TYPE IS DESCRIBED IN THE ANNUITY PROVISIONS SECTION.)

DATE OF FIRST PAYMENT: MAY 15, 2004

ANNUITY PAYMENT AND FREQUENCY: $1,106.60 MONTHLY Count income

DEATH BENEFIT: IF THE ANNUITANT DIES BEFORE THE END OF THE FIXED PERIOD, A DEATH BENEFIT, CONSISTING OF A LUMP SUM AMOUNT EQUAL TO THE COMMUTED VALUE, WILL BE PAID. THE RECIPIENT OF THAT BENEFIT MAY ELECT TO RECEIVE THE REMAINING GUARANTEED ANNUITY PAYMENTS, AS SCHEDULED, INSTEAD OF THE COMMUTED VALUE.

RIDERS AND ENDORSEMENTS ATTACHED:
MEDICAID SINGLE PREMIUM IMMEDIATE ANNUITY WAVIER ENDORSEMENT - FGL MSE (07-2000)

Not asset - see letter from Marella 5/7/04

Exhibit 5

Guaranty Income Plan SPIA

Certificate Of Application

Fidelity & Guaranty Life INSURANCE COMPANY

CERTIFICATE OF RECEIPT OF APPLICATION F&G Life Guaranty Income Plan SPIA POLICY FORM: FGL SPIA (1-91); et al. This is not a contract—please refer to the policy for exact terms and conditions.

IMPORTANT FEATURES OF THIS PLAN

SINGLE PREMIUM IMMEDIATE ANNUITY'S ADVANTAGES

An immediate annuity provides guaranteed income from a single premium over a fixed period of years or for life. You may choose to receive income monthly, quarterly, semi-annually or annually. There are no surrender provisions — the immediate annuity's liquidity is limited to guaranteed income payments, with the exception of the provisions offered under the Accelerated Benefit Rider (form: FGL ABR-SPIA (2-00)). This benefit provides for a limited lump sum distribution if you suffer a defined critical illness. With the Medicaid Single Premium Immediate Annuity Waiver Endorsement, also known as the Senior Safeguard Option, the Guaranty Income Plan may be useful assisting you in qualifying for Medicaid. Under this waiver, the annuity is non-transferable, non-assignable, non-commutable, non-surrenderable, irrevocable and has no cash value. Note that the Accelerated Benefit Rider and the Senior Safeguard Option are not available in all states.

NO SALES CHARGES OR POLICY FEES

There are no sales charges. (If premium taxes are required by law, they will be deducted from the single premium.)

INCOME GUARANTEED BY F&G LIFE

Seven immediate annuity payout options are available. (Please note that your payment option may not be changed after the policy is issued.)

1) Income for a Fixed Period (only option available with the Senior Safeguard Option): This option guarantees to pay you regular income over the period of years you've chosen. If you die before the end of the fixed period, your beneficiary receives a lump sum benefit or can elect to receive the income payments throughout the remainder of the fixed period. Payments stop at the end of the period.

For the Senior Safeguard Option, this option will not be less than one year and will not exceed your life expectancy.

2) Life Income with a Guaranteed Period: You are guaranteed to receive income payments for as long as you live. If you should die during the guaranteed period you selected, your beneficiary will receive the remaining guaranteed payments.

3) Life Income: You receive guaranteed income for as long as you live but with no payments after your death. Generally, this option offers a higher income payment, but should not be chosen if you want someone to receive payments after your death.

4) Joint and Contingent Life Income: Income payments continue for as long as either you, or your contingent annuitant, live. The joint life income amount will be paid in full while you are alive. If you die before the contingent annuitant, payments will continue at the rate you have requested in your application and will be paid for as long as the contingent annuitant lives.

5) Joint and Survivor Life Income with Guaranteed Period: Income is guaranteed for as long as either you, or your joint annuitant, live. The joint life income amount will be paid in full while both annuitants are alive. At the time of application, you can choose to have the joint life income reduced upon the death of either annuitant. If both you and your joint annuitant die during the guaranteed period you selected, your beneficiary receives the remaining guaranteed payments.

6) Joint and Survivor Life Income: Income payments are guaranteed for as long as either you, or your joint annuitant live. The joint life income amount will be paid in full while both you and your joint annuitant are alive. Upon the death of either you or your joint annuitant, payments will continue at the rate you have requested in your application and will be paid for as long as the remaining annuitant lives.

7) Life Income with Lump Sum Refund at Death: Payments will be made to you as long as you live. If you die before the total amount of payments made equals the net premium, your beneficiary will receive a single payment equal to your net premium less any payments previously made.

Except for the Fixed Period payout option, all of these provide an income you cannot outlive.

These descriptions assume that you are the annuitant (the measuring life). Guaranty Income Plan also offers you the flexibility of choosing someone else as the annuitant.

INCOME TAX

Income tax is imposed on the portion of income received from an annuity that represents interest earnings. Please consult your personal tax advisor for more detailed information.

PAYMENT IN THE EVENT OF DEATH

In all payout options except the Life Income Option, if you die before receiving all guaranteed income payments, your joint or contingent annuitant or your beneficiary will receive the value of any remaining income — either by continuing income or in a lump sum equal to commuted value (as defined in the policy). Any lump sum would be subject to income tax to the extent of gain in the policy. With the Senior Safeguard Option, your joint or contingent annuitant or your beneficiary designation may affect Medicaid eligibility. Please consult an elder law attorney or other knowledgeable advisor for more information.

RIGHT TO EXAMINE POLICY

The policy includes a 20 day right of examination (30 days in CA). This means that within the first 20 days, you may return the policy and receive 100 percent of your single premium.

With the Senior Safeguard Option, F&G Life may allow an additional 20 days (from the date of notification) to cancel the transaction if you receive notification from the Medicaid office in your state that his product is not acceptable for purposes of Medicaid eligibility.

continued on back

Not a deposit • Not FDIC insured • Not insured by any Federal Government Agency • Not guaranteed by a financial institution (such as a bank, savings association or credit union) • The financial institution may not condition an extension of credit on the consumer's purchase of an insurance product or an annuity from the financial institution or any of its affiliates. The consumer is free to purchase the insurance product or annuity from another source.

Curtis A. Volesky
12/06/2004 12:57 PM

To: Melody K. Bonn/DHS/NoDak@NoDak
cc: Marella A. Krein/DHS/NoDak@NoDak
Subject: Re: Annuity

The annuity states that the client can cancel it within 20 days following a Medicaid disapproval of assistance. This language doesn't make the annuity irrevocable, but allows the annuity to be cashed in. Annuities that can be cashed in are countable assets. If the client does not act within the 20 days, they lose the right to cash it in, however, they would regain that right for another 20 days after a subsequent Medicaid denial.

Curtis Volesky
Director, Medicaid Eligibility
ND Department of Human Services

Melody K. Bonn

Melody K. Bonn
12/06/2004 12:00 PM

To: Marella A. Krein/DHS/NoDak@NoDak
cc: Curtis A. Volesky/DHS/NoDak@NoDak
Subject: Re: Annuity

So what does Delmer Weldner's annuity mean after 20 days it is fine or because they have 20 days to cancel it we will NEVER look at it as a Medicaid Friendly annuity.

I cannot blame the company for that clause as we approved it twice and then 6 months after the fact we denied it so I am guessing instead of screwing the client they put that clause in there so they can adjust to our decisions when they are made after the fact.

I need to know because then I will close/deny this case AGAIN and let the family do a second appeal.
Thanks Mel

Melody Bonn
Eligibility Worker
Stark County Social Services
664 12th St. West
Dickinson, ND 58601
(701) 456-7675 Phone
(701) 456-7777 Fax

FAX 483-9779
State

Annuity example for a couple based on SB 2190

Passage of SB 2190 allows annuities to have a cancellation clause, and not be counted as an asset.

Bob and Mary, an aged couple, have $400,000 in countable assets.

Bob is in the nursing home and they have been paying for his care with their own funds.

They have not previously purchased an annuity because Mary does not want to tie their assets up in an annuity.

They apply for Medicaid coverage for Bob.

Mary is allowed to keep $95,000 as her "community spouse" allowance.

They have $305,000 that they would still need to spend down. Mary purchases a $305,000 annuity with the cancellation clause. The annuity meets all other requirements and is not counted as an asset.

Bob becomes eligible for Medicaid. Once Bob is eligible for Medicaid, federal law prevents us from counting any of Mary's assets to determine his continued eligibility.

Mary immediately applies for Medicaid for herself. As she has no medical need she is denied.

Mary provides the official denial to her annuity company and is able to cash her annuity in and get her money back.

Annuity example 1 for a single individual based on SB 2190

Passage of SB 2190 allows annuities to have a cancellation clause, and not be counted as an asset.

Donald, age 70, needs to enter the nursing home and has $203,000 in countable assets. He must spend down his assets before he becomes eligible for Medicaid.

Donald purchases a $200,000 annuity with the cancellation clause. According to the life expectancy table, Donald has a life expectancy of 12 years. The annuity is not counted as an asset.

Since Donald is now within the Medicaid asset limits, he becomes eligible for Medicaid.

Two years later Donald dies. The remaining 10 years of annuity payments go to his children who were named as beneficiaries on the annuity.

Annuity example 2 for a single individual based on SB 2190

Passage of SB 2190 allows annuities to have a cancellation clause, and not be counted as an asset.

Barney, age 75, needs to enter the nursing home for 6 to 9 months for recuperation following hip surgery. He has $203,000 in countable assets.

He is not eligible for Medicaid due to his assets.

Barney purchases a $200,000 annuity with the cancellation clause. According to the life expectancy table, Barney has a life expectancy of 9 and 1/4 years. The annuity is not counted as an asset.

Since Barney is now within the Medicaid asset limits, he becomes eligible for Medicaid.

Nine months later he leaves the nursing home.

Since he no longer pays all of his income to the nursing home, he goes over the asset limit in month 10 and his Medicaid case is closed.

He provides the closing notice to the annuity company and cashes in his annuity.

3-7-05

TESTIMONY BEFORE THE
HOUSE INDUSTRY, BUSINESS AND LABOR COMMITTEE
REGARDING SENATE BILL 2190
MARCH 7, 2005

Chairman Keiser, members of the committee, I am Curtis Volesky, Director of Medicaid Eligibility for the Department of Human Services. The department is here to provide information on SB 2190.

The new language in Subsection 2, page 1, line 19, limits the exclusion of annuities for community spouses to those who purchase single premium immediate annuities. This change may impact individuals who truly have been planning for retirement and have a deferred annuity they have been paying into over time. To meet the requirements of this provision, a spouse with a deferred annuity would be required to cash in their annuity and use the proceeds to purchase a single premium immediate annuity.

The changes on page 2, lines 5 and 6, refer to the life expectancy of the annuitant. The department currently bases life expectancy on a standard life expectancy table, but also takes into consideration those instances when an annuitant has a life threatening disease or condition that the person's physician indicates will shorten their life expectancy. The change requires life expectancy to be based only on a standard table in all situations. Because of various tables that may differ, the department requests that the language identify a specific standard table, such as the table published by the Centers for Medicare and Medicaid Services (CMS), or use language consistent with language proposed to this section through HB 1248. The CMS table, which is currently used by the department, is used nation wide for Social Security and Medicaid programs. This change in language does not change the intent, but insures that all use the same table.

Subsection 3, page 2 lines 11 through 17, allows cancellation of a policy if the annuity causes a denial of Medicaid eligibility. Current policy requires that Medicaid consider all assets that are, or can be made, available to pay for medical care. An annuity that includes a cancellation policy allows the individual to obtain the annuity funds to pay for medical care if the person, or their spouse, is not eligible for medical assistance. As a result, the annuity itself is not considered an available asset when applying for medical assistance, but the funds that can be made available are. The provision in subsection 3 states that such a clause would no longer cause the funds to be countable unless the individual actually did cancel the annuity and not replace it with an annuity described in subsection 2. Our understanding is that the purpose of this provision is to allow individuals to "fix" an annuity that may not have been initially set up to meet the requirements of subsection 2.

I will be glad to answer any questions regarding my testimony. Thank you.

NORTH DAKOTA DEPARTMENT
OF HUMAN SERVICES

MELISSA HAUER
Attorney, Legal Advisory Unit

State Capitol - Judicial Wing
600 E Boulevard Ave
Bismarck ND 58505-0250

Office: (701) 328-2311
Fax: (701) 328-2359
E-mail: sohaum@state.nd.us

To: Rep. Nottestad
House Industry, Business and Labor Committee

From: Curtis Volesky
Director, Medicaid Eligibility
Department of Human Services

Date: March 10, 2005

Subject: SB 2190

SB 2190 and HB 1248 are two annuity bills that, if both pass, create a situation that will limit the effectiveness of SB 2190. The department wished to bring this to your attention.

Subsection 3 of SB 2190 allows a cancellation clause in annuities. An annuity with such a cancellation clause will not be considered as an available asset for Medicaid unless the individual actually cancels the annuity and does not use those funds to purchase another annuity that meets the requirements of subsection 2. The purpose is to allow individuals to "fix" an annuity that was not set up properly.

HB 1248 ends the use of subsection 2 for such annuities purchased after July 31, 2005, and adds subsection 4, which applies to all community spouse annuities purchased after that date. The result is that if an individual actually does cancel the annuity in order to "fix" it, subsection 3 in SB 2190 requires that the fix meet the requirements of subsection 2. Since annuities purchased after July 31, 2005 would need to meet the requirements of subsections 3 and 4 in HB 1248, it makes the cancellation clause ineffective. If both bills pass, the subsection 3 in SB 2190 should identify HB 1248's subsection 4 instead of subsection 2.

Here is a proposed amendment to deal with that issue (a copy is also attached). It would amend subsection three of SB 2190 as follows:

3. An annuity that contains a provision that allows for cancellation of the annuity upon a denial of medical assistance may not be considered an available asset unless the annuity is canceled and the proceeds are not used to purchase an annuity that meets the requirements of subsection 4 of section 50-24.1-02.8 if House Bill No. 1248 becomes effective or, if House Bill No. 1248 does not become effective, subsection 2. Any proceeds from a cancellation described in this subsection which are not used to purchase an annuity described in subsection 2 must be considered an available asset of the annuity owner and the owner's spouse.

In other words, if HB 1248 passes, the annuity that is bought after a Medicaid friendly annuity is cashed in would have to comply with the new subsection 4 that HB 1248 creates to NDCC section 50-24.1-02.8. If HB 1248 does not pass, the new annuity will have to comply with subsection 2 of the NDCC 50-24.1-02.8 as amended by SB 2190.

Please contact me at 328-2110 if you have any questions, or need anything further.

Klotzsted

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2190

Page 2, line 14, after "of" insert "subsection 4 of section 50-24.1-02.8 if House Bill No. 1248 becomes effective or, if House Bill No. 1248 does not become effective,"

Renumber accordingly