

2011 SENATE HUMAN SERVICES

SB 2075

# 2011 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee  
Red River Room, State Capitol

SB 2075  
1-11-2011  
12759

Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to excess assets in pre-need funeral service contracts, prepayments, or deposits.

## Minutes:

Testimony attached.

**Chairman, Senator Judy Lee**, opened the hearing on SB 2075 with a fiscal note.

**Jonathan Alm**, an attorney with the Dept. of Human Services, testified in support of SB 2075. See attached testimony #1.

**Senator Dick Dever** asked what amount Medicaid recipients are able to set aside for their funeral.

**Mr. Alm** replied the current amount is \$6000 plus up to an additional \$3000 in Medicaid assets.

**Senator Judy Lee** asked if there are significant assets being sheltered.

**Mr. Alm** said they have recovered in the past up to a couple thousand dollars for estate recovery from funeral expenses that have not been spent.

**Senator Spencer Berry** asked what if there is no outlined plan.

**Mr. Alm** answered that according to state law there has to be pre-arrangement. That means there is either a CD that says "for burial" or there is a contract with the funeral home that sets forth what the individual wants and how much money they put aside for it. If there is any money left over that is unspent, then it would be subject to the department's recovery.

**Senator Judy Lee** asked if some of the pre need funeral contracts get quite specific.

**Mr. Alm** deferred to others who might be able to answer more specifically than he could.

**Senator Dick Dever** asked if the value of the pre need contract was subject to the same limitation as the \$6000 plus \$3000.

**Mr. Alm** answered that at the max it could be \$9000. Anything over, they wouldn't be on Medicaid.

**Senator Spencer Berry** asked if the plans are outlined in writing carry the authority of law. Is the family allowed to change it?

**Mr. Alm** deferred to the funeral industry. He explained that for their purposes whatever money is unspent would be subject to recovery.

**Representative Nathe**, District 30. He has been a funeral director for 25 years. He testified in support of SB 2075. He explained that he worked under this concept in MN. It's usually use it or lose it when it comes to this. Whatever money they've prepaid and they are on county assistance the money that is left goes back to the county. Two reasons for looking at this bill: 1. Eliminate family members changing the pre-planned funeral arrangements to a cheaper method and keeping the extra money. 2. Make it into an irrevocable trust.

He explained that the plans can be changed because, at the time of death, they take direction from the nearest next of kin. This is true in ND and MN.

**Senator Gerald Uglem** asked Rep. Nathe if he saw this returning money to the state or just making sure they spend all the money.

**Rep. Nathe** said he does see money returning to the state.

At the request of Senator Judy Lee he explained that a typical pre need contract would be just as if the death had occurred today.

**Senator Dick Dever** asked how the leftover money is disposed of after the funeral.

**Rep. Nathe** understands that they would reproduce an invoice to the family after services have been rendered showing how much is in the account and what the bill is. If there is any money left over it will show on the invoice. The family will then produce that invoice to the county.

**Jack McDonald** appeared on behalf of the ND Funeral Directors Association and added support for SB 2075. For their purposes the irrevocable contract is probably the next step. They feel this bill would probably add to more contacts between the families and the funeral directors. Sometimes the set asides are done without contacting the funeral directors now.

There was no opposing or neutral testimony.

The hearing on SB 2075 was closed.

**Senator Dick Dever** moved a **Do Pass**.

Seconded by **Senator Gerald Ugem**.

Roll call vote 4-0-1. **Motion carried**.

Carrier is **Senator Gerald Ugem**.

# FISCAL NOTE

Requested by Legislative Council  
12/22/2010

Bill/Resolution No.: SB 2075

**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.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 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.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

**2A. Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill requires any amount remaining in a pre-need funeral service contract, prepayment or deposit to be returned to the estate of the medical assistance recipient. The amount of additional funds which may be recovered is undeterminable.

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The amount of additional funds which may be recovered is undeterminable.

**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, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	Debra A. McDermott	Agency:	Dept of Human Services
Phone Number:	328-3695	Date Prepared:	12/29/2010

Date: 1-11-2011

Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2075

Senate HUMAN SERVICES Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Sen. Dever Seconded By Sen. Uglem

Senators	Yes	No	Senators	Yes	No
Sen. Judy Lee, Chairman	✓		Sen. Tim Mathern		
Sen. Gerald Uglem, V. Chair	✓				
Sen. Dick Dever	✓				
Sen. Spencer Berry	✓				

Total (Yes) 4 No 0

Absent 1

Floor Assignment Sen. Uglem

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

**REPORT OF STANDING COMMITTEE**

**SB 2075: Human Services Committee (Sen. J. Lee, Chairman) recommends DO PASS**  
(4 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2075 was placed on the  
Eleventh order on the calendar.

2011 HOUSE HUMAN SERVICES

SB 2075

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee  
Fort Union Room, State Capitol

SB 2075  
March 7, 2011  
Job #14994

Conference Committee

Committee Clerk Signature

*Vicky Crabtree*

## Explanation or reason for introduction of bill/resolution:

Relating to excess assets in pre-need funeral service contracts, prepayments or deposits.

## Minutes:

See Testimony #1

**Chairman Weisz:** Opened the hearing on SB 2075.

**Jonathan Alm:** Attorney with DHS introduced the bill. (See Testimony #1.)

**Rep. Mike Nathe:** From District 30 and a funeral director for the past 26 years and the owner of Bismarck Funeral Home and Crematory testified in support of the bill. We are looking at any pre-paid funeral assets that were not used for the funeral would be returned to the state. It is being used in about 35-40 states now. We had originally looked at proposing a revokable trust which a lot of these states use and in that revokable trust part of that mechanism would be to return the unused pre-paid funeral portion for this.

**Rep. Porter:** In the contract when payment is made; out of the contract to the funeral service provider when you have left over money, who is in control of that money, who is going to write the check? How do you know who to write the check to? If the family wants the money now, how are you going to know you can't do it and have to write it back to the state?

**Rep. Nathe:** Under this law?

**Rep. Porter:** Correct.

**Rep. Nathe:** If this law were to pass, obviously our industry would be notified that we would have to send it back. I would presume there is a form or something along that line that we have to fill out with the Health Department. When we cash in a prepaid funeral, we get that amount from the pre-paid insurance policy or the CD, the two funding mechanisms that funeral homes would use. If somebody pre-pays a funeral for \$10,000 and only uses \$2,000 because of cremation and no services, then we have \$8,000. Under this bill we would notify the state of the excess money.

**Rep. Porter:** If people want their money right now. How do you know if it is unencumbered and free and clear and can give them their money or not. How are you going to make sure it goes to the right (stops sentence). That Medicaid is not first? Or are you just going to give it to them and the state would have to do a collection.

**Rep. Nathe:** If someone is on assistance they will have a case worker and they would know how much is in there. We are asked once a year by everyone that is on county assistance what the balance of that person's pre-paid account. They get a notification when their client has passed away and who is handling the funeral services.

**Rep. Porter:** So the way you read this, is there any potential liability the funeral home would have if they were to release those funds to a family or do you view this as something between the family and state and your responsibility is just to release the funds?

**Rep. Nathe:** Between the family and the state.

**Rep. Porter:** That is interesting because we just had a child support bill and the state doesn't take that same position in child support.

**Rep. Hofstad:** I'm confused by your contract. If I were to come to your funeral home and arrange a funeral, is that contract not binding and subject to change by my errors?

**Rep. Nathe:** It is subject to change. Anytime we get a contract for a pre-paid funeral we put it in one of two vehicles. A CD account in the bank or a funeral insurance policy and we write a contract up to that effect. As far as the final wishes are concerned on what someone wants in their funeral, by law have to take direction by next of kin. I would talk to the wife if the husband died first and she says we are going to follow his wishes. Then she passes away and the kids come in and by law, I have to take direction by the oldest next of kin. If he says I don't want to do that and want her cremated and take the money and go home, I by law have to follow her wishes. Anyone on county assistance, this would make sure those wishes are followed.

**Rep. Paur:** We are talking about medical assistance here, but if they are not on medical assistance, do you just give the money back to whoever asks for it?

**Rep. Nathe:** It would go back to the next of kin we are dealing with if not on county assistance.

**Rep. Paur:** It would go back even though the will wouldn't necessarily specify it?

**Rep. Nathe:** Correct. We have to follow wishes of the next of kin.

**Jack MacDonald:** Representing the Funeral Directors Association. Rep. Nathe and I talked with the DHS last summer and worked with them in getting this bill introduced. It will have affect that Rep. Nathe mentioned. Not all of the money that is set aside for the funerals is necessarily given to the funeral home right away. You can also set aside money and become eligible for Medicaid assistance. The question whether the funeral director has to return money to the estate may not come up because he never has it in the first place. It

may just be a CD held at a local bank and at time of death the estate cashes the CD or may be a savings account and then they pay for the funeral expenses. This is only dealing with Medicaid assistance and any other time this won't be an issue. The funeral director has to present a detailed billing of the expenses and that can be requested from the DHS and they would then go after the estate. The answer to Rep. Paur's question, yes the money would go back to the heirs, but would still be legally part of the deceased estate. By law they have to report any estate proceeds and distribute those proceeds under law. It will follow what the will says.

**Rep. Porter:** In the case where it is actual pre-need contract with the funeral director, are they under any liability for holding that amount to make sure that this is cleared up prior to giving it back to the estate? Are they under any obligation or liability by changing this or is this arrangement or excess funds always going to be between the estate and department?

**Jack:** It will be between the estate and the department. Right now if the department feels there are access funds they will file a claim against the estate and then the estate can dispute and object to that claim if they want to. This just spells out more clearly what is actually the process right now.

**Rep. Porter:** In the instance where the access funds are returned from the funeral director to the estate or the family, they would then be committing an act of fraud against the estate if they cashed it, distributed it, spent it and then there wasn't anything to collect. Is there a mechanism that should be in place to hold the funds at the level of the funeral director for a period of time prior to that or does it work now that they should just flow out? And if we can't collect them then so be it?

**Jack:** The problem I see is twofold. The amount owed to the state is not always determinable right away. There are other estates claims and the state itself may have to determine how much is owed to them as well. The fact of you holding these funds of estate settlements are not accomplished very easily. There is a 90 day period where you have to give notice to creditors before you can close an estate and often times there is property to be sold and disposed of in different ways. An estate could take up to one to two years to close out. I don't think the funeral home would want to hold funds that long. You could have an ultimate amount Medicaid set aside of \$9,000. The amount not used for the funeral could be \$1,000-\$2000. If you had a lot of paperwork, holding the funds or litigation it doesn't become very productive.

**Rep. Porter:** Do you have to have an estate in ND?

**Jack:** There is always an estate. Under \$50,000 it can be settled informally. You do not have to open up a probate and you can take care of it yourself. If there is land to be transferred then you have to open up an estate.

**Rep. Porter:** Let's say only amount left is \$6,000 difference. Then the notice of creditor notice doesn't exist? There is no estate requirement that exist; it just can quietly go away?

**Jack:** Not necessarily. Even though there is not a legal estate, there is still a legal obligation of the person. There is an estate no matter what even it is not legally open. If

you didn't give notice to the creditors under the \$50,000 or the state, you can still file a claim against the estate even though there is not a legal estate there. If no funds there no personal obligation.

**Rep. Porter:** The collection burden then goes back to the state then.

**Jack:** Collection always goes back to the state.

**Rep. Schmidt:** If my mother is on Medicaid and I paid the \$10,000 for her funeral out of my own pocket, but it only costs \$2,000 because she decided to be cremated. Do I get the \$8,000 back?

**Rep. Nathe:** When you give me the money I have to make the contract in her name even though you wrote the check and then what is left over goes to the state.

**Jack:** You wouldn't give the money ahead of time just at time of funeral.

#### **NO OPPOSITION**

**Chairman Weisz:** Closed the hearing on HB 2075.

**Chairman Weisz:** Let's take up 2075.

**Rep. Kilichowski:** I make a motion Do Pass.

**Rep. Porter:** Second.

**Rep. Hofstad:** What is the limit on the amount that you can set aside for funerals?

**Chairman Weisz:** Maximum is \$9,000. \$6,000 and you can use the additional \$3,000 that you are allowed for other things into it.

**Rep. Holman:** Does this bill change anything from what already would be the process if everyone was aware of what is going on?

**Chairman Weisz:** What do you mean by if everyone was aware?

**Rep. Holman:** If all parties are aware of the money exchanging hands. It came up in Rep. Porter's last question. If you have a non-probate estate, there may or may not be enough information out there for everyone to know what is going on. Although maybe the DHS would always know what is going on. I'm talking about hiding money. Does this make the process more open?

**Chairman Weisz:** Currently I don't think there is an obligation if they don't use that \$6,000 to pay it back to the department or anybody else.

**VOTE: 10 y 0 n DO PASS CARRIED**

House Human Services Committee

SB 2075

March 7, 2011

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**Bill Carrier: Rep. Louser**

Date: 3-7-11  
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2075

House HUMAN SERVICES Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Rep. Kilichowski Seconded By Rep. Porter

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN WEISZ	✓		REP. CONKLIN	✓	
VICE-CHAIR PIETSCH	✓		REP. HOLMAN	✓	
REP. ANDERSON	✓		REP. KILICHOWSKI	✓	
REP. DAMSCHEN	✓				
REP. DEVLIN	✓				
REP. HOFSTAD	✓				
REP. LOUSER	✓				
REP. PAUR	✓				
REP. PORTER	✓				
REP. SCHMIDT	✓				

Total (Yes) 13 No 0

Absent \_\_\_\_\_

Floor Assignment Rep. Louser

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

**REPORT OF STANDING COMMITTEE**

**SB 2075: Human Services Committee (Rep. Weisz, Chairman) recommends DO PASS**  
(13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2075 was placed on the  
Fourteenth order on the calendar.

2011 TESTIMONY

SB 2075

#1

**Testimony**  
**Senate Bill Number 2075 – Department of Human Services**  
**Senate Human Services Committee**  
**Senator Judy Lee, Chairman**  
**January 11, 2011**

Chairman Lee, members of the Human Services Committee, I am Jonathan Alm, an attorney with the Department of Human Services. I am here today in support of Senate Bill 2075.

This bill is designed to clarify that any amount in a pre-need funeral service contract, prepayment, or deposit designated under North Dakota Century Code Section 50-24.1-02.3 not used for funeral or burial expenses must be returned to the estate of the medical assistance recipient and will be subject to the Department's claim against the estate. The Department is required by federal law and by North Dakota Century Code Section 50-24.1-07 to file a claim against the estate of a medical assistance recipient or the recipient's spouse. The Department is also authorized to collect assets belonging to a deceased recipient of medical assistance or spouse using the affidavit for collection method set forth by North Dakota Century Code Chapter 30.1-23.

The Department was contacted by a couple of individuals who are actively involved in the funeral service industry. The individuals raised a concern about a growing trend in which they see family members opting for a different funeral service than what the decedent had indicated pursuant to a burial pre-arrangement. The family members, in turn, retain the balance of the burial account rather than return it to the decedent's estate. This bill provides a tool for the funeral service industry to inform family members that if there are funds remaining in the burial account after all arrangements have been made, the funds are subject to estate

recovery by medical assistance. This bill will not change the Department's current ability to collect the excess funds in the burial account.

This concludes my testimony. I would be happy to try to answer any questions the committee may have. Thank you.

# 1

**Testimony**  
**Senate Bill Number 2075 – Department of Human Services**  
**House Human Services Committee**  
**Representative Robin Weisz, Chairman**  
**March 7, 2011**

Chairman Weisz, members of the Human Services Committee, I am Jonathan Alm, an attorney with the Department of Human Services. I am here today in support of Senate Bill 2075.

This bill is designed to clarify that any amount in a pre-need funeral service contract, prepayment, or deposit designated under North Dakota Century Code Section 50-24.1-02.3 not used for funeral or burial expenses must be returned to the estate of the medical assistance recipient and will be subject to the Department's claim against the estate. The Department is required by federal law and by North Dakota Century Code Section 50-24.1-07 to file a claim against the estate of a medical assistance recipient or the recipient's spouse. The Department is also authorized to collect assets belonging to a deceased recipient of medical assistance or spouse using the affidavit for collection method set forth by North Dakota Century Code Chapter 30.1-23.

The Department was contacted by a couple of individuals who are actively involved in the funeral service industry. The individuals raised a concern about a growing trend in which they see family members opting for a different funeral service than what the decedent had indicated pursuant to a burial pre-arrangement. The family members, in turn, retain the balance of the burial account rather than return it to the decedent's estate. This bill provides a tool for the funeral service industry to inform family members that if there are funds remaining in the burial account after all arrangements have been made, the funds are subject to estate



recovery by medical assistance. This bill will not change the Department's current ability to collect the excess funds in the burial account.

This concludes my testimony. I would be happy to try to answer any questions the committee may have. Thank you.