

**2021 SENATE INDUSTRY, BUSINESS AND LABOR**

**SB 2261**

# 2021 SENATE STANDING COMMITTEE MINUTES

## Industry, Business and Labor Committee Fort Union Room, State Capitol

SB 2261  
1/26/2021

relating to irrevocable itemized funeral contracts and Medicaid assets exempt for funeral expenses
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**Chair Klein** called the hearing to order at 9:48 a.m. All members present. Senators Klein, Larsen, Burckhard, Vedaa, Kreun, Marcellais.

### Discussion Topics:

- Allowing for banks to rely on irrevocable trusts

**Rick Clayburgh, CEO of ND Bankers Association** [9:49] testified in favor and submitted testimony #3204.

**Jonathan Alm, an attorney with the Department of Human Services** [9:52] testified in favor and submitted testimony #3413.

**Mike Krumwiede** [9:55] testified in favor.

**Senator Kreun** moved Amendment 21.0954.01001 Title.02000 [9:58]. **Senator Larsen** seconded the motion [9:59].

[9:59]

Senators	Vote
Senator Jerry Klein	Y
Senator Doug Larsen	Y
Senator Randy A. Burckhard	Y
Senator Curt Kreun	Y
Senator Richard Marcellais	Y
Senator Shawn Vedaa	Y

Motion passed: 6-0-0

**Senator Kreun** moved DO PASS AS AMENDED [10:00].

**Senator Larsen** seconded the motion [10:00].

[10:00]

Senators	Vote
Senator Jerry Klein	Y
Senator Doug Larsen	Y
Senator Randy A. Burckhard	Y
Senator Curt Kreun	Y
Senator Richard Marcellais	Y
Senator Shawn Vedaa	Y

Motion passed: 6-0-0

**Senator Larsen** will carry the bill [10:00].

**Chair Klein** closed the hearing at 10:01 a.m.

*Isabella Grotberg, Committee Clerk*

January 26, 2021

C5  
1/26  
1041

PROPOSED AMENDMENTS TO SENATE BILL NO. 2261

Page 1, line 3, after "expenses" insert "; and to declare an emergency"

Page 1, line 17, after "contract" insert "that is an itemized listing of goods and services that will be received based on the contract"

Page 3, line 21, overstrike "amount may not exceed"

Page 3, line 22, overstrike "the amount" and insert immediately thereafter "itemized funeral service contract"

Page 3, line 22, overstrike "and" and insert immediately thereafter "is"

Page 4, after line 10, insert:

**"SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

**REPORT OF STANDING COMMITTEE**

**SB 2261: Industry, Business and Labor Committee (Sen. Klein, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2261 was placed on the Sixth order on the calendar.

Page 1, line 3, after "expenses" insert "; and to declare an emergency"

Page 1, line 17, after "contract" insert "that is an itemized listing of goods and services that will be received based on the contract"

Page 3, line 21, overstrike "amount may not exceed"

Page 3, line 22, overstrike "the amount" and insert immediately thereafter "itemized funeral service contract"

Page 3, line 22, overstrike "and" and insert immediately thereafter "is"

Page 4, after line 10, insert:

**"SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly



## 2021 Burial Fund Legislation – SB 2261

*To determine whether an individual is eligible for Medicaid, the state will count some of the individual's assets and exclude others. Like other states, North Dakota allows individuals to pre-pay for their burial by contracting with a funeral home and paying in advance for the various costs associated with their funeral. In certain cases, this burial fund can be excluded from the individual's assets when determining Medicaid eligibility. The issue is the changing state law in how Medicaid applicants or members can set aside funds for burial expenses.*

Testimony in support of SB 2261, by NDBA President & CEO, Rick Clayburgh.

### ***The Old Rule***

Before August 1, 2019, individuals could set aside funds for burial expenses up to \$6,000 simply by setting aside and designating the funds to be used for funeral or burial expenses. For banks, this meant that customers could deposit funds in a CD or savings account and ensure that such funds would be excluded simply by having the bank designate the funds that way on the account.

### ***2019 Legislation: The Irrevocable Itemized Burial Contract***

Effective August 1, 2019, the legislative changes to Sections 43-10.1-03.1 and 50-24.1-02.3 first remove the \$6,000 cap on the amount that can be excluded as burial funds. Now, the amount simply “may not exceed the amount to pay for a funeral.” In addition, the law now requires that the money be placed in an “irrevocable itemized funeral contract” to qualify for the exemption.

### ***Subsequent Issues***

The North Dakota Department of Human Services (Department) later received direction from the Centers for Medicare & Medicaid Services (CMS), that the Department must apply the changes made to sections 43-10.1-03.1 and 50-24.1-02.3 to all Medicaid recipients and that the Department may not permit current Medicaid recipients to maintain their pre-August 1, 2019

funds set aside and designated for burial. Based on CMS' direction, the [North Dakota Medicaid Burial Policy](#) created in October 2020, states that individuals must move their funds to an irrevocable itemized burial contract by January 31, 2021 or such funds will be counted. One issue is that the statutes do not define what exactly an “irrevocable itemized burial contract” is. As this is the only way to have such assets excluded, it is important that the statutes state the same. The new policy further directs that any CD would need to be placed into an irrevocable trust, but direction for such trust is found nowhere in the statutes.

### ***The Proposed Change***

The focus of the proposed legislation is to make it clearer for banks, individuals, and funeral directors as to how funds are correctly designated as excludable assets.

First and foremost, it defines “irrevocable itemized funeral contract.” It is also more direct in what must be done when payments made under an irrevocable itemized funeral contract are being deposited with a bank, credit union, savings and loan association, or trust company. Specifically, such funds “must be carried in a separate account with the names of the depositor or transferor, cemetery association or licensed funeral establishment, and the person making payment on behalf of the individual for whose benefit payment is made.”

This will result in less uncertainty for individuals and their banks.

Testimony  
Senate Bill 2261 - Department of Human Services  
Senate Industry, Business and Labor Committee  
Senator Jerry Klein, Chairman  
January 26, 2021

Chairman Klein, and members of the Senate Industry, Business and Labor Committee, I am Jonathan Alm, an attorney with the Department of Human Services (Department). I appear before you in support of Senate Bill 2261 as it adds clarity to irrevocable itemized funeral contracts.

The Department is proposing an amendment to Senate Bill 2261 to add additional clarity for the purpose of Medicaid. The proposed amendment amends the definition of "irrevocable itemized funeral contract" on page 1, lines 16 and 17, to read as follows:

"Irrevocable itemized funeral contract" means an irrevocable pre-need funeral service contract that is an itemized listing of goods and services that will be received based on the contract.

This amendment would add clarity and aligns with current practice as the Department needs the irrevocable itemized funeral contract to have an itemized listing of goods and services.

In addition, the proposed amendment amends page 3, lines 21 through 24, to read as follows:

The irrevocable itemized funeral service ~~may not exceed the amount~~ contract to pay for a funeral ~~and is~~ recognized as an allowable asset exclusion used for determining eligibility for medical assistance under section 50-24.1-02.3 at the time the contract is entered.

This amendment would make it clear that the irrevocable itemized funeral service contract is recognized as an allowable asset exclusion for Medicaid purposes.

Finally, at the request of the North Dakota Bankers Association, the proposed amendment would add an emergency clause.

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

PROPOSED AMENDMENTS TO SENATE BILL NO. 2261

Page 1, line 3, after "expenses" insert "; and to declare an emergency"

Page 1, line 17, after "contract" insert "that is an itemized listing of goods and services that will be received based on the contract"

Page 3, line 21, after "irrevocable" insert "itemized funeral contract"

Page 3, line 21, overstrike "may not exceed"

Page 3, line 22, overstrike "the amount"

Page 3, line 22, overstrike "and" and insert immediately thereafter "is"

Page 4, after line 10, insert:

**"SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure."

Re-number accordingly

**2021 HOUSE INDUSTRY, BUSINESS AND LABOR**

**SB 2261**

# 2021 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee  
Room JW327C, State Capitol

SB 2261  
3/8/2021

<b>Irrevocable itemized funeral contracts &amp; Medicaid assets exempt for funeral expenses.</b>
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(2:10) Chairman Lefor called the hearing to order.

<b>Representatives</b>	<b>Attendance</b>	<b>Representatives</b>	<b>Attendance</b>
Chairman Lefor	P	Rep Ostlie	P
Vice Chairman Keiser	P	Rep D Ruby	P
Rep Hagert	P	Rep Schauer	P
Rep Kasper	P	Rep Stemen	P
Rep Louser	P	Rep Thomas	P
Rep Nehring	P	Rep Adams	P
Rep O'Brien	P	Rep P Anderson	P

## Discussion Topics:

- Burial accounts
- Irrevocable itemized funeral contracts

Rick Clayburgh~President & CEO-ND Banker's Association. Attachment # 7704.

Jonathan Alm~ND Department of Human Services. Attachment # 7837.

Mike Krumwiede~ND Funeral Directors Association testified in favor.

Chairman Lefor closed the hearing.

Rep Adams moved a Do Pass.

Rep P Anderson second.

<b>Representatives</b>	<b>Vote</b>
Chairman Lefor	Y
Vice Chairman Keiser	Y
Rep Hagert	Y
Rep Jim Kasper	Y
Rep Scott Louser	Y
Rep Nehring	Y
Rep O'Brien	Y
Rep Ostlie	Y
Rep Ruby	Y
Rep Schauer	Y
Rep Stemen	Y
Rep Thomas	Y
Rep Adams	Y
Rep P Anderson	Y

Vote roll call taken Motion carried 14-0-0 & Rep D Ruby is the carrier.

(2:16) End time.

*Ellen LeTang, Committee Clerk*

**REPORT OF STANDING COMMITTEE**

**SB 2261, as engrossed: Industry, Business and Labor Committee (Rep. Lefor, Chairman) recommends DO PASS (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).** Engrossed SB 2261 was placed on the Fourteenth order on the calendar.



## 2021 Burial Fund Legislation – SB 2261

*To determine whether an individual is eligible for Medicaid, the state will count some of the individual's assets and exclude others. Like other states, North Dakota allows individuals to pre-pay for their burial by contracting with a funeral home and paying in advance for the various costs associated with their funeral. In certain cases, this burial fund can be excluded from the individual's assets when determining Medicaid eligibility. The issue is the changing state law in how Medicaid applicants or members can set aside funds for burial expenses.*

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### ***Subsequent Issues***

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funds set aside and designated for burial. Based on CMS' direction, the [North Dakota Medicaid Burial Policy](#) created in October 2020, states that individuals must move their funds to an irrevocable itemized burial contract by January 31, 2021 or such funds will be counted. One issue is that the statutes do not define what exactly an “irrevocable itemized burial contract” is. As this is the only way to have such assets excluded, it is important that the statutes state the same. The new policy further directs that any CD would need to be placed into an irrevocable trust, but direction for such trust is found nowhere in the statutes.

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This will result in less uncertainty for individuals and their banks.

Testimony  
Engrossed Senate Bill 2261 - Department of Human Services  
House Industry, Business and Labor Committee  
Representative Mike Lefor, Chairman  
March 8, 2021

Chairman Lefor, and members of the House Industry, Business and Labor Committee, I am Jonathan Alm, an attorney with the Department of Human Services (Department). I appear before you in support of Engrossed Senate Bill 2261 as it adds clarity to irrevocable itemized funeral contracts.

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

# 2021 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee  
Room JW327C, State Capitol

SB 2261  
3/10/2021

<b>Irrevocable itemized funeral contracts &amp; Medicaid assets exempt for funeral expenses.</b>
--

(4:59) Chairman Lefor called the hearing to order.

<b>Representatives</b>	<b>Attendance</b>	<b>Representatives</b>	<b>Attendance</b>
Chairman Lefor	P	Rep Ostlie	A
Vice Chairman Keiser	P	Rep D Ruby	P
Rep Hagert	P	Rep Schauer	P
Rep Kasper	P	Rep Stemen	P
Rep Louser	P	Rep Thomas	P
Rep Nehring	P	Rep Adams	A
Rep O'Brien	P	Rep P Anderson	P

## Discussion Topics:

- Committee work

Rep Louser moved to reconsider committee actions

Re Hagert seconded the motion

Voice vote. Motion carried.

Rep D Ruby moved the amendment to add “account or” & “or separate certificate of deposit” verbally.

Rep Nehring second.

5:02:46 PM Voice vote. Motion carried.

Rep Nehring moved Do Pass as amended

Rep Schauer seconded the motion

<b>Representatives</b>	<b>Vote</b>
Chairman Lefor	Y
Vice Chairman Keiser	Y
Rep Hagert	Y
Rep Jim Kasper	Y
Rep Scott Louser	Y
Rep Nehring	Y
Rep O'Brien	Y
Rep Ostlie	A
Rep Ruby	Y
Rep Schauer	Y
Rep Stemen	Y
Rep Thomas	Y
Rep Adams	A
Rep P Anderson	Y

Roll call vote Motion carried 12-0-2 & Rep D Ruby is the carrier.

(5:03) End time.

*Ellen LeTang, Committee Clerk*

21.0954.02001  
Title.03000

Adopted by the House Industry, Business and  
Labor Committee

March 10, 2021

DA 3/10/21  
1 of 1

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2261

Page 2, line 28, after "insured" insert "account or"

Page 3, line 5, after "account" insert "or separate certificate of deposit"

Renumber accordingly

**REPORT OF STANDING COMMITTEE**

**SB 2261, as engrossed: Industry, Business and Labor Committee (Rep. Lefor, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2261 was placed on the Sixth order on the calendar.**

Page 2, line 28, after "insured" insert "account or"

Page 3, line 5, after "account" insert "or separate certificate of deposit"

Renumber accordingly