

HOUSE BILL NO. 1126

Introduced by

Industry, Business and Labor Committee

(At the request of the Securities Commissioner)

1 A BILL for an Act to create and enact section 43-10.1-03.1 of the North Dakota Century Code,
2 relating to pre-need funeral contracts; to amend and reenact sections 43-10.1-01, 43-10.1-03,
3 43-10.1-04, 43-10.1-05, and 43-10.1-07.1 of the North Dakota Century Code, relating to
4 pre-need funeral contracts; and to repeal section 23-06-03.1 of the North Dakota Century Code,
5 relating to pre-need funeral contacts.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1. AMENDMENT.** Section 43-10.1-01 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **43-10.1-01. Definitions.** As used in this chapter:

- 10 1. "Cemetery association" means any person, corporation, municipality, association,
11 or organization owning, conducting, or maintaining a cemetery or plot for the burial
12 of dead human bodies.
- 13 2. "Cemetery merchandise" means all service or property to be used in funeral
14 services or burials other than "professional service or personal property to be used
15 in funeral services" ~~as defined in subsection 3.~~
- 16 3. "Commissioner" means the securities commissioner.
- 17 ~~4.~~ 4. "Licensed funeral establishment" means a funeral establishment as defined and
18 licensed in accordance with sections 43-10-21 and 43-10-22.
- 19 ~~4.~~ 5. "Person" means any natural person, firm, association, corporation, limited liability
20 company, or agents or employees thereof.
- 21 ~~5.~~ 6. "Pre-need funeral service contract" means any contract, other than an insurance
22 contract, under which for a specified consideration paid in advance in a lump sum
23 or by installments, a person promises, upon the death of a beneficiary named or

1 implied in the contract, to furnish professional service or personal property to be
2 used in funeral services, or to furnish cemetery merchandise.
3 ~~6.~~ 7. "Professional service or personal property to be used in funeral services" means all
4 personal property, services, supplies, and equipment normally performed or
5 furnished by a licensed embalmer, a licensed funeral establishment, or a cemetery
6 association including any inside interment receptacles or containers into which a
7 dead human remains may be directly placed, caskets, crypt beds, catafalques, and
8 all other articles of merchandise incident to a funeral service, but excluding any
9 outside interment receptacles into which any inside receptacle or container will be
10 placed, grave lots, grave spaces, grave markers, monuments, tombstones, crypts,
11 niches, and mausoleums unless these items are sold by a companion agreement
12 or in contemplation of a trade or barter which includes the sale or rental of any
13 inside interment receptacles or containers into which a dead human remains may
14 be directly placed, caskets, crypt beds, catafalques, or other articles of
15 merchandise incident to a funeral service.

16 **SECTION 2. AMENDMENT.** Section 43-10.1-03 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **43-10.1-03. Annual report filed with securities commissioner.** On or before
19 January thirty-first of each year, the owner or manager of each cemetery association or
20 licensed funeral establishment that has entered into any pre-need funeral service contracts
21 during the preceding calendar year shall file a report covering the period of the preceding
22 calendar year with the ~~securities~~ commissioner, which report must include:

- 23 1. The name and address of the licensed funeral establishment or cemetery
24 association and the name and address of the manager or operator thereof.
- 25 2. The name of the purchaser and beneficiary of each pre-need funeral service
26 contract entered into on behalf of the licensed funeral establishment or cemetery
27 association during the preceding calendar year and the date each contract was
28 made.
- 29 3. The lump-sum consideration paid upon such pre-need funeral service contract
30 required to be reported under subsection 2 or the total amount in dollars of any

1 installments paid upon each pre-need funeral service contract required to be
2 reported under subsection 2.

3 4. The name and address of the bank, credit union, savings and loan association, or
4 trust company in which such consideration was deposited in accordance with
5 section ~~23-06-03.4~~ 43-10.1-03.1.

6 5. The total in dollars of all sums received as consideration upon pre-need funeral
7 service contracts executed by the licensed funeral establishment or cemetery
8 association or in its behalf during all periods after July 1, 1973, which are undrawn
9 or unexpended and on deposit in a bank, credit union, savings and loan
10 association, or trust company or in the hands of the licensed funeral establishment
11 or cemetery association.

12 6. Such other information as may reasonably be required by the ~~securities~~
13 commissioner for the purpose of the proper administration of this chapter.

14 Such report must be accompanied by a filing fee of fifteen dollars and is a public record.

15 **SECTION 3.** Section 43-10.1-03.1 of the North Dakota Century Code is created and
16 enacted as follows:

17 **43-10.1-03.1. Payments on pre-need funeral contracts to be deposited -**

18 **Depository shall keep record of deposit - Personal property storage - Penalty.** Whenever
19 payments are made to a person upon pre-need funeral service contracts, one hundred percent
20 of the funds collected under the contracts for the sale of professional service or personal
21 property to be used in funeral services and fifty percent of the funds collected under the
22 contracts for the sale of cemetery merchandise must be deposited in or transferred to a trust
23 company in this state or to a federally insured bank, credit union, or savings and loan
24 association in this state, within ten days. The deposit must be placed in a federal deposit
25 insurance corporation insured certificate of deposit or negotiable debt obligation of the United
26 States government. Payments received from the sale of professional service or personal
27 property to be used in funeral services or cemetery merchandise which cannot or would not be
28 serviced by a licensed funeral establishment or cemetery association in the area where the
29 service or property was sold are specifically included, whether or not the sales might otherwise
30 be considered pre-need funeral service contracts, within the payments to be deposited under
31 this section. The funds may be released or transferred by the bank, credit union, savings and

1 loan association, or trust company to the depositor upon the death of the person for whose
2 benefit the funds were paid. A certified copy of the certificate of death must be furnished to the
3 bank, credit union, savings and loan association, or trust company as prima facie evidence of
4 death. The funds may be released or transferred by the bank, credit union, savings and loan
5 association, or trust company to the person making the payment, before the death of the person
6 for whose benefit the funds are paid, upon a five-day written notice by registered or certified
7 mail made by the bank, credit union, savings and loan association, or trust company to the
8 depositor or transferor at the request of the person making the payment.

9 A bank, credit union, savings and loan association, or trust company receiving such a
10 deposit or transfer shall keep a complete record of the deposit or transfer, showing the name of
11 the depositor or transferor, name of the person making payment, name of the person for whose
12 benefit payment is made, and any other pertinent information.

13 Any personal property to be used in funeral services or cemetery merchandise which is
14 sold to a purchaser on the basis that it will be identified and marked as belonging to such
15 purchaser, and stored or warehoused for the purchaser, must be stored or warehoused at some
16 location within this state.

17 **SECTION 4. AMENDMENT.** Section 43-10.1-04 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **43-10.1-04. Bond.** ~~The Each owner or operator of a licensed funeral establishment or~~
20 ~~cemetery association shall, at the time of filing the annual report required in section 43-10.1-03,~~
21 who files an annual report, must file with the securities commissioner a corporate surety bond
22 approved by the securities commissioner in an amount deemed adequate by the securities
23 commissioner running to the state of North Dakota. ~~The bond must be payable to the state of~~
24 ~~North Dakota, and~~ in such form and style as the securities commissioner may require for the
25 use and benefit of the purchasers or persons making payments upon pre-need funeral service
26 contracts or their estates, or the beneficiary of the pre-need funeral service contract or his
27 estate for damages suffered by them because of the failure to comply with all provisions of the
28 pre-need funeral service contract or the provisions of this chapter.

29 **SECTION 5. AMENDMENT.** Section 43-10.1-05 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **43-10.1-05. Verification by securities commissioner.** Within ninety days after the
2 filing of a report as required by section 43-10.1-03, the securities commissioner shall verify
3 such report by mailing to the banks, credit unions, savings and loan associations, or trust
4 companies where the report indicates the consideration has been deposited, a questionnaire
5 which the bank, credit union, savings and loan association, or trust company is requested to
6 complete and return, verifying the facts stated in the report in regard to the contract or the
7 deposit of funds. The securities commissioner shall verify the facts on additional contracts
8 reported if the commissioner has reason to believe additional verification to be necessary.

9 **SECTION 6. AMENDMENT.** Section 43-10.1-07.1 of the North Dakota Century Code
10 is amended and reenacted as follows:

11 **43-10.1-07.1. Administration.** The securities commissioner has the power to
12 promulgate rules and regulations having the force and effect of law, reasonably necessary to
13 carry out the provisions of this chapter, in accordance with chapter 28-32. Any hearing held
14 and any orders issued pursuant to this chapter must be in accordance with chapter 28-32. In
15 addition to those powers set forth in chapter 28-32, the securities commissioner has additional
16 powers as set forth in this chapter.

17 **SECTION 7. REPEAL.** Section 23-06-03.1 of the North Dakota Century Code is
18 repealed.