

HOUSE BILL NO. 1232

Introduced by

Representatives Heller, Hogan, K. Koppelman

Senators Sorvaag, Unruh, Murphy

1 A BILL for an Act to amend and reenact sections 43-10.1-03.1 and 50-24.1-02.3 of the North
2 Dakota Century Code, relating to pre-need funeral contracts and medicaid eligibility.

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

4 **SECTION 1. AMENDMENT.** Section 43-10.1-03.1 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **43-10.1-03.1. Payments on pre-need funeral contracts to be deposited - Depository**
7 **shall keep record of deposit - Personal property storage.**

8 Whenever payments are made to a person upon pre-need funeral service contracts, one
9 hundred percent of the funds collected under the contracts for the sale of professional service
10 or personal property to be used in funeral services and fifty percent of the funds collected under
11 the contracts for the sale of cemetery merchandise must be deposited in or transferred to a trust
12 company in this state or to a federally insured bank, credit union, or savings and loan
13 association in this state, within ten days. The deposit must be placed in a federal deposit
14 insurance corporation or national credit union administration insured certificate of deposit or
15 negotiable debt obligation of the United States government. Payments received from the sale of
16 professional service or personal property to be used in funeral services or cemetery
17 merchandise which cannot or would not be serviced by a licensed funeral establishment or
18 cemetery association in the area where the service or property was sold are specifically
19 included, whether or not the sales might otherwise be considered pre-need funeral service
20 contracts, within the payments to be deposited under this section. The funds may be released
21 or transferred by the bank, credit union, savings and loan association, or trust company to the
22 depositor upon the death of the person for whose benefit the funds were paid. A certified copy
23 of the certificate of death must be furnished to the bank, credit union, savings and loan
24 association, or trust company as prima facie evidence of death. The funds may be released or

1 transferred by the bank, credit union, savings and loan association, or trust company to the
2 person making the payment, before the death of the person for whose benefit the funds are
3 paid, upon a five-day written notice by registered or certified mail made by the bank, credit
4 union, savings and loan association, or trust company to the depositor or transferor at the
5 request of the person making the payment. ~~Upon written request, however, a~~ purchaser of a
6 pre-need funeral service contract may make a certain amount of the pre-need funds
7 irrevocable. The irrevocable amount may not exceed the amount of the allowable asset
8 exclusion used for determining eligibility for medical assistance under section 50-24.1-02.3 at
9 the time the contract is entered, plus the portion of the three thousand dollar asset limitation the
10 purchaser designates for funeral expenses. A purchaser of a pre-need funeral service contract
11 has forty-five days from entering the contract to cancel the irrevocable part of the contract by
12 giving notice to the cemetery association or licensed funeral establishment with whom the
13 contract was entered. Any pre-need funeral service contract held by a cemetery association or a
14 licensed funeral establishment must be fully transferable to another cemetery association or
15 funeral establishment licensed under chapter 43-10 or a substantially similar law of another
16 jurisdiction which agrees to accept the obligations.

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

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

25 **SECTION 2. AMENDMENT.** Section 50-24.1-02.3 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **50-24.1-02.3. When designated pre-need funeral service contracts, prepayments, or**
28 **deposits not to be considered in eligibility determination.**

29 In determining eligibility for medical assistance, the department of human services may not
30 consider as an available resource any pre-need funeral service contracts, prepayments, or
31 deposits to a fund which total six thousand dollars or less designated by the applicant or

1 recipient as set-aside to pay for the applicant's or recipient's funeral. An applicant or recipient
2 designates a prepayment or deposit for that applicant's or recipient's burial by providing funds
3 that are to be used for the funeral or burial expenses of the applicant or recipient. If an
4 applicant's or recipient's burial is funded by an insurance policy, the amount considered
5 set-aside for burial is the lesser of the cost basis or the face value of the insurance policy. In
6 addition, the applicant or recipient may designate all or a portion of the three thousand dollar
7 asset limitation for funeral pre-need contracts, prepayments, or deposits. Interest or earnings
8 retained in a funeral fund also may not be considered as an available resource. A pre-need
9 funeral service contract, prepayment, or deposit designated under this section is not a
10 multiple-party account for purposes of chapter 30.1-31. Any amount in a pre-need funeral
11 service contract, prepayment, or deposit designated under this section which is not used for
12 funeral or burial expenses must be returned to the estate of the medical assistance recipient
13 and is subject to recovery by the department from the medical assistance recipient's estate. No
14 claim for payment of funeral expenses may be made against the estate of a deceased medical
15 assistance recipient except to the extent that funds maintained in accordance with this section
16 total less than six thousand dollars.