

**FIRST ENGROSSMENT
with House Amendments
ENGROSSED SENATE BILL NO. 2261**

Introduced by

Senators Patten, Hogue, K. Roers

Representative Lefor

1 A BILL for an Act to amend and reenact sections 43-10.1-01 and 43-10.1-03.1 of the North
2 Dakota Century Code, relating to irrevocable itemized funeral contracts and Medicaid assets
3 exempt for funeral expenses; and to declare an emergency.

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

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

7 **43-10.1-01. Definitions.**

8 As used in this chapter:

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

1 by installments, a person promises, upon the death of a beneficiary named or implied
2 in the contract, to furnish professional service or personal property to be used in
3 funeral services, or to furnish cemetery merchandise.

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

17 **SECTION 2. AMENDMENT.** Section 43-10.1-03.1 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **43-10.1-03.1. Payments on pre-need funeral contracts to be deposited - Depository**
20 **shall keep record of deposit - Personal property storage.**

- 21 1. If payments are made to a person upon pre-need funeral service contracts, including
22 irrevocable itemized funeral contracts, one hundred percent of the funds collected
23 under the contracts for the sale of professional service or personal property to be used
24 in funeral services and fifty percent of the funds collected under the contracts for the
25 sale of cemetery merchandise must be deposited in or transferred to a trust company
26 in this state or to a federally insured bank, credit union, or savings and loan
27 association in this state, within ten days. The deposit must be placed in a federal
28 deposit insurance corporation or national credit union administration insured account
29 or certificate of deposit or negotiable debt obligation of the United States government.
30 Payments received from the sale of professional service or personal property to be
31 used in funeral services or cemetery merchandise which cannot or would not be

1 serviced by a licensed funeral establishment or cemetery association in the area in
2 which the service or property was sold are specifically included, regardless of whether
3 the sales might otherwise be considered pre-need funeral service contracts, within the
4 payments to be deposited under this section. If payments have been made under an
5 irrevocable itemized funeral contract, the money must be carried in a separate account
6 or separate certificate of deposit with the names of the depositor or transferor,
7 cemetery association or licensed funeral establishment, and the person making
8 payment on behalf of the individual for whose benefit payment is made.

9 a. The funds may be released or transferred by the bank, credit union, savings and
10 loan association, or trust company to the depositor upon the death of the
11 individual for whose benefit the funds were paid. A certified copy of the certificate
12 of death must be furnished to the bank, credit union, savings and loan
13 association, or trust company as prima facie evidence of death. The funds may
14 be released or transferred by the bank, credit union, savings and loan
15 association, or trust company to the person making the payment, before the
16 death of the individual for whose benefit the funds are paid, upon a five-day
17 written notice by registered or certified mail made by the bank, credit union,
18 savings and loan association, or trust company to the depositor or transferor at
19 the request of the person making the payment.

20 b. A purchaser of a pre-need funeral service contract may make a certain amount of
21 the pre-need funds irrevocable by designating an irrevocable amount to be used
22 to pay for the funeral of the beneficiary. ~~The irrevocable amount may not exceed~~
23 ~~the amount itemized funeral service contract~~ to pay for a funeral and is recognized
24 as an allowable asset exclusion used for determining eligibility for medical
25 assistance under section 50-24.1-02.3 at the time the contract is entered. A
26 purchaser of a ~~pre-need funeral service contract~~ an irrevocable itemized funeral
27 contract has forty-five days from entering the contract to cancel the irrevocable
28 part of the contract by giving notice to the cemetery association or licensed
29 funeral establishment with which the contract was entered. Any pre-need funeral
30 service contract held by a cemetery association or a licensed funeral
31 establishment must be fully transferable to another cemetery association or

1 funeral establishment licensed under chapter 43-10 or a substantially similar law
2 of another jurisdiction which agrees to accept the obligations.

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

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

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