

Sixty-sixth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1318

Introduced by

Representatives Lefor, Blum, Holman, Johnston

Senators Hogan, Klein, Poolman

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 Medicaid assets exempt for funeral expenses.

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~~

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

- 1 a. The funds may be released or transferred by the bank, credit union, savings and
2 loan association, or trust company to the depositor upon the death of the
3 ~~person~~individual for whose benefit the funds were paid. A certified copy of the
4 certificate of death must be furnished to the bank, credit union, savings and loan
5 association, or trust company as prima facie evidence of death. The funds may
6 be released or transferred by the bank, credit union, savings and loan
7 association, or trust company to the person making the payment, before the
8 death of the ~~person~~individual for whose benefit the funds are paid, upon a
9 five-day written notice by registered or certified mail made by the bank, credit
10 union, savings and loan association, or trust company to the depositor or
11 transferor at the request of the person making the payment.
- 12 b. A purchaser of a pre-need funeral service contract may make a certain amount of
13 the pre-need funds irrevocable. The irrevocable amount may not exceed the
14 amount of ~~the~~to pay for a funeral and recognized as an allowable asset exclusion
15 used for determining eligibility for medical assistance under section 50-24.1-02.3
16 at the time the contract is entered, ~~plus the portion of the three thousand dollar~~
17 ~~asset limitation the purchaser designates for funeral expenses.~~ A purchaser of a
18 pre-need funeral service contract has forty-five days from entering the contract to
19 cancel the irrevocable part of the contract by giving notice to the cemetery
20 association or licensed funeral establishment with ~~whom~~which the contract was
21 entered. Any pre-need funeral service contract held by a cemetery association or
22 a licensed funeral establishment must be fully transferable to another cemetery
23 association or funeral establishment licensed under chapter 43-10 or a
24 substantially similar law of another jurisdiction which agrees to accept the
25 obligations.
- 26 2. A bank, credit union, savings and loan association, or trust company receiving such a
27 deposit or transfer shall keep a complete record of the deposit or transfer, showing the
28 name of the depositor or transferor, name of the person making payment, name of the
29 ~~person~~individual for whose benefit payment is made, and any other pertinent
30 information.

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

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

7 **50-24.1-02.3. When designated pre-need funeral service contracts, prepayments, or**
8 **deposits not to be considered in eligibility determination.**

9 1. In determining eligibility for medical assistance, the department of human services
10 may not consider as an available resource any pre-need funeral service contracts,
11 prepayments, or deposits to a fund which ~~total six thousand dollars or less~~ are placed
12 in an irrevocable itemized funeral contract designated by the applicant or recipient as
13 set-aside to pay for the applicant's or recipient's funeral.

14 2. An applicant or recipient designates a prepayment or deposit for that applicant's or
15 recipient's burial by providing funds that ~~are to~~ must be used for the funeral or burial
16 expenses of the applicant or recipient. If an applicant's or recipient's burial is funded
17 by an insurance policy, the amount considered set-aside for burial is the lesser of the
18 cost basis or the face value of the insurance policy. ~~In addition, the applicant or~~
19 ~~recipient may designate all or a portion of the three thousand dollar asset limitation for~~
20 ~~funeral pre-need contracts, prepayments, or deposits.~~ Interest or earnings retained in
21 a funeral fund also may not be considered as an available resource.

22 3. A pre-need funeral service contract, prepayment, or deposit designated under this
23 section is not a multiple-party account for purposes of chapter 30.1-31. Any amount in
24 a pre-need funeral service contract, prepayment, or deposit designated under this
25 section which is not used for funeral or burial expenses must be returned to the estate
26 of the medical assistance recipient and is subject to recovery by the department from
27 the medical assistance recipient's estate. ~~No~~ A claim for payment of funeral expenses
28 may not be made against the estate of a deceased medical assistance recipient
29 except to the extent that ~~the~~ the funds are maintained in accordance with this section ~~total~~
30 ~~less than six thousand dollars~~ chapter.