FIRST ENGROSSMENT

Sixty-seventh Legislative Assembly of North Dakota

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.
- "Cemetery merchandise" means all service or property to be used in funeral services
 or burials other than professional service or personal property to be used in funeral
 services.
- 15 3. "Commissioner" means the securities commissioner.
- 4. <u>"Irrevocable itemized funeral contract" means an irrevocable pre-need funeral service</u>
 <u>contract that is an itemized listing of goods and services that will be received based on</u>
 <u>the contract.</u>
- 19 <u>5.</u> "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

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- by installments, a person promises, upon the death of a beneficiary named or implied
 in the contract, to furnish professional service or personal property to be used in
 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, catafalgues, 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, catafalgues, or other articles of merchandise incident to a 16 funeral service.

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

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

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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, cre	dit union, savings and
10	loan association, or trust company to the depositor upon the	e death of the
11	individual for whose benefit the funds were paid. A certified	l copy of the certificate
12	of death must be furnished to the bank, credit union, saving	gs and loan
13	association, or trust company as prima facie evidence of d	eath. The funds may
14	be released or transferred by the bank, credit union, saving	js and loan
15	association, or trust company to the person making the pay	yment, 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 ma	ake a certain amount of
21	the pre-need funds irrevocable by designating an irrevocat	e amount to be used
22	to pay for the funeral of the beneficiary. The irrevocable an	ount may not exceed
23	the amountitemized funeral service contract to pay for a fu	neral and<u>is</u> recognized
24	as an allowable asset exclusion used for determining eligit	oility for medical
25	assistance under section 50-24.1-02.3 at the time the cont	ract is entered. A
26	purchaser of a pre-need funeral service contractan irrevoca	able itemized funeral
27	contract has forty-five days from entering the contract to ca	ancel the irrevocable
28	part of the contract by giving notice to the cemetery associ	ation 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	SEC	CTION 3. EMERGENCY. This Act is declared to be an emergency measure.