

Sixty-second  
Legislative Assembly  
of North Dakota

## ENGROSSED SENATE BILL NO. 2072

Introduced by

Human Services Committee

(At the request of the Department of Human Services)

1 A BILL for an Act to amend and reenact subsections 1 and 6 of section 50-24.1-02.8 of the  
2 North Dakota Century Code, relating to the treatment of transfers involving annuities for  
3 purposes of determining eligibility for medical assistance; and to declare an emergency.

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

5 **SECTION 1. AMENDMENT.** Subsections 1 and 6 of section 50-24.1-02.8 of the North  
6 Dakota Century Code are amended and reenacted as follows:

7 1. For purposes of this section, ~~"annuity"~~:

8 a. "Annuity" means a policy, certificate, contract, or other arrangement between two  
9 or more parties under which one party pays money or other valuable  
10 consideration to the other party in return for the right to receive payments in the  
11 future.

12 b. "Total value" means, if the annuity provides for:

13 (1) Only a specified number of periodic payments over a specified period of  
14 time, an amount equal to the total of all amounts remaining unpaid at the  
15 time the determination of total value is made;

16 (2) An unspecified number of periodic payments over a period of time based on  
17 an annuitant's life expectancy, an amount equal to the total of all amounts  
18 remaining unpaid under the terms of the annuity if the annuitant's actual  
19 lifetime is the same as the annuitant's life expectancy as determined in  
20 accordance with actuarial publications of the office of the chief actuary of  
21 the social security administration based on the annuitant's age at the time  
22 the determination of total value is made; or

23 (3) A specified number of periodic payments over a specified period of time and  
24 also for an unspecified number of periodic payments over a period of time

1                   based on an annuitant's life expectancy, an amount equal to the greater of  
2                   the total amount of all payments:

- 3                   (a)   That are guaranteed to be paid under the terms of the annuity but  
4                   remain unpaid at the time the determination of total value is made; or  
5                   (b)   Remaining unpaid under the terms of the annuity if the annuitant's  
6                   actual lifetime is the same as the annuitant's life expectancy as  
7                   determined in accordance with actuarial publications of the office of  
8                   the chief actuary of the social security administration based on the  
9                   annuitant's age at the time the determination of total value is made.

- 10       6.   The purchase of an annuity on or after February 8, 2006, or the selection or alteration  
11       on or after February 8, 2006, of a payment option for an annuity purchased at any  
12       time, is a disqualifying transfer of an asset for purposes of this chapter unless:
- 13       a.   The state is named as the remainder beneficiary in the first position for at least  
14       the total amount of medical assistance paid on behalf of the annuitant or the state  
15       is named in the second position after the community spouse or minor or disabled  
16       child and is named in the first position if the community spouse or a  
17       representative of the minor or disabled child disposes of any remainder for less  
18       than fair market value;
- 19       b.   The annuity is purchased from an insurance company or other commercial  
20       company that sells annuities as part of the normal course of business;
- 21       c.   The annuity is irrevocable and neither the annuity nor payments due under the  
22       annuity may be assigned or transferred;
- 23       d.   The annuity provides substantially equal monthly payments of principal and  
24       interest and does not have a balloon or deferred payment of principal or interest.  
25       Payments will be considered substantially equal if the total annual payment in  
26       any year varies by five percent or less from the payment in the previous year;  
27       and
- 28       e.   The annuity will return the full principal and interest within the purchaser's life  
29       expectancy as determined in accordance with actuarial publications of the office  
30       of the chief actuary of the social security administration; and

- 1           f. The total value of all annuities owned by the purchaser do not exceed the  
2           spousal share identified in section 1924(c)(1)(A)(ii) of the Social Security Act  
3           [42 U.S.C. section 1396r-5(c)(1)(A)(ii)], less any asset that the department  
4           attributes to the community spouse pursuant to 1924(c)(2) of the Social Security  
5           Act [42 U.S.C. section 1396r-5(c)(2)].

6           **SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.