

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 create and enact a new subsection to section 50-24.1-02.8 of the North
2 Dakota Century Code, relating to the treatment of transfers involving annuities for purposes of
3 determining eligibility for medical assistance; to amend and reenact subsections 1 and 6 of
4 section 50-24.1-02.8 of the North Dakota Century Code, relating to the treatment of transfers
5 involving annuities for purposes of determining eligibility for medical assistance; and to declare
6 an emergency.

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

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

10 1. For purposes of this section, "annuity":

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

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

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

19 (2) An unspecified number of periodic payments over a period of time based on
20 an annuitant's life expectancy, an amount equal to the total of all amounts
21 remaining unpaid under the terms of the annuity if the annuitant's actual
22 lifetime is the same as the annuitant's life expectancy as determined in
23 accordance with actuarial publications of the office of the chief actuary of

1 the social security administration based on the annuitant's age at the time
2 the determination of total value is made; or

3 (3) A specified number of periodic payments over a specified period of time and
4 also for an unspecified number of periodic payments over a period of time
5 based on an annuitant's life expectancy, an amount equal to the greater of
6 the total amount of all payments:

7 (a) That are guaranteed to be paid under the terms of the annuity but
8 remain unpaid at the time the determination of total value is made; or

9 (b) Remaining unpaid under the terms of the annuity if the annuitant's
10 actual lifetime is the same as the annuitant's life expectancy as
11 determined in accordance with actuarial publications of the office of
12 the chief actuary of the social security administration based on the
13 annuitant's age at the time the determination of total value is made.

14 6. The purchase of an annuity on or after February 8, 2006, or the selection or alteration
15 on or after February 8, 2006, of a payment option for an annuity purchased at any
16 time, is a disqualifying transfer of an asset for purposes of this chapter unless:

17 a. The state is named as the remainder beneficiary in the first position for at least
18 the total amount of medical assistance paid on behalf of the annuitant or the state
19 is named in the second position after the community spouse or minor or disabled
20 child and is named in the first position if the community spouse or a
21 representative of the minor or disabled child disposes of any remainder for less
22 than fair market value;

23 b. The annuity is purchased from an insurance company or other commercial
24 company that sells annuities as part of the normal course of business;

25 c. The annuity is irrevocable and neither the annuity nor payments due under the
26 annuity may be assigned or transferred;

27 d. The annuity provides substantially equal monthly payments of principal and
28 interest and does not have a balloon or deferred payment of principal or interest.
29 Payments will be considered substantially equal if the total annual payment in
30 any year varies by five percent or less from the payment in the previous year;

31 and

- 1 e. The annuity will return the full principal and interest within the purchaser's life
2 expectancy as determined in accordance with actuarial publications of the office
3 of the chief actuary of the social security administration; and
4 f. The total value of all annuities owned by the purchaser do not exceed the
5 spousal share identified in section 1924(c)(1)(A)(ii) of the Social Security Act
6 [42 U.S.C. section 1396r-5(c)(1)(A)(ii)], less any asset that the department
7 attributes to the community spouse pursuant to 1924(c)(2) of the Social Security
8 Act [42 U.S.C. section 1396r-5(c)(2)].

9 **SECTION 2.** A new subsection to section 50-24.1-02.8 is created and enacted as follows:

10 An annuity purchased on or after February 8, 2006, or a payment option selected or
11 altered on or after February 8, 2006, which is revocable, or for which the annuity or
12 annuity payments may be assigned, is not a disqualifying transfer under subsection 6.

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