

Sixty-second
Legislative Assembly
of North Dakota

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.