

Sixty-sixth  
Legislative Assembly  
of North Dakota

**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          ~~reasonable and necessary~~ amount of ~~the~~ to pay for a funeral and recognized as  
15          an allowable asset exclusion used for determining eligibility for medical  
16          assistance under section 50-24.1-02.3 at the time the contract is entered, ~~plus~~  
17          ~~the portion of the three thousand dollar asset limitation the purchaser designates~~  
18          ~~for funeral expenses~~. A purchaser of a pre-need funeral service contract has  
19          forty-five days from entering the contract to cancel the irrevocable part of the  
20          contract by giving notice to the cemetery association or licensed funeral  
21          establishment with ~~whom~~which the contract was entered. Any pre-need funeral  
22          service contract held by a cemetery association or a licensed funeral  
23          establishment must be fully transferable to another cemetery association or  
24          funeral establishment licensed under chapter 43-10 or a substantially similar law  
25          of another jurisdiction which agrees to accept the 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~~ reasonable and necessary 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 funds are maintained in accordance with this ~~section~~ total-  
30                   ~~less than six thousand dollars~~ chapter.