

**Fifty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 9, 2001**

SENATE BILL NO. 2314
(Senators Stenehjem, Bowman, Dever)
(Representatives Nelson, Weiler)

AN ACT to amend and reenact section 23-06-03.1 of the North Dakota Century Code, or in the alternative to amend and reenact section 43-10.1-03.1 of the North Dakota Century Code as created by section 3 of House Bill No. 1126, as approved by the fifty-seventh legislative assembly, relating to pre-need funeral contracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. If House Bill No. 1126 does not become effective, section 23-06-03.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-06-03.1. Payments on pre-need funeral contracts to be deposited - Depository shall keep record of deposit - Personal property storage - Penalty. Whenever payments are made to any person upon pre-need funeral service contracts, one hundred percent of the funds collected under such contracts for the sale of professional service or personal property to be used in funeral services and fifty percent of the funds collected under such contracts for the sale of cemetery merchandise must be deposited in or transferred to a trust company or to a federally insured bank, credit union, or savings and loan association in this state, within ten days. Payments received from any sale of professional service or personal property to be used in funeral services or cemetery merchandise which cannot or would not be serviced by any licensed funeral establishment or cemetery association in the area where the service or property was sold are specifically included, whether or not such sales might otherwise be considered pre-need funeral service contracts, within the payments to be deposited under this section. The funds may be released or transferred by the bank, credit union, savings and loan association, or trust company to the depositor upon the death of the person for whose benefit the funds were paid. A certified copy of the certificate of death must be furnished to the bank, credit union, savings and loan association, or trust company as prima facie evidence of death. The funds may be released or transferred by the bank, credit union, savings and loan association, or trust company to the person making the payment, ~~prior to~~ before the death of the person for whose benefit the funds are paid, upon a five-day written notice by registered or certified mail made by the bank, credit union, savings and loan association, or trust company to the depositor or transferor at the request of the person making the payment. Upon written request, however, a purchaser of a pre-need funeral service contract may make a certain amount of the pre-need funds irrevocable. The irrevocable amount may not exceed the amount of the allowable asset exclusion used for determining eligibility for medical assistance under section 50-24.1-02.3 at the time the contract is entered. A purchaser of a pre-need funeral service contract has forty-five days from entering the contract to cancel the irrevocable part of the contract by giving notice to the cemetery association or licensed funeral establishment with whom the contract was entered. Any pre-need funeral service contract held by a cemetery association or a licensed funeral establishment must be fully transferable to another cemetery association or funeral establishment licensed under chapter 43-10 or a substantially similar law of another jurisdiction which agrees to accept the obligations.

Any bank, credit union, savings and loan association, or trust company receiving such a deposit or transfer shall keep a complete record of the deposit or transfer, showing the name of the depositor or transferor, name of the person making payment, name of the person for whose benefit payment is made, and any other pertinent information.

Any personal property to be used in funeral services or cemetery merchandise which is sold to a purchaser on the basis that it will be identified and marked as belonging to such purchaser, and stored or warehoused for the purchaser, must be stored or warehoused at some location within this state.

Any person who willfully violates this section or any rule or order of the commissioner under this section is guilty of a class C felony. Each violative act constitutes a separate offense and a prosecution or conviction of any one offense does not bar a prosecution or conviction for any other offense.

SECTION 2. AMENDMENT. If House Bill No. 1126 becomes effective, section 43-10.1-03.1 of the North Dakota Century Code, as created by section 3 of House Bill No. 1126, as approved by the fifty-seventh legislative assembly, 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. Whenever payments are made to any person upon pre-need funeral service contracts, one hundred percent of the funds collected under the contracts for the sale of professional service or personal property to be used in funeral services and fifty percent of the funds collected under the contracts for the sale of cemetery merchandise must be deposited in or transferred to a trust company in this state or to a federally insured bank, credit union, or savings and loan association in this state, within ten days. The deposit must be placed in a federal deposit insurance corporation or national credit union administration insured certificate of deposit or negotiable debt obligation of the United States government. Payments received from the sale of professional service or personal property to be used in funeral services or cemetery merchandise which cannot or would not be serviced by a licensed funeral establishment or cemetery association in the area where the service or property was sold are specifically included, whether or not the sales might otherwise be considered pre-need funeral service contracts, within the payments to be deposited under this section. The funds may be released or transferred by the bank, credit union, savings and loan association, or trust company to the depositor upon the death of the person for whose benefit the funds were paid. A certified copy of the certificate of death must be furnished to the bank, credit union, savings and loan association, or trust company as prima facie evidence of death. The funds may be released or transferred by the bank, credit union, savings and loan association, or trust company to the person making the payment, before the death of the person for whose benefit the funds are paid, upon a five-day written notice by registered or certified mail made by the bank, credit union, savings and loan association, or trust company to the depositor or transferor at the request of the person making the payment. Upon written request, however, a purchaser of a pre-need funeral service contract may make a certain amount of the pre-need funds irrevocable. The irrevocable amount may not exceed the amount of the allowable asset exclusion used for determining eligibility for medical assistance under section 50-24.1-02.3 at the time the contract is entered. A purchaser of a pre-need funeral service contract has forty-five days from entering the contract to cancel the irrevocable part of the contract by giving notice to the cemetery association or licensed funeral establishment with whom the contract was entered. Any pre-need funeral service contract held by a cemetery association or a licensed funeral establishment must be fully transferable to another cemetery association or funeral establishment licensed under chapter 43-10 or a substantially similar law of another jurisdiction which agrees to accept the obligations.

A bank, credit union, savings and loan association, or trust company receiving such a deposit or transfer shall keep a complete record of the deposit or transfer, showing the name of the depositor or transferor, name of the person making payment, name of the person for whose benefit payment is made, and any other pertinent information.

Any personal property to be used in funeral services or cemetery merchandise which is sold to a purchaser on the basis that it will be identified and marked as belonging to such purchaser, and stored or warehoused for the purchaser, must be stored or warehoused at some location within this state.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-seventh Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2314.

Senate Vote: Yeas 49 Nays 0 Absent 0

House Vote: Yeas 72 Nays 25 Absent 1

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2001.

Approved at _____ M. on _____, 2001.

Governor

Filed in this office this _____ day of _____, 2001,

at _____ o'clock _____ M.

Secretary of State