

Introduced by

Industry, Business and Labor Committee

(At the request of the Securities Commissioner)

1 A BILL for an Act to amend and reenact section 43-10.1-03.1 of the North Dakota Century
2 Code, relating to depositing pre-need funeral contract payments.

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
5 is amended and reenacted as follows:

6 **43-10.1-03.1. Payments on pre-need funeral contracts to be deposited -**
7 **Depository shall keep record of deposit - Personal property storage.** Whenever payments
8 are made to a person upon pre-need funeral service contracts, one hundred percent of the
9 funds collected under the contracts for the sale of professional service or personal property to
10 be used in funeral services and fifty percent of the funds collected under the contracts for the
11 sale of cemetery merchandise must be deposited in or transferred to a trust company in this
12 state or to a federally insured bank, credit union, or savings and loan association in this state,
13 within ten days. The deposit must be placed in a federal deposit insurance corporation or
14 national credit union administration insured certificate of deposit or negotiable debt obligation of
15 the United States government. Payments received from the sale of professional service or
16 personal property to be used in funeral services or cemetery merchandise which cannot or
17 would not be serviced by a licensed funeral establishment or cemetery association in the area
18 where the service or property was sold are specifically included, whether or not the sales might
19 otherwise be considered pre-need funeral service contracts, within the payments to be
20 deposited under this section. The funds may be released or transferred by the bank, credit
21 union, savings and loan association, or trust company to the depositor upon the death of the
22 person for whose benefit the funds were paid. A certified copy of the certificate of death must
23 be furnished to the bank, credit union, savings and loan association, or trust company as prima
24 facie evidence of death. The funds may be released or transferred by the bank, credit union,

1 savings and loan association, or trust company to the person making the payment or to an
2 appointed person pursuant to a durable power of attorney, before the death of the person for
3 whose benefit the funds are paid, ~~upon a five day written notice by registered or certified mail~~
4 ~~made by the bank, credit union, savings and loan association, or trust company to the depositor~~
5 ~~or transferor at the request of the person making the payment.~~ The bank, credit union, savings
6 and loan association, or trust company shall provide notice by registered mail within five days to
7 the funeral establishment or cemetery association that deposited the funds after the funds have
8 been released to the person who made payment or the appointed person pursuant to a durable
9 power of attorney. Upon written request, however, a purchaser of a pre-need funeral service
10 contract may make a certain amount of the pre-need funds irrevocable. The irrevocable
11 amount may not exceed the amount of the allowable asset exclusion used for determining
12 eligibility for medical assistance under section 50-24.1-02.3 at the time the contract is entered.
13 A purchaser of a pre-need funeral service contract has forty-five days from entering the contract
14 to cancel the irrevocable part of the contract by giving notice to the cemetery association or
15 licensed funeral establishment with whom the contract was entered. Any pre-need funeral
16 service contract held by a cemetery association or a licensed funeral establishment must be
17 fully transferable to another cemetery association or funeral establishment licensed under
18 chapter 43-10 or a substantially similar law of another jurisdiction which agrees to accept the
19 obligations.

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

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