

Fifty-ninth
Legislative Assembly
of North Dakota

REENGROSSED SENATE BILL NO. 2190

Introduced by

Senator Wardner

Representative Wald

1 A BILL for an Act to amend and reenact section 50-24.1-02.8 of the North Dakota Century
2 Code, relating to transfers involving annuities.

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

4 **SECTION 1. AMENDMENT.** Section 50-24.1-02.8 of the North Dakota Century Code
5 is amended and reenacted as follows:

6 **50-24.1-02.8. Transfers involving annuities.**

- 7 1. For purposes of this section, "annuity" means a policy, certificate, contract, or other
8 arrangement between two or more parties whereby one party pays money or other
9 valuable consideration to the other party in return for the right to receive payments
10 in the future. The term does not mean an employee benefit that qualifies for
11 favorable tax treatment under the Internal Revenue Code or a plan described in
12 the Internal Revenue Code as a retirement plan under which contributions must
13 end and withdrawals begin by age seventy and one-half.
- 14 2. The purchase of an annuity, an instrument purporting to be an annuity, or any
15 other arrangement that meets the definition of annuity in subsection 1 is
16 considered an uncompensated assignment or transfer of assets under section
17 50-24.1-02, resulting in a penalty under the applicable rules established by the
18 department of human services unless the following criteria are met:
- 19 a. The annuity is a single premium immediate annuity, irrevocable, and cannot
20 be assigned to another person.
- 21 b. The annuity is purchased from an insurance company or other commercial
22 company that sells annuities as part of the normal course of business.
- 23 c. The annuity provides substantially equal monthly payments of principal and
24 interest and does not have a balloon or deferred payment of principal or

- 1 interest. Payments will be considered substantially equal if the total annual
2 payment in any year varies by five percent or less from the payment in the
3 previous year.
- 4 d. The annuity will return the full principal and interest within the purchaser's life
5 expectancy as determined by ~~the department of human services~~ a standard
6 actuarial life expectancy table on the date of issuance of the annuity.
- 7 e. The monthly payments from the annuity, unless specifically ordered otherwise
8 by a court of competent jurisdiction, do not exceed the maximum monthly
9 income amount allowed for a community spouse as determined by the
10 department pursuant to 42 U.S.C. 1396r-5.
- 11 3. An annuity that contains a provision that allows for cancellation of the annuity upon
12 a denial of medical assistance may not be considered an available asset unless
13 the annuity is canceled and the proceeds are not used to purchase an annuity that
14 meets the requirements of subsection 2. Any proceeds from a cancellation
15 described in this subsection which are not used to purchase an annuity described
16 in subsection 2 must be considered an available asset of the annuity owner and
17 the owner's spouse.