

**Sixty-seventh Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 5, 2021**

SENATE BILL NO. 2261  
(Senators Patten, Hogue, K. Roers)  
(Representative Lefor)

AN ACT to amend and reenact sections 43-10.1-01 and 43-10.1-03.1 of the North Dakota Century Code, relating to irrevocable itemized funeral contracts and Medicaid assets exempt for funeral expenses; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 43-10.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**43-10.1-01. Definitions.**

As used in this chapter:

1. "Cemetery association" means any person, ~~corporation, municipality, association, or organization~~ owning, conducting, or maintaining a cemetery or plot for the burial of dead human bodies.
2. "Cemetery merchandise" means all service or property to be used in funeral services or burials other than professional service or personal property to be used in funeral services.
3. "Commissioner" means the securities commissioner.
4. "Irrevocable itemized funeral contract" means an irrevocable pre-need funeral service contract that is an itemized listing of goods and services that will be received based on the contract.
5. "Licensed funeral establishment" means a funeral establishment as defined and licensed in accordance with sections 43-10-21 and 43-10-22.
5. "~~Person~~" means any natural person, firm, ~~association, corporation, limited liability company, or agents or employees thereof.~~
6. "Pre-need funeral service contract" means any contract, other than an insurance contract, under which for a specified consideration paid in advance in a lump sum or by installments, a person promises, upon the death of a beneficiary named or implied in the contract, to furnish professional service or personal property to be used in funeral services, or to furnish cemetery merchandise.
7. "Professional service or personal property to be used in funeral services" means all personal property, services, supplies, and equipment normally performed or furnished by a licensed embalmer, a licensed funeral establishment, or a cemetery association including any inside interment receptacles or containers into which a dead human remains may be directly placed, caskets, crypt beds, catafalques, and all other articles of merchandise incident to a funeral service, but excluding any outside interment receptacles into which any inside receptacle or container will be placed, grave lots, grave spaces, grave markers, monuments, tombstones, crypts, niches, and mausoleums unless these items are sold by a companion agreement or in contemplation of a trade or barter which includes the sale or rental of any inside interment receptacles or containers into which a dead human remains may be directly placed, caskets, crypt beds, catafalques, or other articles of merchandise incident to a funeral service.

**SECTION 2. AMENDMENT.** Section 43-10.1-03.1 of the North Dakota Century Code 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.**

1. If payments are made to a person upon pre-need funeral service contracts, including irrevocable itemized funeral 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 account or 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 in which the service or property was sold are specifically included, regardless of whether the sales might otherwise be considered pre-need funeral service contracts, within the payments to be deposited under this section. If payments have been made under an irrevocable itemized funeral contract, the money must be carried in a separate account or separate certificate of deposit with the names of the depositor or transferor, cemetery association or licensed funeral establishment, and the person making payment on behalf of the individual for whose benefit payment is made.
  - a. 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 individual 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 individual 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.
  - b. A purchaser of a pre-need funeral service contract may make a certain amount of the pre-need funds irrevocable by designating an irrevocable amount to be used to pay for the funeral of the beneficiary. ~~The irrevocable amount may not exceed the amount itemized funeral service contract to pay for a funeral and is~~ recognized as an 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~~ an irrevocable itemized funeral 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 which 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.
2. 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 individual for whose benefit payment is made, and any other pertinent information.
3. Any personal property to be used in funeral services or cemetery merchandise which is sold to a purchaser on the basis 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.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.

\_\_\_\_\_  
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 Sixty-seventh Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2261 and that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote:        Yeas 46                      Nays 0                      Absent 1

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Secretary of the Senate

This certifies that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote:        Yeas 93                      Nays 0                      Absent 1

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
Chief Clerk of the House

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2021.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2021.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2021,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State