CHAPTER 43-10.1
PRE-NEED FUNERAL SERVICES

43-10.1-01. Definitions.

As used in this chapter:

1. "Cemetery association" means any person 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 insurance 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.
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.

43-10.1-02. Pre-need funeral service contracts.

A person may not engage in the sale or execution of a pre-need funeral service contract unless that person is the operator, agent, employee, or manager of a licensed funeral establishment or cemetery association. As part of the sale of a pre-need funeral service contract, the seller shall inform the purchaser of the extent to which the person with the duty of final disposition under section 23-06-03 might be bound by any pre-need funeral arrangements.

43-10.1-03. Annual report filed with commissioner.

On or before January thirty-first of each year, the owner or manager of each cemetery association or licensed funeral establishment that has entered into any pre-need funeral service contracts during the preceding calendar year shall file a report covering the period of the preceding calendar year with the commissioner, which report must include:

1. The name and address of the licensed funeral establishment or cemetery association and the name and address of the manager or operator thereof.
2. The name of the purchaser and beneficiary of each pre-need funeral service contract entered into on behalf of the licensed funeral establishment or cemetery association during the preceding calendar year and the date each contract was made.
3. The lump sum consideration paid upon such pre-need funeral service contract required to be reported under subsection 2 or the total amount in dollars of any

installments paid upon each pre-need funeral service contract required to be reported under subsection 2.

4. The name and address of the bank, credit union, savings and loan association, or trust company in which such consideration was deposited in accordance with section 43-10.1-03.1.
5. The total in dollars of all sums received as consideration upon pre-need funeral service contracts executed by the licensed funeral establishment or cemetery association or in its behalf during all periods after July 1, 1973, which are undrawn or unexpended and on deposit in a bank, credit union, savings and loan association, or trust company or in the hands of the licensed funeral establishment or cemetery association.
6. Such other information as may reasonably be required by the commissioner for the purpose of the proper administration of this chapter.

Such report must be accompanied by a filing fee of fifteen dollars and is a public record.

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 itemized funeral service contract to pay for a funeral 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 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.

43-10.1-04. Bond.

Each owner or operator of a licensed funeral establishment or cemetery association, who files an annual report, must file with the commissioner a corporate surety bond approved by the commissioner in an amount deemed adequate by the commissioner running to the state of North Dakota. The bond must be in such form and style as the commissioner may require for the use and benefit of the purchasers or persons making payments upon pre-need funeral service contracts or their estates, or the beneficiary of the pre-need funeral service contract or the beneficiary's estate for damages suffered by them because of the failure to comply with all provisions of the pre-need funeral service contract or the provisions of this chapter.

43-10.1-05. Verification by commissioner.

Within ninety days after the filing of a report as required by section 43-10.1-03, the commissioner shall verify the report by mailing to the banks, credit unions, savings and loan associations, or trust companies where the report indicates the consideration has been deposited, a questionnaire which the bank, credit union, savings and loan association, or trust company is requested to complete and return, verifying the facts stated in the report in regard to the contract or the deposit of funds. The commissioner shall verify the facts on additional contracts reported if the commissioner has reason to believe additional verification to be necessary.

43-10.1-06. Special audits - Violations of law.

Repealed by S.L. 1979, ch. 463, § 7.

43-10.1-06.1. Fraudulent practices.

It is a fraudulent practice and it is unlawful:

1. For any person knowingly to subscribe to, or make or cause to be made, any material false statement or representation in any report or other document or statement required to be filed under any provision of this chapter, or to omit to state any material statement or fact in any such document or statement which is necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.
2. For any person, in connection with the sale of any pre-need funeral service or personal property, directly or indirectly, to employ any device, scheme, or artifice to defraud.
3. For any person, in connection with the sale of any pre-need funeral service or personal property, directly or indirectly, to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.
4. No action may be brought under this section by the commissioner after six years from the date of the violation.

43-10.1-06.2. Orders and injunctions.

Whenever it appears to the commissioner either upon complaint or otherwise, that any person has engaged in, is engaging in, or is about to engage in any act or practice or transaction which is prohibited by this chapter or by any order of the commissioner issued pursuant to any section of this chapter or which is declared to be illegal in this chapter, the commissioner may:

1. Issue any order, including cease and desist, stop, and suspension orders, which the commissioner deems necessary or appropriate in the public interest or for the protection of purchasers. In addition to any other remedy authorized by this chapter, the commissioner may impose by order and collect a civil penalty in an amount not to exceed ten thousand dollars for each violation against any person found in an administrative action to have violated this chapter. The commissioner may bring an action in district court to recover penalties under this section. Any person aggrieved by an order issued under this subsection may request a hearing before the commissioner if the request is made, in writing, within ten days after receipt of the order. The hearing and any appeal therefrom must be held in accordance with chapter 28-32.
2. Apply to the district court of any county in this state for an injunction restraining such person and the person's agents, employees, partners, officers, and directors from continuing such act, practice, or transaction of engaging therein or doing any acts in furtherance thereof, and for such other and further relief as the facts may warrant. In any proceeding for an injunction, the commissioner may apply for and on due showing be entitled to have issued the court's subpoena requiring the appearance forthwith of any defendant and the defendant's agents, employees, partners, officers, or directors, and the production of such documents, books, and records as may appear necessary for the hearing upon the petition for an injunction. Upon proof of any of the offenses described in this section, the court may grant such injunction as the facts may warrant. The court may not require the commissioner to post a bond.

43-10.1-06.3. Investigations and subpoenas.

1. The commissioner in the commissioner's discretion:
   a. May make such public or private investigation within or outside this state as the commissioner deems necessary to determine whether any person has violated or is about to violate any provision of this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder.
   b. May require or permit any person to file a statement in writing, under oath or otherwise as the commissioner determines, as to all the facts and circumstances concerning the matter to be investigated.
   c. May publish information concerning any violation of this chapter or any rule or order hereunder.
2. For the purpose of any investigation or proceeding under this chapter, the commissioner or any officer designated by the commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner deems relevant or material to the inquiry.
3. In case of contumacy by, or refusal to obey a subpoena issued to, any person, the district court, upon application by the commissioner, may issue to the person an order requiring that person to appear before the commissioner, or the officer designated by the commissioner, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.
4. No person is excused from attending and testifying or from producing any document or record before the commissioner, or in obedience to the subpoena of the commissioner or any officer designated by the commissioner, or in any proceeding instituted by the commissioner, on the ground that the testimony or evidence, documentary or

otherwise, required of the person may tend to incriminate that person or subject that person to a penalty or forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the individual is compelled, after claiming the privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

43-10.1-07. Prosecution for violations of law.

The commissioner may refer any evidence available concerning a violation of this chapter or of any rule or order issued under this chapter to the appropriate criminal prosecutor who, with or without the reference, may institute criminal proceedings under this chapter. The criminal prosecutor may apply for and on due showing be issued the court's subpoena requiring the appearance forthwith of any defendant and the defendant's agents, employees, partners, officers, and directors, and the production of any documents, books, and records necessary for the prosecution of the criminal proceedings.

43-10.1-07.1. Administration.

The commissioner has the power to promulgate rules and regulations having the force and effect of law, reasonably necessary to carry out the provisions of this chapter, in accordance with chapter 28-32. Any hearing held and any orders issued pursuant to this chapter must be in accordance with chapter 28-32. In addition to those powers set forth in chapter 28-32, the commissioner has additional powers as set forth in this chapter.

43-10.1-07.2. Statute of limitations.

No action may be brought under this chapter by the commissioner after five years from the date that the commissioner knew or reasonably should have known about the facts that are the basis for the alleged violation. This section does not apply to section 43-10.1-06.1.

43-10.1-08. Penalties.

1. Any person who willfully violates any provision of this chapter or any rule or order of the commissioner under this chapter is guilty of a class B felony.
2. An information must be filed or an indictment must be found under this chapter within five years after the commissioner or criminal prosecutor knew or reasonably should have known about the facts that are the basis for the prosecution.
3. "Willfully" means the person was aware of the consequences of the person's actions, and proof of evil motive or intent to violate the law or knowledge that the law was being violated is not required. Each act or omission is a separate offense, and a prosecution or conviction for an offense does not bar a prosecution or conviction for any other offense.