

Sixty-ninth
Legislative Assembly
of North Dakota

**SECOND ENGROSSMENT
with House Amendments**

REENGROSSED SENATE BILL NO. 2029

Introduced by

Legislative Management

(Government Finance Committee)

1 A BILL for an Act to create and enact a new subsection to section 30.1-28-07 and chapter 54-68
2 of the North Dakota Century Code, relating to an office of guardianship and conservatorship and
3 the removal of a guardian; to amend and reenact section 30.1-29-15 and subsection 1 of
4 section 50-24.1-07 of the North Dakota Century Code, relating to the removal of a conservator
5 and the recovery of medical assistance expenses; to repeal chapter 27-27 and section
6 54-68-02.1 of the North Dakota Century Code, relating to the task force on guardianship
7 monitoring and transition requirements; to provide a penalty; to provide for a report; to provide
8 an appropriation; to provide a continuing appropriation; to provide for a transfer; and to provide
9 an effective date.

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

11 **SECTION 1.** A new subsection to section 30.1-28-07 of the North Dakota Century Code is
12 created and enacted as follows:

13 The court may order a guardian to be listed on a registry if the court removed the
14 guardian for good cause. A guardian listed on the registry is disqualified from acting as
15 a guardian in any guardianship proceeding. The court shall send a copy of the order to
16 the state court administrator, who shall maintain and administer the registry. This
17 subsection does not apply to a licensed guardian. For purposes of this subsection, a
18 licensed guardian includes a guardian whose license has been suspended but
19 excludes a guardian whose license is revoked.

20 **SECTION 2. AMENDMENT.** Section 30.1-29-15 of the North Dakota Century Code is
21 amended and reenacted as follows:

1 **30.1-29-15. (5-415) Death, resignation, or removal of conservator.**

2 1. The court may remove a conservator for good cause, upon notice and hearing, or
3 accept the resignation of a conservator. After a conservator's death, resignation, or
4 removal, the court may appoint another conservator. A conservator so appointed
5 succeeds to the title and powers of the predecessor.

6 2. The court may order a conservator to be listed on a registry if the court removed the
7 conservator for good cause. A conservator listed on the registry is disqualified from
8 acting as a conservator in any conservatorship proceeding. The court shall send a
9 copy of the order to the state court administrator, who shall maintain and administer
10 the registry. This subsection does not apply to a licensed conservator. For purposes of
11 this subsection, a licensed conservator includes a conservator whose license has
12 been suspended but excludes a conservator whose license is revoked.

13 **SECTION 3. AMENDMENT.** Subsection 1 of section 50-24.1-07 of the North Dakota
14 Century Code is amended and reenacted as follows:

- 15 1. On the death of any recipient of medical assistance who was a resident of a nursing
16 facility, intermediate care facility for individuals with intellectual disabilities, or other
17 medical institution and with respect to whom the department determined that resident
18 reasonably was not expected to be discharged from the medical institution and to
19 return home, or who was fifty-five years of age or older when the recipient received the
20 assistance, and on the death of the spouse of the deceased recipient, the total amount
21 of medical assistance paid on behalf of the recipient following the institutionalization of
22 the recipient who cannot reasonably be expected to be discharged from the medical
23 institution, or following the recipient's fifty-fifth birthday, as the case may be, must be
24 allowed as a preferred claim against the decedent's estate after payment, in the
25 following order, of:
- 26 a. Recipient liability expense applicable to the month of death for nursing home or
27 basic care services;
 - 28 b. Funeral expenses not in excess of three thousand five hundred dollars;
 - 29 c. Expenses of the last illness, other than those incurred by medical assistance;
 - 30 d. Expenses of administering the estate, including attorney's fees approved by the
31 court;

- 1 e. Claims made under chapter 50-01;
- 2 f. Claims made under chapter 50-24.5;
- 3 g. Claims made under chapter 50-06.3 and on behalf of the state hospital; and
- 4 h. Claims made under chapter 54-68; and
- 5 i. Claims made under subsection 4.

6 **SECTION 4.** Chapter 54-68 of the North Dakota Century Code is created and enacted as
7 follows:

8 **54-68-01. Definitions.**

9 As used in this chapter:

- 10 1. "Agency permit" means temporary authorization given by the office to an employee of
11 a professional guardianship or professional conservatorship entity which allows the
12 permitholder to provide guardianship or conservatorship services as an agent of the
13 entity.
- 14 2. "Identifiable information" means an individual's personal details, including the
15 individual's name, address, telephone number, facsimile number, social security
16 number, electronic mail address, program identification number, or any other unique
17 identifying number, characteristic, or code, and any demographic information collected
18 about the individual.
- 19 3. "Investigation counsel" means the guardianship and conservatorship counsel.
- 20 4. "Licensed conservator" means a person licensed by the office to provide
21 conservatorship services.
- 22 5. "Licensed guardian" means a person licensed by the office to provide guardianship
23 services.
- 24 6. "Office" means the office of guardianship and conservatorship.
- 25 7. "Public conservator" means a conservator under contract with the office to provide
26 conservatorship services for an individual eligible for public services.
- 27 8. "Public guardian" means a guardian under contract with the office to provide
28 guardianship services for an individual eligible for public services.
- 29 9. "Public services" means state or federally funded programs administered by the office
30 available to eligible individuals.

1 10. "Review board" means the guardianship and conservatorship review board
2 established under section 54-68-03.

3 11. "Unlicensed conservator" means a person providing conservatorship services without
4 a conservator license.

5 12. "Unlicensed guardian" means a person providing guardianship services without a
6 guardian license.

7 **54-68-02. Office of guardianship and conservatorship - Purpose - Powers and duties -**
8 **Report - Audit.**

9 1. The office, in its capacity of supervising and directing guardianship and
10 conservatorship, shall operate independently of any state agency that provides
11 services to individuals under guardianship or conservatorship. The office shall
12 administer programs assigned by state law. The office may adopt rules to administer
13 and enforce this chapter.

14 2. The office shall:

15 a. Develop policies and procedures, including eligibility criteria, for:

16 (1) Receiving public services;

17 (2) A public guardian or a public conservator;

18 (3) A licensed guardian or a licensed conservator; and

19 (4) Distribution of funding for direct payments and expense reimbursements for
20 public services.

21 b. Develop ethical standards for:

22 (1) A licensed guardian or a licensed conservator; and

23 (2) An unlicensed guardian or an unlicensed conservator.

24 c. Develop policies and procedures for proceedings when a guardian or a
25 conservator is unable to fulfill the duties of a guardian or a conservator.

26 d. Keep accurate records of all financial transactions performed under this chapter
27 in the manner required by the office of management and budget.

28 e. Provide a report each biennium to the legislative management regarding the
29 operations of the office, including the cost of public guardians and public
30 conservators, and any other information requested by the legislative
31 management.

- 1 3. The office may:
- 2 a. Recommend rules applicable to a licensed guardian or a licensed conservator.
- 3 b. Grant licenses to a guardian or conservator and agency permits, including
- 4 revoking or suspending an agency permit.
- 5 c. Require insurance or bond coverage for a licensed guardian or a licensed
- 6 conservator as a condition for licensure.
- 7 d. Establish mandatory disclosure and reporting requirements for a licensed
- 8 guardian or a licensed conservator, including a process to disclose information or
- 9 submit reports to the office.
- 10 e. Provide training for guardians and conservators.
- 11 f. Monitor guardianship and conservatorship services.
- 12 g. Provide annual reports to the governor.
- 13 h. Distribute funding for direct payments, expense reimbursements, or other public
- 14 services, including funding for public administrators.
- 15 i. Establish and collect fees to support guardianship and conservatorship services
- 16 and the duties of the office, which must be deposited in the guardianship and
- 17 conservatorship support fund.
- 18 j. Seek and apply for private, federal, or other funds to help support guardians and
- 19 conservators and to safeguard the rights of individuals who receive public
- 20 services.
- 21 k. Accept private funds for deposit in the guardianship and conservatorship support
- 22 fund.
- 23 4. The office may not authorize payment for services for any public guardian or public
- 24 conservator that provides services for more individuals than allowed through statute,
- 25 regulation, or administrative rule.
- 26 5. The office, its officers, or its employees, may not act as a public guardian or a public
- 27 conservator or act in any other representative capacity for any individual. This
- 28 subsection does not prohibit an officer or employee from acting as a guardian or
- 29 conservator in a personal capacity apart from any duties as an officer or employee.
- 30 6. The office is subject to audits by the state auditor under chapter 54-10.

1 **54-68-02.1. Transition - Requirements.**

2 1. By March 31, 2026, the office shall:

3 a. Establish the guardianship and conservatorship review board.

4 b. Appoint an executive director and employ the necessary staff to provide office
5 services within the limits of legislative appropriations.

6 c. Develop by rule initial policies, procedures, and eligibility criteria for:

7 (1) Receiving public services;

8 (2) A public guardian or a public conservator;

9 (3) A licensed guardian or a licensed conservator; and

10 (4) Distribution of funding for direct payments and expense reimbursements for
11 public services.

12 d. Develop by rule ethical standards for:

13 (1) A licensed guardian or a licensed conservator; and

14 (2) An unlicensed guardian or an unlicensed conservator.

15 e. Develop by rule policies and procedures for proceedings when a guardian or a
16 conservator is unable to fulfill the duties of a guardian or a conservator.

17 f. Set by rule daily rates for fees and a reimbursement mechanism protocol.

18 g. Establish initial fees to support guardianship and conservatorship services and
19 the duties of the office.

20 2. The office may adopt rules necessary to facilitate the creation of the office and
21 assume the administration of guardianship programs.

22 **54-68-03. Review board - Director - Administrative authority - Operations committee.**

23 1. The office shall establish a guardianship and conservatorship review board to conduct
24 disciplinary proceedings for a guardian or conservator. The guardianship and
25 conservatorship review board shall consist of:

26 a. Three members representing guardians, appointed by the guardianship
27 association of North Dakota;

28 b. One member representing family guardians, appointed by the guardianship
29 association of North Dakota;

30 c. One member representing the protection and advocacy project, appointed by the
31 committee on protection and advocacy;

d. Two members appointed by the state bar association of North Dakota, consisting of:

(1) One lawyer licensed to practice law in the state; and

(2) One retired judge, judicial referee, or surrogate judge; and

e. Two members of the public, appointed by the governor.

2. The review board shall appoint an office director, who serves at the will of the review board. Within the limits of legislative appropriations, the director shall employ the necessary staff to provide office services in accordance with this chapter. The director, with the advice and consent of the review board, may adopt rules for administration of the office.

3. The office may establish a guardianship and conservatorship counsel to investigate noncompliance under this chapter reported after April 1, 2026. The director of the office is the hiring authority for the investigation counsel.

4. The office shall create a guardianship and conservatorship operations committee to supervise the operations of the office and investigation counsel. The guardianship and conservatorship operations committee shall develop and submit budgets for the office, review board, and investigation counsel.

a. The guardianship and conservatorship operations committee shall consist of:

(1) Two members of the legislative assembly, one from each chamber, appointed by the chairman of the legislative management;

(2) Two members appointed by the state bar association of North Dakota, consisting of:

(a) One lawyer licensed to practice law in the state; and

(b) One retired judge, judicial referee, or surrogate judge; and

(3) Two members appointed by the governor.

b. Initially, members of the guardianship and conservatorship operations committee shall serve staggered terms as follows:

(1) Two members shall serve a term of one year;

(2) Two members shall serve a term of two years; and

(3) Two members shall serve a term of three years.

- 1 c. After the expiration of initial terms, all appointments must be for a term of three
2 years. A member may not serve more than two consecutive terms of three years.
3 d. A member of the guardianship and conservatorship operations committee
4 concurrently serving as a member of the legislative assembly shall receive
5 per diem compensation in accordance with section 54-35-10.

6 **54-68-04. Guardianship and conservatorship support fund - Continuing**
7 **appropriation.**

8 There is created in the state treasury the guardianship and conservatorship support fund.
9 The fund consists of all moneys transferred to the fund by the legislative assembly, interest
10 upon moneys in the fund, fee collections, donations, grants, and other contributions received for
11 deposit in the fund. All moneys in the fund are appropriated on a continuing basis to the office to
12 defray the expenses of supporting guardianship and conservatorship services, including
13 guardianship and conservatorship training and monitoring.

14 **54-68-05. Records - Confidentiality - Disclosure - Penalty.**

- 15 1. Identifiable information concerning an individual who is applying for or receiving public
16 services under this chapter is confidential and may be disclosed only:
17 a. In the administration of any program under the supervision or administration of
18 the office.
19 b. When authorized by a policy of the office.
20 c. When allowed or required by rule or law.
21 2. A report concerning an applicant, provider, or recipient of public services is confidential
22 if the report is made in good faith and may be disclosed only to:
23 a. Authorized staff and agents of the office, who may further disclose the
24 information to a person that has a definite interest in the well-being of the
25 individual concerned, is in a position to serve the individual's interests, and that
26 needs to know the contents of the records to assure the well-being and interests
27 of the individual concerned.
28 b. An individual who is the subject of the report, if the identity of the person
29 reporting or supplying information under this chapter is protected until the
30 information is needed for use in an administrative, legal, or disciplinary
31 proceeding arising out of the report.

1 c. A public official and the public official's authorized agent who requires the
2 information in connection with the discharge of official duties.

3 d. A court when the court determines the information is necessary for the
4 determination of an issue before the court.

5 e. The investigation counsel.

6 3. The investigation counsel may disclose information uncovered during a disciplinary
7 investigation to the attorney general or bureau of criminal investigation related to a
8 criminal investigation when the investigation counsel suspects the subject of the
9 investigation has committed a crime.

10 4. A person that discloses, authorizes, or knowingly allows, participates in, or acquiesces
11 in the disclosure of confidential information in violation of this section is guilty of a
12 class C felony.

13 **54-68-06. Guardianship and conservatorship limitations - Representation to the**
14 **public - Exemption.**

15 1. A person may not serve as a guardian or a conservator for three or more adult
16 individuals at the same time unless that person is a licensed guardian or a licensed
17 conservator or has an agency permit. This subsection does not apply to an individual
18 appointed as a guardian or conservator for a family member.

19 2. A public guardian or a public conservator may not provide services to a minor unless
20 authorized by a proceeding under section 30.1-28-03.3.

21 3. A person must be a licensed guardian or a licensed conservator to offer guardianship
22 or conservatorship services to the public.

23 4. This section does not apply to:

24 a. A federal or state agency.

25 b. A financial institution under section 6-08.1-01 when appointed as a conservator.

26 c. Human service zones, including human service zone directors or human service
27 zone team members, as defined in section 50-01.1-01.

28 5. A person who violates this section after August 1, 2026, is guilty of a class B
29 misdemeanor.

54-68-07. Immunity.

1. A person who in good faith provides information or testimony regarding a guardian's or conservator's misconduct or lack of professionalism is not subject to civil liability.
2. An employee of the office, a member of the review board, or an agent of the review board acting in good faith is not subject to civil liability.

54-68-08. Authority - Applicability.

1. The office may revoke or suspend a guardian or a conservator license.
2. The office shall establish by rule a process to appeal license denials and review board orders.
3. Upon receipt of any report or complaint, the office shall assess the need for an investigation of the report or complaint. For the purpose of investigating a report or complaint:
 - a. The office or review board shall:
 - (1) Establish confidentiality and disclosure standards for investigating a report or complaint and subsequent disciplinary proceedings.
 - (2) Adopt rules to effectuate the powers and duties under this chapter.
 - b. The office or review board may:
 - (1) Interview an alleged victim, witness, or any other individual with knowledge of the situation.
 - (2) Access any record or information on an applicant, provider, or recipient of public services.
 - (3) Issue subpoenas for the attendance of witnesses and the production of designated documents, electronically stored information, or tangible things in accordance with the North Dakota Rules of Civil Procedure.
 - (4) Order the deposition of a person residing within or outside the state to be taken in accordance with the North Dakota Rules of Civil Procedure.
 - (5) Coordinate with other agencies and departments, including the attorney general and bureau of criminal investigation.
3. A guardian or conservator subject to the jurisdiction of a court of this state shall follow the applicable policies, procedures, and standards of the office, or other approval

1 authority authorized by rule if the guardian or the conservator serves an adult ward,
2 adult protected person, or incapacitated person, as defined in title 30.1.

3 **54-68-09. Attorney general - Counsel - Bureau of criminal investigation - Primary**
4 **authority for investigations.**

- 5 1. The attorney general shall act as legal counsel in any particular investigation or
6 proceeding under section 54-12-02. The attorney general shall appear and defend any
7 officer or employee of the office and any member of the review board in any action
8 founded on an act or omission arising out of performance of an official duty.
9 2. In accordance with chapter 54-12, the attorney general and bureau of criminal
10 investigation have primary authority to investigate criminal cases related to a
11 guardianship or conservatorship.

12 **54-68-10. Duty to disclose and cooperate.**

- 13 1. A state and local governmental entity and its officers and employees, and the officials,
14 officers, and employees of the courts of this state shall disclose records and
15 information requested by the review board or investigation counsel or any authorized
16 representative of the review board or investigation counsel and shall cooperate with
17 and give reasonable assistance to the review board or investigation counsel and any
18 authorized representative of the review board or counsel unless prohibited by federal
19 regulation or law.
20 2. A sheriff or police officer shall serve process and execute all lawful orders upon
21 request of the office, its authorized representative, the review board, or the
22 investigation counsel. The service of process extends to all parts of the state in any
23 investigation or disciplinary proceeding under this chapter.

24 **54-68-11. Duties of witnesses - Penalty.**

- 25 1. An individual is obliged to attend as a witness in any investigation or disciplinary
26 proceeding commenced under this chapter.
27 2. If an individual refuses to attend, testify, or produce any writings or things required by
28 subpoena, the office, review board, or investigation counsel that issued the subpoena
29 may petition the district court of the district in which the attendance or production is
30 required for an order compelling the individual to attend and testify or produce the
31 writings or things required by the subpoena. The court shall order the individual to

appear before the court at a specified time and place to show cause why the individual has not attended, testified, or produced the writings or things as required. A copy of the order must be served on the individual. If the court determines the subpoena was regularly issued, the court shall order the individual to appear at the time and place fixed in the order and testify or produce the required writings or things.

3. An individual who fails to obey an order under this section is guilty of a class A misdemeanor.

54-68-12. Preferred claim.

1. The office has a preferred claim against the estate of an individual or an individual's spouse for recovery of funds expended under this chapter for the care of that individual or the individual's spouse. All funds recovered under this chapter must be deposited in the general fund.

2. A claim may not be required to be paid and interest may not begin to accrue during the lifetime of the decedent's surviving spouse, if any.

3. A statute of limitation or similar statute or the doctrine of laches may not bar a claim under this chapter.

SECTION 5. REPEAL. Chapter 27-27 of the North Dakota Century Code is repealed.

SECTION 6. REPEAL. Section 54-68-02.1 of the North Dakota Century Code, as created in Section 4 of this Act, is repealed.

SECTION 7. APPROPRIATION - OFFICE OF GUARDIANSHIP AND

CONSERVATORSHIP - FULL-TIME EQUIVALENT POSITION AUTHORIZATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the office of guardianship and conservatorship for the purpose of defraying the expenses of the office of guardianship and conservatorship, for the biennium beginning July 1, 2025, and ending June 30, 2027, as follows:

Office of guardianship and conservatorship	<u>\$1,200,000</u>
Total general fund	\$1,200,000
Full-time equivalent positions	4.00

SECTION 8. TRANSFER. The office of management and budget shall transfer any unspent appropriation authority and full-time equivalent positions authorized for the office of

1 guardianship and conservatorship line item in Senate Bill No. 2002 to the office of guardianship
2 and conservatorship, for the biennium beginning July 1, 2025, and ending June 30, 2027.

3 **SECTION 9. TRANSFER.** The office of management and budget shall transfer any unspent
4 appropriation authority for guardianship related services and grants from the department of
5 health and human services in House Bill No. 1012 to the office of guardianship and
6 conservatorship, for the biennium beginning July 1, 2025, and ending June 30, 2027.

7 **SECTION 10. TRANSFER.** The office of management and budget shall transfer any
8 unspent appropriation authority from the guardianship grants line item in Section 1 of House Bill
9 No. 1015 to the office of guardianship and conservatorship, for the biennium beginning July 1,
10 2025, and ending June 30, 2027.

11 **SECTION 11. EFFECTIVE DATE.**

12 1. Sections 54-68-06, 54-68-08, and 54-68-09, as created in Section 4 of this Act,
13 become effective on April 1, 2026.

14 2. Sections 6, 8, 9, and 10 of this Act become effective on April 1, 2026.