

Introduced by

Legislative Management

(Human Services Committee)

1 A BILL for an Act to create and enact section 30.1-28-10.1 of the North Dakota Century Code,
2 relating to the appointment of an emergency guardian; to amend and reenact section
3 30.1-28-09 of the North Dakota Century Code, relating to requirements of guardianship
4 proceedings; and to repeal section 30.1-28-10 of the North Dakota Century Code, relating to the
5 appointment of temporary guardians.

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

7 **SECTION 1. AMENDMENT.** Section 30.1-28-09 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **30.1-28-09. (5-309) Notices in guardianship proceedings.**

- 10 1. In a proceeding for the appointment or removal of a guardian or for an alteration or
11 termination of a guardianship other than for the appointment of a ~~temporary~~an
12 emergency guardian or for the temporary suspension of a guardian, notice of hearing
13 shall be given to each of the following:
- 14 a. The ward or the proposed ward and the ward's or proposed ward's spouse,
15 parents, and adult children;
 - 16 b. Any person, corporation, or institution who is serving as the ward's guardian,
17 attorney in fact, representative payee for public benefits, or conservator, or who
18 has the ward's care and custody;
 - 19 c. If no other person is notified under subdivision a, then the adult siblings and any
20 adult with whom the proposed ward resides in a private residence, or if none can
21 be found, any known adult relative; and
 - 22 d. The attorney for the proposed ward, the visitor, and the physician or clinical
23 psychologist, together with a copy of the respective order of appointment for
24 each.

1 2. Notice must be served personally on the ward or proposed ward, and the ward's or
2 proposed ward's spouse and parents if they can be found within the state. Notice to
3 the spouse and parents, if they cannot be found within the state, and to all other
4 persons except the ward or proposed ward must be given as provided in section
5 30.1-03-01. Waiver of notice by the ward or proposed ward is not effective unless the
6 ward or proposed ward attends the hearing or the ward's or proposed ward's waiver of
7 notice is confirmed in an interview with the visitor.

8 3. The notice must be printed with not less than double-spaced twelve-point type. The
9 notice must inform the ward or proposed ward of the ward's or proposed ward's rights
10 at the hearing and must include a description of the nature, purpose, and
11 consequences of an appointment of a guardian.

12 **SECTION 2.** Section 30.1-28-10.1 of the North Dakota Century Code is created and
13 enacted as follows:

14 **30.1-28-10.1. Emergency guardian.**

15 1. If the court finds that compliance with the procedures of this chapter likely will result in
16 substantial harm to the alleged incapacitated individual's health, safety, or welfare, and
17 that no other person appears to have authority and willingness to act in the
18 circumstances, the court, on petition by a person interested in the alleged
19 incapacitated individual's welfare, may appoint an emergency guardian whose
20 authority may not exceed sixty days and who may exercise only the powers specified
21 in the order. Immediately upon receipt of the petition for an emergency guardianship,
22 the court shall appoint an attorney to represent the alleged incapacitated individual in
23 the proceeding. Except as otherwise provided in subsection 2, reasonable notice of
24 the time and place of a hearing on the petition must be given to the alleged
25 incapacitated individual and any other person as the court directs.

26 2. An emergency guardian may be appointed without notice to the alleged incapacitated
27 individual and the alleged incapacitated individual's attorney only if the court finds from
28 affidavit or other sworn testimony that the alleged incapacitated individual will be
29 substantially harmed before a hearing on the appointment can be held. If the court
30 appoints an emergency guardian without notice to the alleged incapacitated individual,
31 the alleged incapacitated individual must be given notice of the appointment within

- 1 forty-eight hours after the appointment. The court shall hold a hearing on the
2 appropriateness of the appointment within five days after the appointment.
- 3 3. Appointment of an emergency guardian, with or without notice, is not a determination
4 of the alleged incapacitated individual's incapacity.
- 5 4. The court may remove an emergency guardian at any time. An emergency guardian
6 shall make any report the court requires. In all other respects, the provisions of this
7 chapter concerning guardians apply to an emergency guardian.
- 8 **SECTION 3. REPEAL.** Section 30.1-28-10 of the North Dakota Century Code is repealed.