

Sixty-ninth
Legislative Assembly
of North Dakota

**SECOND ENGROSSMENT
with Conference Committee 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, employer
17 identification number, or any other unique identifying number, characteristic, or code
18 and any demographic information collected 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. "Operations committee" means the guardianship and conservatorship operations
26 committee established under section 54-68-03.
- 27 8. "Public conservator" means a conservator under contract with the office to provide
28 conservatorship services for an individual eligible for public services.
- 29 9. "Public guardian" means a guardian under contract with the office to provide
30 guardianship services for an individual eligible for public services.

1 10. "Public services" means state or federally funded programs administered by the office
2 available to eligible individuals.

3 11. "Review board" means the guardianship and conservatorship review board
4 established under section 54-68-05.

5 12. "Unlicensed conservator" means a person providing conservatorship services without
6 a conservator license.

7 13. "Unlicensed guardian" means a person providing guardianship services without a
8 guardian license.

9 **54-68-02. Office of guardianship and conservatorship - Purpose - Powers and duties -**
10 **Report - Audit.**

11 1. The office of guardianship and conservatorship is established, consisting of the
12 operations committee, office staff, and review board.

13 2. The office, in its capacity of supervising and directing guardianship and
14 conservatorship, shall operate independently of any state agency that provides
15 services to individuals under guardianship or conservatorship. The office shall
16 administer programs assigned by state law. The office may adopt rules to administer
17 and enforce this chapter.

18 3. The office shall:

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

20 (1) Receiving public services;

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

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

23 (4) Distribution of funding for direct payments and expense reimbursements for
24 public services.

25 b. Develop ethical standards for:

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

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

28 c. Monitor guardianship and conservatorship services.

29 d. Develop policies and procedures for proceedings if a guardian or a conservator is
30 unable to fulfill the duties of a guardian or a conservator.

- e. Keep accurate records of all financial transactions performed under this chapter in the manner required by the office of management and budget.
- f. Provide a report each biennium to the legislative management regarding the operations of the office, including the cost of public guardians and public conservators, and any other information requested by the legislative management.

4. The office may:

- a. Recommend rules applicable to a licensed guardian or a licensed conservator.
- b. Grant licenses to a guardian or conservator and agency permits, including revoking or suspending an agency permit.
- c. Require insurance or bond coverage for a licensed guardian or a licensed conservator as a condition for licensure.
- d. Establish mandatory disclosure and reporting requirements for a licensed guardian or a licensed conservator, including a process to disclose information or submit reports to the office.
- e. Provide training for guardians and conservators.
- f. Provide annual reports to the governor.
- g. Distribute funding for direct payments, expense reimbursements, or other public services, including funding for public administrators.
- h. Establish and collect fees to support guardianship and conservatorship services and the duties of the office, which must be deposited in the guardianship and conservatorship support fund.
- i. Seek and apply for private, federal, or other funds to help support guardians and conservators and to safeguard the rights of individuals who receive public services.
- j. Accept private funds for deposit in the guardianship and conservatorship support fund.

5. The office may not authorize payment for services for any public guardian or public conservator that provides services for more individuals than allowed through statute, regulation, or administrative rule.

- 1 6. The office, its officers, or its employees may not act as a public guardian or a public
2 conservator or act in any other representative capacity for any individual. This
3 subsection does not prohibit an officer or employee from acting as a guardian or
4 conservator in a personal capacity apart from any duties as an officer or employee.
- 5 7. The office is subject to audits by the state auditor under chapter 54-10.
- 6 8. The director of the office of management and budget shall allocate office space in the
7 state capitol for the office of guardianship and conservatorship, or, if office space in the
8 capitol is unavailable, shall negotiate for, contract for, and obtain office space for the
9 office in the city of Bismarck or in the Bismarck area. The office of guardianship and
10 conservatorship's office space may not be located in the office space of the
11 department of health and human services or the judicial branch and must provide
12 sufficient privacy and security for the office to conduct its business. The director of the
13 office of management and budget shall charge the office of guardianship and
14 conservatorship an amount equal to the fair value of the office space and related
15 services the office of management and budget renders to the office of guardianship
16 and conservatorship.

17 **54-68-02.1. Transition - Requirements.**

- 18 1. By August 1, 2025, each appointing authority shall make the initial appointments to the
19 operations committee in accordance with section 54-68-03.
- 20 2. By August 31, 2025, the operations committee shall appoint an executive director and
21 investigation counsel.
- 22 3. By January 1, 2026, each appointing authority shall make the initial appointments to
23 the review board in accordance with section 54-68-05.
- 24 4. By March 31, 2026, the office shall:
 - 25 a. Develop by rule initial policies, procedures, and eligibility criteria for:
 - 26 (1) Receiving public services;
 - 27 (2) A public guardian or a public conservator;
 - 28 (3) A licensed guardian or a licensed conservator; and
 - 29 (4) Distribution of funding for direct payments and expense reimbursements for
30 public services.
 - 31 b. Develop by rule ethical standards for:

- 1 (1) A licensed guardian or a licensed conservator; and
- 2 (2) An unlicensed guardian or an unlicensed conservator.
- 3 c. Develop by rule policies and procedures for proceedings if a guardian or a
- 4 conservator is unable to fulfill the duties of a guardian or a conservator.
- 5 d. Set by rule daily rates for fees and a reimbursement mechanism protocol.
- 6 e. Establish initial fees to support guardianship and conservatorship services and
- 7 the duties of the office.
- 8 5. The office may adopt rules necessary to facilitate the creation of the office and
- 9 assume the administration of guardianship programs.

10 **54-68-03. Operations committee.**

- 11 1. A guardianship and conservatorship operations committee is created to oversee the
- 12 operation of the office. The operations committee shall:
- 13 a. Appoint an office director and investigation counsel who serve at the will of the
- 14 operations committee.
- 15 b. Oversee and provide consent to the office for the adoption of administrative rules.
- 16 c. Oversee the administration of programs and personnel under the office.
- 17 d. Provide input and approval of the office budget.
- 18 2. The operations committee shall consist of:
- 19 a. Two members of the legislative assembly, one from each chamber, appointed by
- 20 the chairman of the legislative management;
- 21 b. Two members appointed by the chief justice of the supreme court;
- 22 c. Two members appointed by the governor; and
- 23 d. One member appointed by the state bar association of North Dakota.
- 24 3. Initially, members of the operations committee shall serve staggered terms as follows:
- 25 a. Two members shall serve a term of one year;
- 26 b. Two members shall serve a term of two years; and
- 27 c. Three members shall serve a term of three years.
- 28 4. After the expiration of initial terms, all appointments must be for a term of three years.
- 29 A member may not serve more than two consecutive terms of three years.

1 5. A member of the operations committee serves at the will of the appointing authority,
2 and may be removed for good cause. A vacancy must be filled in the same manner as
3 the original appointment for the unexpired portion of the term.

4 6. A member of the operations committee is entitled to:
5 a. Per diem compensation in accordance with section 54-35-10; and
6 b. Payment for mileage and travel expenses incurred in the conduct of committee
7 business as provided under sections 44-08-04 and 54-06-09.

8 **54-68-04. Director - Investigation counsel - Powers and duties.**

9 1. The powers and duties of the director of the office of guardianship and
10 conservatorship include:

- 11 a. Within the limits of legislative appropriations, to employ the necessary staff to
12 provide services in accordance with this chapter.
13 b. To contract with guardians to administer services.
14 c. To grant guardian and conservator licenses.
15 d. To develop, maintain, and revise a comprehensive master plan for guardianship
16 and conservatorship in this state, including the needs and resources.
17 e. To recommend rules to the operations committee regarding the administration of
18 the office.
19 f. To develop and submit budgets for the office.
20 g. To present an annual report to the operations committee on the status of the
21 office.

22 2. The powers and duties of the investigation counsel of the office of guardianship and
23 conservatorship include:

- 24 a. To oversee the complaint process.
25 b. To recommend rules to the operations committee regarding operation of the
26 complaint and appeals process.
27 c. To investigate noncompliance under this chapter reported after April 1, 2026, by
28 conducting interviews, accessing records, issuing subpoenas, and ordering
29 depositions.
30 d. To issue formal disciplinary complaints.
31 e. To attend disciplinary hearings.

54-68-05. Review board.

1. A guardianship and conservatorship review board is created to conduct disciplinary proceedings and issue sanctions for a guardian or conservator. The guardianship and conservatorship review board shall consist of:
 - a. One member representing guardians, appointed by the guardianship association of North Dakota;
 - b. One member representing family guardians, appointed by the chief justice of the supreme court;
 - c. One member representing the protection and advocacy project, appointed by the 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 who is not an active judge or employee of a judge; and
 - (2) One retired judge, judicial referee, or surrogate judge; and
 - e. Two members of the public, appointed by the governor.
2. Initially, members of the review board shall serve staggered terms as follows:
 - a. Two members shall serve a term of one year;
 - b. Two members shall serve a term of two years; and
 - c. Three members shall serve a term of three years.
3. After the expiration of initial terms, all appointments must be for a term of three years. A member may not serve more than two consecutive terms of three years.
4. A member of the review board serves at the will of the appointing authority, and may be removed for good cause. A vacancy must be filled in the same manner as the original appointment for the unexpired portion of the term.
5. A member of the review board may not receive compensation for their service but is entitled to payment for mileage and travel expenses incurred in the conduct of committee business as provided under sections 44-08-04 and 54-06-09.
6. Office staff, under the oversight of the operations committee, shall develop by rule complaint protocols, hearing procedures, ethics rules, disciplinary measures, and

1 sanctions. Office staff, under the oversight of the operations committee, may develop
2 other rules necessary for the review board.

3 7. Review board meetings are closed meetings under chapter 44-04.

4 **54-68-06. Guardianship and conservatorship support fund - Continuing**
5 **appropriation.**

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

12 **54-68-07. Records - Confidentiality - Disclosure - Penalty.**

- 13 1. For purposes of this chapter, confidential records as defined under section 44-04-17.1
14 include:
- 15 a. Identifiable information that may reasonably be used to identify a guardian,
16 conservator, complainant, or an individual applying for or receiving services; and
17 b. A report concerning an applicant, provider, or recipient of public services.
- 18 2. Confidential information may be disclosed only:
- 19 a. In the administration of a program under the supervision or administration of the
20 office; or
21 b. When authorized or required by administrative rule, court rule, or law.
- 22 3. The office may disclose information uncovered during a disciplinary investigation to
23 the attorney general or bureau of criminal investigation related to a criminal
24 investigation when the investigation counsel suspects the subject of the investigation
25 has committed a crime.
- 26 4. A person that discloses, authorizes, or knowingly allows, participates in, or acquiesces
27 in the disclosure of confidential information in violation of this section is guilty of a
28 class C felony.

54-68-08. Guardianship and conservatorship limitations - Representation to the public - Exemption.

1. A person may not serve as a guardian or a conservator for three or more adult individuals at the same time unless that person is a licensed guardian or a licensed conservator or has an agency permit. This subsection does not apply to an individual appointed as a guardian or conservator for a family member.
2. A public guardian or a public conservator may not provide services to a minor unless authorized by a proceeding under section 30.1-28-03.3.
3. A person must be a licensed guardian or a licensed conservator to offer guardianship or conservatorship services to the public.
4. This section does not apply to:
 - a. A federal or state agency.
 - b. A financial institution under section 6-08.1-01 when appointed as a conservator.
 - c. Human service zones, including human service zone directors or human service zone team members, as defined in section 50-01.1-01.
5. A person who violates this section after August 1, 2026, is guilty of a class B misdemeanor.

54-68-09. 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.

54-68-10. Authority - Appeals - Applicability.

1. The office may revoke or suspend a guardian or a conservator license.
2. 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 operations committee 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. Office staff 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. Appeals under this chapter must be conducted in accordance with chapter 28-32.

4. A guardian or conservator subject to the jurisdiction of a court of this state shall follow the rules of the office if the guardian or the conservator serves an adult ward, adult protected person, or incapacitated person, as defined in title 30.1.

54-68-11. Attorney general - Counsel - Bureau of criminal investigation - Primary authority for investigations.

1. The attorney general may act as legal counsel in any particular investigation or proceeding under section 54-12-02. The attorney general shall appear and defend any officer or employee of the office and any member of the review board in any action founded on an act or omission arising out of performance of an official duty.

2. In accordance with chapter 54-12, the attorney general and bureau of criminal investigation have primary authority to investigate criminal cases related to a guardianship or conservatorship.

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

1. A state or local governmental entity and its officers and employees, and the officials, officers, and employees of the courts of this state shall disclose records and information requested by the review board or investigation counsel or any authorized representative of the review board or investigation counsel and shall cooperate with and give reasonable assistance to the review board or investigation counsel and any

1 authorized representative of the review board or counsel unless prohibited by federal
2 regulation or law.

3 2. A sheriff or police officer shall serve process and execute all lawful orders upon
4 request of the office, its authorized representative, the review board, or the
5 investigation counsel. The service of process extends to all parts of the state in any
6 investigation or disciplinary proceeding under this chapter.

7 **54-68-13. Duties of witnesses - Penalty.**

8 1. An individual is obliged to attend as a witness in any investigation or disciplinary
9 proceeding commenced under this chapter.

10 2. If an individual refuses to attend, testify, or produce any writings or things required by
11 subpoena, the office, review board, or investigation counsel that issued the subpoena
12 may petition the district court of the district in which the attendance or production is
13 required for an order compelling the individual to attend and testify or produce the
14 writings or things required by the subpoena. The court shall order the individual to
15 appear before the court at a specified time and place to show cause why the individual
16 has not attended, testified, or produced the writings or things as required. A copy of
17 the order must be served on the individual. If the court determines the subpoena was
18 regularly issued, the court shall order the individual to appear at the time and place
19 fixed in the order and testify or produce the required writings or things.

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

22 **54-68-14. Preferred claim.**

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

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

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

1 **54-68-15. Supreme court power.**

2 A court of this state may refer cases to the office. The court may adopt court rules as
3 necessary to facilitate case management with the district courts, the office, and the review
4 board.

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

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

8 **SECTION 7. APPROPRIATION - OFFICE OF GUARDIANSHIP AND**

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

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

18 **SECTION 8. TRANSFER.** The office of management and budget shall transfer the full-time
19 equivalent attorney position authorized for the office of guardianship and conservatorship line
20 item in Senate Bill No. 2002 to the office of guardianship and conservatorship, for the biennium
21 beginning July 1, 2025, and ending June 30, 2027. The remaining full-time equivalent positions
22 authorized for the office of guardianship and conservatorship line item in Senate Bill No. 2002
23 shall transfer as caseload permits but no later than April 1, 2026.

24 **SECTION 9. TRANSFER.** The office of management and budget shall transfer any unspent
25 appropriation authority authorized for the office of guardianship and conservatorship line item in
26 Senate Bill No. 2002 to the office of guardianship and conservatorship, for the biennium
27 beginning July 1, 2025, and ending June 30, 2027.

28 **SECTION 10. TRANSFER.** The office of management and budget shall transfer any
29 unspent appropriation authority for guardianship related services and grants from the
30 department of health and human services in House Bill No. 1012 to the office of guardianship
31 and conservatorship, for the biennium beginning July 1, 2025, and ending June 30, 2027.

1 **SECTION 11. TRANSFER.** The office of management and budget shall transfer any
2 unspent appropriation authority from the guardianship grants line item in Section 1 of House Bill
3 No. 1015 to the office of guardianship and conservatorship, for the biennium beginning July 1,
4 2025, and ending June 30, 2027.

5 **SECTION 12. ATTORNEY GENERAL - EMERGENCY COMMISSION REQUEST.** During
6 the 2025-26 interim, the attorney general may submit a request to the emergency commission
7 in accordance with chapter 54-16 to request authorization and related funding for one full-time
8 equivalent position for the bureau of criminal investigation related to guardianship and
9 conservatorship case investigations. Prior to submitting a request, the office of guardianship
10 and conservatorship must be operational and the attorney general must identify an increase in
11 workload related to guardianship and conservatorship case investigations which necessitates
12 the addition of one full-time equivalent position.

13 **SECTION 13. EFFECTIVE DATE.**

- 14 1. Sections 54-68-08, 54-68-10, and 54-68-11, as created in Section 4 of this Act,
15 become effective on April 1, 2026.
- 16 2. Sections 6, 9, 10 and 11 of this Act become effective on April 1, 2026.