

HOUSE BILL NO. 1262

Introduced by

Representatives Louser, Hoverson, Klemin, VanWinkle, Fisher

Senators Burckhard, Hogue, Larson, Paulson

1 A BILL for an Act to amend and reenact section 30.1-28-04 of the North Dakota Century Code,
2 relating to guardians of incapacitated persons.

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

4 **SECTION 1. AMENDMENT.** Section 30.1-28-04 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **30.1-28-04. (5-304) Findings - Order of appointment.**

7 1. The court shall exercise the authority conferred in this chapter consistent with the
8 maximum self-reliance and independence of the incapacitated person and make
9 appointive and other orders only to the extent necessitated by the incapacitated
10 person's actual mental and adaptive limitations or other conditions warranting the
11 procedure.

12 2. At a hearing held under this chapter, the court shall:

13 a. Hear evidence that the proposed ward is an incapacitated person. Age,
14 eccentricity, poverty, or medical diagnosis alone is not sufficient to justify a finding
15 of incapacity;

16 b. Hear evidence and determine whether there are any existing general durable
17 powers of attorney and durable powers of attorney for health care. If there are
18 validly executed durable powers of attorney, the court shall consider the
19 appointed attorneys in fact and agents appointed thereunder when assessing
20 alternative resource plans and the need for a guardian; and

21 c. Appoint a guardian, other than the proposed ward, and confer specific powers of
22 guardianship only after finding in the record based on clear and convincing
23 evidence that:

24 (1) The proposed ward is an incapacitated person;

- 1 (2) There is no available alternative resource plan that is suitable to safeguard
2 the proposed ward's health, safety, or habilitation which could be used
3 instead of a guardianship;
- 4 (3) The guardianship is necessary as the best means of providing care,
5 supervision, or habilitation of the ward; and
- 6 (4) The powers and duties conferred upon the guardian are appropriate as the
7 least restrictive form of intervention consistent with the ability of the ward for
8 self-care.
- 9 3. Except upon specific findings of the court, a ward may not be deprived of any of the
10 following legal rights: to vote, to seek to change marital status, or to obtain or retain a
11 motor vehicle operator's license.
- 12 4. The court may find that the ward retains other specific rights.
- 13 5. The order appointing a guardian confers upon the guardian only those powers and
14 duties specified in the order. In addition to any other powers conferred upon the
15 guardian, the court's order must state whether the guardian has no authority, general
16 authority, or limited authority to make decisions on behalf of the ward in each of the
17 areas of residential, educational, medical, legal, vocational, and financial
18 decisionmaking. A grant of limited authority must specify the limitations upon the
19 authority of the guardian or the authority retained by the ward. The court's order must
20 require the guardian to provide within ninety days from the date of the order a
21 beginning inventory of all assets owned by the ward or in which the ward has an
22 interest. The guardian shall provide a copy of the beginning inventory to the ward and
23 any interested persons designated by the court in its order. Unless terminated earlier
24 by the court, an order appointing or reappointing a guardian under this section is
25 effective for up to five years. At least ninety days before the expiration of the initial
26 order of appointment or any following order of reappointment, the court shall request
27 and consider information submitted by the guardian, ward, ward's attorney, if any, and
28 any interested persons regarding whether the need for a guardian continues to exist. If
29 it is recommended that the guardianship continue, the court may appoint a guardian
30 ad litem or visitor, or both, in accordance with section 30.1-28-03. The court shall hold
31 a hearing on whether the guardianship should continue. Following the hearing and

- 1 consideration of submitted information, the court may reappoint the guardian for up to
2 another five years, allow the existing order to expire, or appoint a new guardian in
3 accordance with this section. The supreme court, by rule or order, shall provide for the
4 regular review of guardianship in existence on August 1, 2015.
- 5 6. Unless a court of competent jurisdiction determines otherwise, a durable power of
6 attorney for health care executed pursuant to chapter 23-06.5 takes precedence over
7 any authority to make medical decisions granted to a guardian pursuant to chapter
8 30.1-28.
- 9 7. The court may require a guardian to furnish a bond in the amount and with sureties as
10 the court specifies.
- 11 8. After the hearing, the guardian ad litem must be discharged of the person's duties as
12 guardian ad litem.