

Sixty-ninth
Legislative Assembly
of North Dakota

**PROPOSED AMENDMENTS TO
SECOND ENGROSSMENT**

REENGROSSED SENATE BILL NO. 2029

Introduced by

Legislative Management

(Government Finance Committee)

1 A BILL for an Act to create and enact chapter 27-27.1 and a new subsection to section
2 30.1-28-07 of the North Dakota Century Code, relating to an office of guardianship and
3 conservatorship and the removal of a guardian; to amend and reenact section 30.1-29-15 and
4 subsection 1 of section 50-24.1-07 of the North Dakota Century Code, relating to the removal of
5 a conservator and the recovery of medical assistance expenses; to repeal chapter 27-27 of the
6 North Dakota Century Code, relating to the task force on guardianship monitoring; to provide a
7 penalty; to provide for a report; to provide an appropriation; ~~and to provide a continuing~~
8 appropriation; and to provide an expiration date.

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

10 **SECTION 1.** Chapter 27-27.1 of the North Dakota Century Code is created and enacted as
11 follows:

12 **27-27.1-01. Definitions.**

13 As used in this chapter:

- 14 1. "Agency permit" means temporary authorization given by the office to an employee of
15 a professional guardianship or professional conservatorship entity which allows the
16 permitholder to provide guardianship or conservatorship services as an agent of the
17 entity.
- 18 2. "Board" means the guardianship and conservatorship review board.
- 19 3. "Identifiable information" means an individual's personal details, including the
20 individual's name, address, telephone number, facsimile number, social security

- 1 number, electronic mail address, program identification number, or any other unique
2 identifying number, characteristic, or code, and any demographic information collected
3 about the individual.
- 4 4. "Investigation counsel" means the guardianship and conservatorship counsel.
5 5. "Licensed conservator" means a person licensed by the office to provide
6 conservatorship services.
- 7 6. "Licensed guardian" means a person licensed by the office to provide guardianship
8 services.
- 9 7. "Office" means the office of guardianship and conservatorship.
- 10 8. "Public conservator" means a conservator under contract with the office to provide
11 conservatorship services for an individual eligible for public services.
- 12 9. "Public guardian" means a guardian under contract with the office to provide
13 guardianship services for an individual eligible for public services.
- 14 10. "Public services" means state or federally funded programs administered by the office
15 available to eligible individuals.
- 16 11. "Unlicensed conservator" means a person providing conservatorship services without
17 a conservator license.
- 18 12. "Unlicensed guardian" means a person providing guardianship services without a
19 guardian license.

20 **27-27.1-02. Office of guardianship and conservatorship - Purpose - Powers and**
21 **duties - Report - Audit.**

- 22 1. The office of guardianship and conservatorship is created as a division under the
23 supreme court to administer the programs assigned by state law or the supreme court.
- 24 2. The office shall:
- 25 a. Develop policies and procedures, including 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 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 policies and procedures for proceedings when a guardian or a
- 4 conservator is unable to fulfill the duties of a guardian or a conservator.
- 5 d. Keep accurate records of all financial transactions performed under this chapter
- 6 in the manner required by the office of management and budget.
- 7 e. Provide a report each biennium to the legislative management regarding the
- 8 operations of the office, including the cost of public guardians and public
- 9 conservators, and any other information requested by the legislative
- 10 management.
- 11 3. The office may:
- 12 a. Recommend rules applicable to a licensed guardian or a licensed conservator.
- 13 b. Grant licenses to a guardian or conservator and agency permits, including
- 14 revoking or suspending an agency permit.
- 15 c. Require insurance or bond coverage for a licensed guardian or a licensed
- 16 conservator as a condition for licensure.
- 17 d. Establish mandatory disclosure and reporting requirements for a licensed
- 18 guardian or a licensed conservator, including a process to disclose information or
- 19 submit reports to the office.
- 20 e. Provide training for guardians and conservators.
- 21 f. Monitor guardianship and conservatorship services.
- 22 g. Provide annual reports to the supreme court.
- 23 h. Distribute funding for direct payments, expense reimbursements, or other public
- 24 services, including funding for public administrators.
- 25 i. Establish and collect fees to support guardianship and conservatorship services
- 26 and the duties of the office, which must be deposited in the guardianship and
- 27 conservatorship support fund.
- 28 j. Seek and apply for private, federal, or other funds to help support guardians and
- 29 conservators and to safeguard the rights of individuals who receive public
- 30 services.

1 k. Accept private funds for deposit in the guardianship and conservatorship support
2 fund.

3 4. The office may not authorize payment for services for any public guardian or public
4 conservator that provides services for more individuals than allowed through statute,
5 regulation, court rule, or policy adopted by the office.

6 5. The office, its officers, or its employees, may not act as a public guardian or a public
7 conservator or act in any other representative capacity for any individual. This
8 subsection does not prohibit an officer or employee from acting as a guardian or
9 conservator in a personal capacity apart from any duties as an officer or employee.

10 6. The office is subject to audits by the state auditor under chapter 54-10.

11 **27-27.1-03. Guardianship and conservatorship support fund - Continuing**
12 **appropriation.**

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

19 **27-27.1-04. Records - Confidentiality - Disclosure - Penalty.**

20 1. Identifiable information concerning an individual who is applying for or receiving public
21 services under this chapter is confidential and may be disclosed only:

22 a. In the administration of any program under the supervision or administration of
23 the office.

24 b. When authorized by a policy or procedure of the office.

25 c. When allowed or required by rule or law.

26 2. A report concerning an applicant, provider, or recipient of public services is confidential
27 if the report is made in good faith and may be disclosed only to:

28 a. Authorized staff and agents of the office, who may further disclose the
29 information to a person that has a definite interest in the well-being of the
30 individual concerned, is in a position to serve the individual's interests, and that

1 needs to know the contents of the records to assure the well-being and interests
2 of the individual concerned.

3 b. An individual who is the subject of the report, if the identity of the person
4 reporting or supplying information under this chapter is protected until the
5 information is needed for use in an administrative, legal, or disciplinary
6 proceeding arising out of the report.

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

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

11 e. The investigation counsel.

12 3. The investigation counsel may disclose information uncovered during a disciplinary
13 investigation to the attorney general or bureau of criminal investigation related to a
14 criminal investigation when the investigation counsel suspects the subject of the
15 investigation has committed a crime.

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

19 **27-27.1-05. Guardianship and conservatorship limitations - Representation to the**
20 **public - Exemption.**

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

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

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

29 4. This section does not apply to:

30 a. A federal or state agency.

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

1 c. An individual appointed as a guardian or conservator for a family memberHuman
2 service zones, including human service zone directors and human service zone
3 team members, as defined in section 50-01.1-01.

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

6 **27-27.1-06. Immunity.**

7 A person who in good faith provides information or testimony regarding a guardian's or
8 conservator's misconduct or lack of professionalism is not subject to civil liability.

9 **27-27.1-07. Jurisdiction - Waiver of court costs - Applicability.**

10 1. The supreme court has original jurisdiction to revoke or suspend a guardian or a
11 conservator license.

12 2. The supreme court must establish a process to appeal license denials and board
13 orders.

14 3. The courts shall waive court costs and filing fees in any proceeding in which a person
15 is receiving public services under this chapter.

16 4. A guardian or conservator subject to the jurisdiction of a court of this state shall follow
17 the applicable policies, procedures, and standards of the office, or other approval
18 authority authorized by court rule, if the guardian or the conservator serves an adult
19 ward, adult protected person, or incapacitated person, as defined in title 30.1.

20 **27-27.1-08. Guardianship and conservatorship review board - Guardianship and**
21 **conservatorship counsel - Guardianship and conservatorship operations committee.**

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

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

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

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

- 1 d. Two members appointed by the state bar association of North Dakota, consisting
2 of:
3 (1) One lawyer licensed to practice law in the state; and
4 (2) One retired judge, retired judicial referee, or surrogate judge; and
5 e. Two members of the public, appointed by the supreme court.
6 2. The supreme court may establish a guardianship and conservatorship counsel to
7 investigate noncompliance reported under this chapter. The director of the office is the
8 hiring authority for the investigation counsel.
9 3. The supreme court must create a guardianship and conservatorship operations
10 committee to supervise the operations of the office and investigation counsel.
11 a. The guardianship and conservatorship operations committee shall consist of:
12 (1) Two members of the legislative assembly, one from each chamber,
13 appointed by the chairman of the legislative management;
14 (2) Two members appointed by the state bar association of North Dakota,
15 consisting of:
16 (a) One lawyer licensed to practice law in the state; and
17 (b) One retired judge, retired judicial referee, or surrogate judge;
18 (3) Two members appointed by the chief justice of the supreme court; and
19 (4) The state court administrator, or the state court administrator's designee,
20 who serves as an ex officio member.
21 b. Initially, members of the guardianship and conservatorship operations committee
22 shall serve staggered terms as follows:
23 (1) Two members shall serve a term of one year;
24 (2) Two members shall serve a term of two years; and
25 (3) Two members shall serve a term of three years.
26 c. After the expiration of initial terms, all appointments must be for a term of three
27 years. A member may not serve more than two consecutive terms of three years.
28 d. A member of the guardianship and conservatorship operations committee
29 concurrently serving as a member of the legislative assembly shall receive
30 per diem compensation in accordance with section 54-35-10.
31 e. The guardianship and conservatorship operations committee:

- | | | |
|---|---------------|--|
| 1 | a. <u>(1)</u> | Must develop and submit budgets for the office, board, and investigation |
| 2 | | counsel. |
| 3 | b. <u>(2)</u> | Is the hiring authority for the office director. |
| 4 | c. <u>(3)</u> | May adopt policies recommended by the office. |

27-27.1-09. Supreme court - Discretionary powers.

The supreme court may:

1. Grant immunity to a member of the board and the board's agents if a district court or the supreme court would have immunity in performing the same functions.
2. Establish confidentiality and disclosure standards for disciplinary proceedings.
3. Authorize officials, officers, agents, and designees of the office, the board, and the investigation counsel to:
 - a. Administer oaths.
 - b. Order and otherwise provide for the inspection of books and records.
 - c. 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.
 - d. 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.
4. Adopt rules to effectuate the powers and duties under this chapter.

20 27-27.1-10. Attorney general - Counsel - Bureau of criminal investigation - Primary
21 authority for investigations.

- 22 1. The attorney general shall act as legal counsel in any particular investigation or
23 proceeding under section 54-12-02. The attorney general shall appear and defend any
24 officer or employee of the office and any member of the board in any action founded
25 on an act or omission arising out of performance of an official duty consistent with
26 section 54-12-01.3.
- 27 2. In accordance with chapter 54-12, the attorney general and bureau of criminal
28 investigation have primary authority to investigate criminal cases related to a
29 guardianship or conservatorship.

27-27.1-11. Duty to disclose and cooperate.

1. A state and 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 board or investigation counsel or any authorized representative of the board or investigation counsel and shall cooperate with and give reasonable assistance to the board or investigation counsel and any authorized representative of the board or counsel unless prohibited by federal regulation or law.
2. The service of process extends to all parts of the state in any investigation or disciplinary proceeding under this chapter. A sheriff or police officer shall serve process and execute all lawful orders upon request of the office, its authorized representative, the board, or the investigation counsel.

27-27.1-12. Duties of witnesses - Penalty.

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

27-27.1-13. 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.

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

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

5 **SECTION 2.** A new subsection to section 30.1-28-07 of the North Dakota Century Code is
6 created and enacted as follows:

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

14 **SECTION 3. AMENDMENT.** Section 30.1-29-15 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **30.1-29-15. (5-415) Death, resignation, or removal of conservator.**

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

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

28 **SECTION 4. AMENDMENT.** Subsection 1 of section 50-24.1-07 of the North Dakota
29 Century Code is amended and reenacted as follows:

30 1. On the death of any recipient of medical assistance who was a resident of a nursing
31 facility, intermediate care facility for individuals with intellectual disabilities, or other

1 medical institution and with respect to whom the department determined that resident
2 reasonably was not expected to be discharged from the medical institution and to
3 return home, or who was fifty-five years of age or older when the recipient received the
4 assistance, and on the death of the spouse of the deceased recipient, the total amount
5 of medical assistance paid on behalf of the recipient following the institutionalization of
6 the recipient who cannot reasonably be expected to be discharged from the medical
7 institution, or following the recipient's fifty-fifth birthday, as the case may be, must be
8 allowed as a preferred claim against the decedent's estate after payment, in the
9 following order, of:

- 10 a. Recipient liability expense applicable to the month of death for nursing home or
11 basic care services;
- 12 b. Funeral expenses not in excess of three thousand five hundred dollars;
- 13 c. Expenses of the last illness, other than those incurred by medical assistance;
- 14 d. Expenses of administering the estate, including attorney's fees approved by the
15 court;
- 16 e. Claims made under chapter 50-01;
- 17 f. Claims made under chapter 50-24.5;
- 18 g. Claims made under chapter 50-06.3 and on behalf of the state hospital; and
- 19 h. Claims made under chapter 27-27.1; and
- 20 i. Claims made under subsection 4.

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

22 **SECTION 6. APPROPRIATION - JUDICIAL BRANCH - OFFICE OF GUARDIANSHIP**

23 **AND CONSERVATORSHIP.** The funds provided in this section, or so much of the funds as may
24 be necessary, are appropriated out of any moneys in the general fund in the state treasury, not
25 otherwise appropriated, to the judicial branch for the purpose of defraying the expenses of the
26 office of guardianship and conservatorship, for the biennium beginning July 1, 2025, and ending
27 June 30, 2027, as follows:

28 Establishment costs - indigents	\$1,550,000
29 Establishment costs - developmentally disabled	1,096,400
30 Public guardian and conservator fees - indigents	7,100,000

1	Guardianship contracts - developmentally disabled	<u>5,500,000</u>
2	Total general fund	\$15,246,400

3 **SECTION 7. EXPIRATION DATE.** This Act is effective through July 31, 2027, and after that
4 date is ineffective.